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Rules and Regulations

Federal Register
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Monday, April 1, 2002

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 2179–01]

RIN 1115–AG46

Increase of the Immigration User Fee From $6 to $7

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service (Service) collects a fee from every passenger arriving at a port-of-entry in the United States aboard a commercial aircraft or commercial vessel (or having been ''preinspected'' at a place outside the United States prior to such arrival), except those individuals exempted under section 286(e) of the Immigration and Nationality Act (Act) or under 8 CFR part 286. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 2002, Public Law 107–77, dated November 28, 2001, increased the fee from $6 to $7. This rule amends Service regulations in light of this fee change by removing the current reference to $6 in the regulations in favor of a reference to the fee amount prescribed in section 286(d) of the Act as amended. This technical change to the regulations is being taken so that it will be unnecessary for the Service to amend the text of its regulations each time the user immigration fee is statutorily changed in the future.

EFFECTIVE DATE: This final rule is effective May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Georgia Mayers, Chief of Cash Management, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6034, Washington, DC 20536, telephone (202) 305–1200.

SUPPLEMENTARY INFORMATION:

What Is the Immigration User Fee?

Beginning in Fiscal Year 1987, the Service was authorized by Congress via the 1987 Appropriations Act for the Department of Justice, Public Law 99–591, to collect an immigration user fee for each passenger arriving in the United States by commercial air or sea conveyance. Immigration user fee funds are used to operate air and sea inspection services and to fund other related activities.

How Will the Service Use the Fees That Are Collected?

As provided by law, the user fees that are collected may be used, among other things, to:

- Provide immigration inspection and preinspection services for commercial aircraft and vessels;
- Provide overtime immigration inspection services for commercial aircraft or vessels;
- Administer debt recovery, including the establishment and operation of a national collections office;
- Expand, operate, and maintain information systems for nonimmigrant control and debt collection;
- Detect fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection;
- Provide detention and removal services for: inadmissible aliens arriving on commercial aircraft and vessels and for any inadmissible alien who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and
- Administer removal and asylum screening proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels including immigration removal proceedings resulting from the presentation of fraudulent documents and the failure to present documentation and for any inadmissible alien who has attempted illegal entry into the United States by avoiding immigration inspection at air or sea ports-of-entry.

What Changes Is the Service Making to This Rule?

This rule amends 8 CFR 286.2(a) by removing the specific fee amount of $6 and inserting a more general reference to the immigration fee prescribed in section 286(d) of the Act. This action is being taken so that in the future the Service will not have to amend the text of its regulations each time a change in the user fee occurs by statute.

Which Tickets Will Be Affected by This Rule?

The immigration user fee is normally collected at the time that a ticket or document for transportation to the United States is issued. All tickets and documents for transportation issued on or after May 1, 2002 will be subject to the $7 immigration user fee.

How Will the Public Be Notified of Future Changes to the Immigration User Fee?

The Service intends to publish notices in the **Federal Register** describing any changes to the immigration user fee including the date upon which any new fee must be collected by persons issuing tickets or transportation documents.

Did Public Law 107–77 Make Any Other Changes Relating to Immigration User Fees?

Yes, Public Law 107–77 also authorized the Attorney General to charge and collect $3 per individual for the immigration inspection or preinspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in section 286(e)(1) of the Act, unless the passengers arrived by regularly scheduled Great Lakes international ferries or Great Lakes vessels on the Great Lakes or connecting waterways. Regulations implementing the $3 fee will be published in the **Federal Register** at a later date as a separate rulemaking.

Good Cause Exception

The Service's implementation of this rule as a final rule is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(A). Advance notice and comment on this regulation is both impractical and unnecessary. This rule merely amends Service regulations to conform with a statutorily mandated fee increase by removing any reference to a

specific fee amount in favor of adding a more general reference to section 286(d) of the Act which sets forth both the legal authority and amount of the immigration user fee.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule requires carriers to charge and collect a user fee for certain air and sea passengers arriving in the United States. Since the passengers rather than the carriers ultimately pay the immigration inspection user fee, and they are not considered small entities as the term is defined in 5 U.S.C. 601(6), this rule does not bear an impact on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution or power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.2(a) is revised to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

(a) A fee, in the amount prescribed in section 286(d) of the Act, per individual is charged and collected by the Commissioner for the immigration inspection of each passenger aboard a commercial aircraft or commercial vessel, arriving at a port-of-entry in the United States, or for the preinspection of a passenger in a place outside the United States prior to such arrival, except as provided in § 286.3.

* * * * *

Dated: March 7, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–7737 Filed 3–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–062–2]

Change in Disease Status of the Czech Republic Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding the Czech Republic to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in that region. The Czech Republic had already been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants that have been in the Czech Republic and meat, meat products, and certain other products of ruminants that have been in the Czech Republic. The interim rule was necessary in order to update the disease status of the Czech Republic regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: The interim rule became effective on June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 2001, and published in the **Federal Register** on December 4, 2001 (66 FR 62913, Docket No. 01–062–1), we amended the regulations in 9 CFR part 94 by adding the Czech Republic to the list of regions where bovine spongiform encephalopathy (BSE) exists. The Czech Republic had previously been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, due to the detection of BSE in native-born animals in that region, the interim rule was necessary to update the disease status of the Czech Republic regarding BSE.

Comments on the interim rule were required to be received on or before

February 4, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR part 94 that was published at 66 FR 62913 on December 4, 2001.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 26th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–7776 Filed 3–29–02; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 264a

Reserve Bank Directors-Actions and Responsibilities

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final Rule.

SUMMARY: The Board is removing 12 CFR 264a (Reserve Bank Directors-Actions and Responsibilities). The regulation has been superceded by a regulation of the Office of Government Ethics (Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting A Personal Financial Interest)).

EFFECTIVE DATES: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Cary K. Williams, Assistant General Counsel, Legal Division (202/452–3295) or Bryan A. Bonner, Senior Attorney, Legal Division (202/452–3719). For users of the Telecommunications Device for the Deaf (TDD)only, please call 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he/she has a personal financial interest, or in which certain persons or organization with which he/she is affiliated have a financial interest. 18 U.S.C. 208 (b) permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. 12 CFR 264a was promulgated for the purpose of assuring preservation of and adherence to the intent of both the Federal Reserve Act and section 208 of title 18, United States Code, as it applies to directors of Federal Reserve Banks, to include the prohibitions and waiver criteria set out in 18 U.S.C. 208(a) & (b).

5 CFR 2640 was promulgated after 12 CFR 264a. 5 CFR 2640 identifies those financial interests which, by regulation, may be exempt from the general prohibitions set out in 18 U.S.C. 208 (a). 5 CFR 2640 also provides interpretation of the 18 U.S.C. 208 (a) prohibitions, as well as guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b). 12 CFR 264a is superceded by 5 CFR 2640. Accordingly, the Board is removing it.

List of Subjects in 12 CFR Part 264a

Federal Reserve System

Authority and Issuance

PART 264a - RESERVE BANK DIRECTORS-ACTIONS AND RESPONSIBILITIES [Removed and Reserved]

For the reasons set forth in the preamble, under the authority of 18 U.S.C. 208, the Board is removing and reserving part 264a in chapter II of title 12 of the Code of Federal Regulations.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, March 26, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–7660 Filed 3–29–02; 8:45 am]

BILLING CODE 6210–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007a, WY–001–0008a, WY–001–0009a; FRL–7166–2]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the State of Wyoming's withdrawal of the August 9, 2000, August 7, 2001 and August 13, 2001 submittals to the EPA that revise the Wyoming State Implementation Plan (SIP), EPA is withdrawing the direct final rule to partially approve and partially disapprove these revisions that restructure and modify the State's air quality rules. In the direct final rule, published on February 6, 2002 (67 FR 5485), we stated that if we received adverse comment by March 8, 2002, the rule would be withdrawn and would not take effect. EPA subsequently received a letter from the State of Wyoming (on March 8, 2002) withdrawing the three submittals that EPA is taking action on in our February 6, 2002 direct final rule. EPA also received adverse comments from the Wyoming Outdoor Council (on March 7, 2002). Since, in addition to receiving adverse comments, the State of Wyoming withdrew their submittals, the direct final rule is withdrawn and will not take effect. In the ''Proposed Rules'' section of today's **Federal Register** publication, we are withdrawing the proposed rule published on February 6, 2002 (67 FR 5552).

EFFECTIVE DATE: The direct final rule is withdrawn as of April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA Region VIII, (303) 312–6431 or Laurel Dygowski, EPA Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the February 6, 2002 **Federal Register** (67 FR 5485).

List of Subjects in 40 CFR Part 52

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

Dated: March 25, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Accordingly, the addition of 40 CFR 52.2620(c)(30) and the amendment to 40 CFR 52.2622 are withdrawn as of April 1, 2002.

[FR Doc. 02–7772 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 255–0320b; FRL–7164–7]

Interim Final Determination That the State of California Has Conditionally Corrected Deficiencies and Stay of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Based on a proposed conditional approval, EPA is making an interim final determination by this action that California has corrected the deficiencies for which a sanctions clock began on April 7, 2000. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment on the proposed rulemaking and publish a final rule taking into consideration any comments received. Elsewhere in today's **Federal Register**, EPA has published a proposed rulemaking conditionally approving the State of California's submittal of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) PM–10 portion of the California State Implementation Plan (SIP). That proposed rulemaking provides the public with an opportunity to comment on EPA's action. We will consider any comments received before taking final action on the State's submittal.

DATES: This interim final determination is effective on April 1, 2002. Comments will be accepted until May 31, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations: Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814. San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX; (415) 947–4116.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

On July 23, 1996, the State of California submitted a revision to the SJVUAPCD portion of the PM–10 SIP, for which we published a limited approval and limited disapproval on March 8, 2000 (65 FR 12118). Our disapproval action started an 18-month clock beginning on April 7, 2000, for the imposition of the offset sanction (followed by a highway sanction 6 months later). The State subsequently submitted revised SIP rules on December 6, 2001. In the Proposed Rules section of today's **Federal Register**, we have proposed conditional approval of the State's December 6, 2001, submittal. Based on that proposal, we believe that it is more likely than not that the State has corrected the original section 189(a) and section 110(a) disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies identified in the March 8, 2000, final action that started the clock for imposition of sanctions. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed conditional approval of the State's submittal, EPA determines that the State's submittal is not conditionally approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. At that time, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clock that started for this area on April 7, 2000. However, this action will temporarily stay the imposition of the offsets sanction and will defer the imposition of the highway sanction until we finalize the conditional approval or withdraw it based on adverse comments. If we must withdraw the proposed conditional approval action based on adverse comments or we subsequently determine that the State, in fact, did not correct the disapproval deficiencies or subsequently does not fulfill the conditions of the conditional approval, the sanctions consequences described in the sanctions rule will apply (59 FR 39832, August 4, 1994, codified at 40 CFR 52.31).

II. EPA Action

We are making an interim final determination that the State has corrected the prior disapproval deficiencies that are associated with sanctions. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until we take action proposing or finally disapproving in whole or part the State submittal. After EPA has reviewed any comments, EPA will either finalize its conditional approval and issue a final determination to stay the offset sanction and defer the highway funding sanction, or EPA will withdraw this interim final determination and the sanctions will be reimposed in accordance with 40 CFR 51.31(d).

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)).[1] EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely stays and defers federal sanctions. Accordingly, the administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 1, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–7633 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; re-opening of comment period; correction.

SUMMARY: The re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*) was published on March 21, 2002. The comment period closing date was incorrectly published as October 15, 2002. The actual closing date is May 20, 2002. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

DATES: We will accept public comments until May 20, 2002.

ADDRESSES:

Comment Submission: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825.

2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

3. You may send comments by electronic mail (e-mail) to:

fw1splittail@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, Susan Moore, at the above address (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION: The re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*) was published on March 21, 2002. The comment period closing date was incorrectly published as October 15, 2002. The actual closing date is May 20, 2002. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

Public Comments Solicited

We will accept written comments during this re-opened comment period, and comments should be submitted to the Sacramento Fish and Wildlife Office as found in the **ADDRESSES** section.

Accordingly, in FR Doc. 02–6803 published at 67 FR 13095 on March 21, 2002, on page 13095 in column 2, correct the **DATES** caption to read as follows:

DATES: We will accept public comments until May 20, 2002.

Dated: March 26, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–7882 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309-2090-03; I.D. 121301A]

RIN 0648-A069

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

ACTION: Correction to the final rule; 2002 Pacific Coast groundfish fishery specifications and management measures.

SUMMARY: This document contains corrections to the final rule implementing the 2002 Pacific Coast groundfish fishery specifications and management measures published on March 7, 2002.

DATES: Effective 0001 hours local time (l.t.) March 1, 2002, until the 2003 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Section 660.323, paragraph (a)(2)(ii)(A) is effective 0001 hours l.t. March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, NMFS, (206)-526-6140.

SUPPLEMENTARY INFORMATION:

Background

The final rule for the 2002 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, was published in the **Federal Register** on March 7, 2002 (67 FR 10490). This final rule contained errors that require correction.

Corrections

In the rule FR Doc. 02-5302, in the issue of Thursday, March 7, 2002 (67 FR 10490) make the following corrections:

1. On page 10490, in the first column, the DATES section is corrected to read as set forth in the DATES section of this document.

2. On page 10522, in the second column, Section IV., paragraph D.(3)(b), the first sentence is corrected to read as follows:

* * * * *

IV. * * *

D. * * *

(3) * * *

(b) ''Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31.''

* * * * *

3. On page 10525, in the third column, amendatory instruction 2 and regulatory text are corrected to read as follows:

''2. In § 660.323, paragraph (a)(2)(ii)(A) is revised to read as follows:''

§ 660.323 Catch restrictions.

(a) * * *

(2) * * *

(ii) * * *

(A) *Season dates.* North of 36° N. lat., the primary sablefish season for limited entry, fixed gear vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator.

* * * * *

Dated: March 25, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–7711 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

Rules and Regulations

Federal Register
Vol. 67, No. 62
Monday, April 1, 2002

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS No. 2179–01]

RIN 1115–AG46

Increase of the Immigration User Fee From $6 to $7

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: The Immigration and Naturalization Service (Service) collects a fee from every passenger arriving at a port-of-entry in the United States aboard a commercial aircraft or commercial vessel (or having been ''preinspected'' at a place outside the United States prior to such arrival), except those individuals exempted under section 286(e) of the Immigration and Nationality Act (Act) or under 8 CFR part 286. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act 2002, Public Law 107–77, dated November 28, 2001, increased the fee from $6 to $7. This rule amends Service regulations in light of this fee change by removing the current reference to $6 in the regulations in favor of a reference to the fee amount prescribed in section 286(d) of the Act as amended. This technical change to the regulations is being taken so that it will be unnecessary for the Service to amend the text of its regulations each time the user immigration fee is statutorily changed in the future.

EFFECTIVE DATE: This final rule is effective May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Georgia Mayers, Chief of Cash Management, Office of Finance, Immigration and Naturalization Service, 425 I Street, NW., Room 6034, Washington, DC 20536, telephone (202) 305–1200.

SUPPLEMENTARY INFORMATION:

What Is the Immigration User Fee?

Beginning in Fiscal Year 1987, the Service was authorized by Congress via the 1987 Appropriations Act for the Department of Justice, Public Law 99–591, to collect an immigration user fee for each passenger arriving in the United States by commercial air or sea conveyance. Immigration user fee funds are used to operate air and sea inspection services and to fund other related activities.

How Will the Service Use the Fees That Are Collected?

As provided by law, the user fees that are collected may be used, among other things, to:

- Provide immigration inspection and preinspection services for commercial aircraft and vessels;
- Provide overtime immigration inspection services for commercial aircraft or vessels;
- Administer debt recovery, including the establishment and operation of a national collections office;
- Expand, operate, and maintain information systems for nonimmigrant control and debt collection;
- Detect fraudulent documents used by passengers traveling to the United States, including training of, and technical assistance to, commercial airline personnel regarding such detection;
- Provide detention and removal services for: inadmissible aliens arriving on commercial aircraft and vessels and for any inadmissible alien who has attempted illegal entry into the United States through avoidance of immigration inspection at air or sea ports-of-entry; and
- Administer removal and asylum screening proceedings at air or sea ports-of-entry for inadmissible aliens arriving on commercial aircraft and vessels including immigration removal proceedings resulting from the presentation of fraudulent documents and the failure to present documentation and for any inadmissible alien who has attempted illegal entry into the United States by avoiding immigration inspection at air or sea ports-of-entry.

What Changes Is the Service Making to This Rule?

This rule amends 8 CFR 286.2(a) by removing the specific fee amount of $6 and inserting a more general reference to the immigration fee prescribed in section 286(d) of the Act. This action is being taken so that in the future the Service will not have to amend the text of its regulations each time a change in the user fee occurs by statute.

Which Tickets Will Be Affected by This Rule?

The immigration user fee is normally collected at the time that a ticket or document for transportation to the United States is issued. All tickets and documents for transportation issued on or after May 1, 2002 will be subject to the $7 immigration user fee.

How Will the Public Be Notified of Future Changes to the Immigration User Fee?

The Service intends to publish notices in the **Federal Register** describing any changes to the immigration user fee including the date upon which any new fee must be collected by persons issuing tickets or transportation documents.

Did Public Law 107–77 Make Any Other Changes Relating to Immigration User Fees?

Yes, Public Law 107–77 also authorized the Attorney General to charge and collect $3 per individual for the immigration inspection or preinspection of each commercial vessel passenger whose journey originated in the United States or in any place set forth in section 286(e)(1) of the Act, unless the passengers arrived by regularly scheduled Great Lakes international ferries or Great Lakes vessels on the Great Lakes or connecting waterways. Regulations implementing the $3 fee will be published in the **Federal Register** at a later date as a separate rulemaking.

Good Cause Exception

The Service's implementation of this rule as a final rule is based upon the ''good cause'' exception found at 5 U.S.C. 553(b)(A). Advance notice and comment on this regulation is both impractical and unnecessary. This rule merely amends Service regulations to conform with a statutorily mandated fee increase by removing any reference to a

specific fee amount in favor of adding a more general reference to section 286(d) of the Act which sets forth both the legal authority and amount of the immigration user fee.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule requires carriers to charge and collect a user fee for certain air and sea passengers arriving in the United States. Since the passengers rather than the carriers ultimately pay the immigration inspection user fee, and they are not considered small entities as the term is defined in 5 U.S.C. 601(6), this rule does not bear an impact on small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice, Immigration and Naturalization Service, to be a ''significant regulatory action'' under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution or power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 286

Air carriers, Immigration, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, part 286 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 286—IMMIGRATION USER FEE

1. The authority citation for part 286 continues to read as follows:

Authority: 8 U.S.C. 1103, 1356; 8 CFR part 2.

2. Section 286.2(a) is revised to read as follows:

§ 286.2 Fee for arrival of passengers aboard commercial aircraft or commercial vessels.

(a) A fee, in the amount prescribed in section 286(d) of the Act, per individual is charged and collected by the Commissioner for the immigration inspection of each passenger aboard a commercial aircraft or commercial vessel, arriving at a port-of-entry in the United States, or for the preinspection of a passenger in a place outside the United States prior to such arrival, except as provided in § 286.3.

* * * * *

Dated: March 7, 2002.

James W. Ziglar,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 02–7737 Filed 3–29–02; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–062–2]

Change in Disease Status of the Czech Republic Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding the Czech Republic to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in that region. The Czech Republic had already been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants that have been in the Czech Republic and meat, meat products, and certain other products of ruminants that have been in the Czech Republic. The interim rule was necessary in order to update the disease status of the Czech Republic regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: The interim rule became effective on June 8, 2001.

FOR FURTHER INFORMATION CONTACT: Dr. Donna Malloy, Senior Staff Veterinarian, National Center for Import and Export, Products Program, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–3277.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective June 8, 2001, and published in the **Federal Register** on December 4, 2001 (66 FR 62913, Docket No. 01–062–1), we amended the regulations in 9 CFR part 94 by adding the Czech Republic to the list of regions where bovine spongiform encephalopathy (BSE) exists. The Czech Republic had previously been listed in § 94.18(a)(2) as a region that presents an undue risk of introducing BSE into the United States. However, due to the detection of BSE in native-born animals in that region, the interim rule was necessary to update the disease status of the Czech Republic regarding BSE.

Comments on the interim rule were required to be received on or before

February 4, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule amending 9 CFR part 94 that was published at 66 FR 62913 on December 4, 2001.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 26th day of March 2002.

W. Ron DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–7776 Filed 3–29–02; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL RESERVE SYSTEM

12 CFR Part 264a

Reserve Bank Directors-Actions and Responsibilities

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final Rule.

SUMMARY: The Board is removing 12 CFR 264a (Reserve Bank Directors-Actions and Responsibilities). The regulation has been superceded by a regulation of the Office of Government Ethics (Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting A Personal Financial Interest)).

EFFECTIVE DATES: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Cary K. Williams, Assistant General Counsel, Legal Division (202/452–3295) or Bryan A. Bonner, Senior Attorney, Legal Division (202/452–3719). For users of the Telecommunications Device for the Deaf (TDD)only, please call 202/263–4869.

SUPPLEMENTARY INFORMATION:

Background

18 U.S.C. 208(a) prohibits an officer or employee of the executive branch, of any independent agency of the United States, of the District of Columbia, or Federal Reserve bank director, officer, or employee, or any special Government employee from participating in an official capacity in particular matters in which he/she has a personal financial interest, or in which certain persons or organization with which he/she is affiliated have a financial interest. 18 U.S.C. 208 (b) permits waivers of the disqualification provision in certain cases, either on an individual basis or pursuant to general regulation. 12 CFR 264a was promulgated for the purpose of assuring preservation of and adherence to the intent of both the Federal Reserve Act and section 208 of title 18, United States Code, as it applies to directors of Federal Reserve Banks, to include the prohibitions and waiver criteria set out in 18 U.S.C. 208(a) & (b).

5 CFR 2640 was promulgated after 12 CFR 264a. 5 CFR 2640 identifies those financial interests which, by regulation, may be exempt from the general prohibitions set out in 18 U.S.C. 208 (a). 5 CFR 2640 also provides interpretation of the 18 U.S.C. 208 (a) prohibitions, as well as guidance to agencies on the factors to consider when issuing individual waivers under 18 U.S.C. 208 (b). 12 CFR 264a is superceded by 5 CFR 2640. Accordingly, the Board is removing it.

List of Subjects in 12 CFR Part 264a

Federal Reserve System

Authority and Issuance

PART 264a - RESERVE BANK DIRECTORS-ACTIONS AND RESPONSIBILITIES [Removed and Reserved]

For the reasons set forth in the preamble, under the authority of 18 U.S.C. 208, the Board is removing and reserving part 264a in chapter II of title 12 of the Code of Federal Regulations.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, March 26, 2002.

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 02–7660 Filed 3–29–02; 8:45 am]

BILLING CODE 6210–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007a, WY–001–0008a, WY–001–0009a; FRL–7166–2]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to the State of Wyoming's withdrawal of the August 9, 2000, August 7, 2001 and August 13, 2001 submittals to the EPA that revise the Wyoming State Implementation Plan (SIP), EPA is withdrawing the direct final rule to partially approve and partially disapprove these revisions that restructure and modify the State's air quality rules. In the direct final rule, published on February 6, 2002 (67 FR 5485), we stated that if we received adverse comment by March 8, 2002, the rule would be withdrawn and would not take effect. EPA subsequently received a letter from the State of Wyoming (on March 8, 2002) withdrawing the three submittals that EPA is taking action on in our February 6, 2002 direct final rule. EPA also received adverse comments from the Wyoming Outdoor Council (on March 7, 2002). Since, in addition to receiving adverse comments, the State of Wyoming withdrew their submittals, the direct final rule is withdrawn and will not take effect. In the ''Proposed Rules'' section of today's **Federal Register** publication, we are withdrawing the proposed rule published on February 6, 2002 (67 FR 5552).

EFFECTIVE DATE: The direct final rule is withdrawn as of April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA Region VIII, (303) 312–6431 or Laurel Dygowski, EPA Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the February 6, 2002 **Federal Register** (67 FR 5485).

List of Subjects in 40 CFR Part 52

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

Dated: March 25, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

Accordingly, the addition of 40 CFR 52.2620(c)(30) and the amendment to 40 CFR 52.2622 are withdrawn as of April 1, 2002.

[FR Doc. 02–7772 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 255–0320b; FRL–7164–7]

Interim Final Determination That the State of California Has Conditionally Corrected Deficiencies and Stay of Sanctions, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Based on a proposed conditional approval, EPA is making an interim final determination by this action that California has corrected the deficiencies for which a sanctions clock began on April 7, 2000. This action will stay the imposition of the offset sanction and defer the imposition of the highway sanction. Although this action is effective upon publication, we will take comment on the proposed rulemaking and publish a final rule taking into consideration any comments received. Elsewhere in today's **Federal Register**, EPA has published a proposed rulemaking conditionally approving the State of California's submittal of a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) PM–10 portion of the California State Implementation Plan (SIP). That proposed rulemaking provides the public with an opportunity to comment on EPA's action. We will consider any comments received before taking final action on the State's submittal.

DATES: This interim final determination is effective on April 1, 2002. Comments will be accepted until May 31, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations: Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814. San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX; (415) 947–4116.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

I. Background

On July 23, 1996, the State of California submitted a revision to the SJVUAPCD portion of the PM–10 SIP, for which we published a limited approval and limited disapproval on March 8, 2000 (65 FR 12118). Our disapproval action started an 18-month clock beginning on April 7, 2000, for the imposition of the offset sanction (followed by a highway sanction 6 months later). The State subsequently submitted revised SIP rules on December 6, 2001. In the Proposed Rules section of today's **Federal Register**, we have proposed conditional approval of the State's December 6, 2001, submittal. Based on that proposal, we believe that it is more likely than not that the State has corrected the original section 189(a) and section 110(a) disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies identified in the March 8, 2000, final action that started the clock for imposition of sanctions. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed conditional approval of the State's submittal, EPA determines that the State's submittal is not conditionally approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. At that time, EPA will also issue an interim final determination or a final determination that the deficiencies have not been corrected. Until EPA takes such an action, the application of sanctions will continue to be deferred and/or stayed.

This action does not stop the sanctions clock that started for this area on April 7, 2000. However, this action will temporarily stay the imposition of the offsets sanction and will defer the imposition of the highway sanction until we finalize the conditional approval or withdraw it based on adverse comments. If we must withdraw the proposed conditional approval action based on adverse comments or we subsequently determine that the State, in fact, did not correct the disapproval deficiencies or subsequently does not fulfill the conditions of the conditional approval, the sanctions consequences described in the sanctions rule will apply (59 FR 39832, August 4, 1994, codified at 40 CFR 52.31).

II. EPA Action

We are making an interim final determination that the State has corrected the prior disapproval deficiencies that are associated with sanctions. Based on this action, imposition of the offset sanction will be stayed and imposition of the highway sanction will be deferred until we take action proposing or finally disapproving in whole or part the State submittal. After EPA has reviewed any comments, EPA will either finalize its conditional approval and issue a final determination to stay the offset sanction and defer the highway funding sanction, or EPA will withdraw this interim final determination and the sanctions will be reimposed in accordance with 40 CFR 51.31(d).

Because EPA has preliminarily determined that the State has corrected the deficiencies identified in EPA's limited disapproval action, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception under the Administrative Procedure Act (APA) in not providing an opportunity for comment before this action takes effect (5 U.S.C. 553(b)(3)).[1] EPA believes that notice-and-comment rulemaking before the effective date of this action is impracticable and contrary to the public

[1] As previously noted, however, by this action EPA is providing the public with a chance to comment on EPA's determination after the effective date, and EPA will consider any comments received in determining whether to reverse such action.

interest. EPA has reviewed the State's submittal and, through its proposed action, is indicating that it is more likely than not that the State has corrected the deficiencies that started the sanctions clocks. Therefore, it is not in the public interest to initially impose sanctions or to keep applied sanctions in place when the State has most likely done all it can to correct the deficiencies that triggered the sanctions clocks. Moreover, it would be impracticable to go through notice-and-comment rulemaking on a finding that the State has corrected the deficiencies prior to the rulemaking approving the State's submittal. Therefore, EPA believes that it is necessary to use the interim final rulemaking process to temporarily stay or defer sanctions while EPA completes its rulemaking process on the approvability of the State's submittal. Moreover, with respect to the effective date of this action, EPA is invoking the good cause exception to the 30-day notice requirement of the APA because the purpose of this action is to relieve a restriction (5 U.S.C. 553(d)(1)).

III. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. This action merely stays and defers federal sanctions. Accordingly, the administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule only stays an imposed sanction and defers the imposition of another, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely stays a sanction and defers another one, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

This rule does not contain technical standards, thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the executive order.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rule) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of April 1, 2002. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register.** This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental regulations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–7633 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

U.S. Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH73

Endangered and Threatened Wildlife and Plants; Re-opening of Comment Period on the Sacramento Splittail Final Rule; Correction

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; re-opening of comment period; correction.

SUMMARY: The re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*) was published on March 21, 2002. The comment period closing date was incorrectly published as October 15, 2002. The actual closing date is May 20, 2002. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

DATES: We will accept public comments until May 20, 2002.

ADDRESSES:

Comment Submission: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

1. You may submit written comments and information by mail to the Field Supervisor, Sacramento Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, California 95825.

2. You may hand-deliver comments to our Sacramento Fish and Wildlife Office, during normal business hours, at the address given above.

3. You may send comments by electronic mail (e-mail) to:

fw1splittail@fws.gov. See the Public Comments Solicited section below for file format and other information about electronic filing.

Comments and materials received will be available for inspection, by appointment, during normal business hours at the address under (1) above.

FOR FURTHER INFORMATION CONTACT: For general information, Susan Moore, at the above address (telephone 916/414–6600; facsimile 916/414–6713).

SUPPLEMENTARY INFORMATION: The re-opening of the comment period for the final rule on the Sacramento splittail (*Pogonichthys macrolepidotus*) was published on March 21, 2002. The comment period closing date was incorrectly published as October 15, 2002. The actual closing date is May 20, 2002. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this re-opened comment period, and will be fully considered in the final rule. We are re-opening the comment period to invite comments and to obtain peer review on the statistical analysis completed by us to re-analyze the available splittail abundance data. We are also inviting additional comments on the status of and factors affecting the species, as first solicited in the January 12, 2001 (66 FR 2828), comment period and re-solicited in the May 8, 2001 (66 FR 23181), and August 17, 2001 (66 FR 43145), re-openings of same.

Public Comments Solicited

We will accept written comments during this re-opened comment period, and comments should be submitted to the Sacramento Fish and Wildlife Office as found in the **ADDRESSES** section.

Accordingly, in FR Doc. 02–6803 published at 67 FR 13095 on March 21, 2002, on page 13095 in column 2, correct the **DATES** caption to read as follows:

DATES: We will accept public comments until May 20, 2002.

Dated: March 26, 2002.

Steve Williams,

Director, Fish and Wildlife Service.

[FR Doc. 02–7882 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 011231309-2090-03; I.D. 121301A]

RIN 0648-A069

Magnuson-Stevens Act Provisions; Fisheries off the West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Groundfish Fishery Management Measures; Correction

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

ACTION: Correction to the final rule; 2002 Pacific Coast groundfish fishery specifications and management measures.

SUMMARY: This document contains corrections to the final rule implementing the 2002 Pacific Coast groundfish fishery specifications and management measures published on March 7, 2002.

DATES: Effective 0001 hours local time (l.t.) March 1, 2002, until the 2003 annual specifications and management measures are effective, unless modified, superseded, or rescinded through a publication in the **Federal Register**. Section 660.323, paragraph (a)(2)(ii)(A) is effective 0001 hours l.t. March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Yvonne deReynier, NMFS, (206)-526-6140.

SUPPLEMENTARY INFORMATION:

Background

The final rule for the 2002 specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan, was published in the **Federal Register** on March 7, 2002 (67 FR 10490). This final rule contained errors that require correction.

Corrections

In the rule FR Doc. 02-5302, in the issue of Thursday, March 7, 2002 (67 FR 10490) make the following corrections:

1. On page 10490, in the first column, the DATES section is corrected to read as set forth in the DATES section of this document.

2. On page 10522, in the second column, Section IV., paragraph D.(3)(b), the first sentence is corrected to read as follows:

* * * * *

IV. * * *

D. * * *

(3) * * *

(b) ''Recreational fishing for lingcod is closed between January 1 and March 15, and between October 16 and December 31.''

* * * * *

3. On page 10525, in the third column, amendatory instruction 2 and regulatory text are corrected to read as follows:

''2. In § 660.323, paragraph (a)(2)(ii)(A) is revised to read as follows:''

§ 660.323 Catch restrictions.

(a) * * *

(2) * * *

(ii) * * *

(A) *Season dates.* North of 36° N. lat., the primary sablefish season for limited entry, fixed gear vessels begins at 12 noon l.t. on April 1 and ends at 12 noon l.t. on October 31, unless otherwise announced by the Regional Administrator.

* * * * *

Dated: March 25, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 02–7711 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 67, No. 62
Monday, April 1, 2002

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–1C]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Continuance Referendum; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on March 14, 2002, a Referendum Order to conduct a continuance referendum for marketing agreement and order 905. This document corrects the ballot postmark deadline date, changing it from May 6, 2002 to April 26, 2002 in the **SUPPLEMENTARY INFORMATION** section of the Notice.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs; Agricultural Marketing Service, Department of Agriculture, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION:

Background

The referendum order that is the subject of this correction provides that a referendum be conducted among eligible producers of Florida citrus to determine whether they favor continuance of the marketing order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area.

Need for Correction

As published, the ballot postmark deadline date in the **SUPPLEMENTARY INFORMATION** section is incorrect. The ballot postmark deadline date needs to be changed from May 6, 2002 to April 26, the ending date of the referendum period.

Correction of Publication

The publication of the referendum order (Docket No. FV02–905–1), which was the subject of FR Doc. 02–6108 published on March 14, 2002 (67 FR 11450) is corrected as follows:

On page 11450, column two, under **SUPPLEMENTARY INFORMATION**, the date ''May 6, 2002'' for ballots to be postmarked by is corrected to read ''April 26, 2002.''

Authority:
7 U.S.C. 601–674.

Dated: March 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7905 Filed 3–28–02; 12:04 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Security

10 CFR Part 824

[Docket No. SO–RM–00–01]

RIN 1992–AA28

Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations

AGENCY: Office of Security, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes regulations to implement section 234B of the Atomic Energy Act of 1954 (Section 234B) which was added to that act by section 3147 of the National Defense Authorization Act for Fiscal Year 2000. Section 234B subjects contractors and others working for DOE to civil penalties for violations of DOE rules, regulations and orders regarding the safeguarding and security of Restricted Data and other classified information.

DATES: Written comments (7 copies) may be submitted by July 1, 2002. Public hearings will be held in Las Vegas, Nevada on May 22, 2002, and in Washington, DC on May 29, 2002. Requests to speak at the Las Vegas hearing must be submitted on or before May 15, 2002, or at the Washington, DC hearing on or before May 22, 2002.

ADDRESSES: Comments should be addressed to: Geralyn C. Praskievicz, Office of Security, SO–1, Docket No. SO–RM–00–01, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–4451.

The following two public hearings will be held: May 22, 2002, from 9:30 a.m. until 12:30 p.m. at the U.S. Department of Energy, National Nuclear Security Administration, Nevada Operations Office, 232 Energy Way, Las Vegas, Nevada, room A107, and May 29, 2002, from 9:30 a.m. until 12:30 p.m., at the U.S. Department of Energy, James Forrestal Building, 1000 Independence Avenue SW, Washington, DC, room GE–086.

The envelope and written comments should indicate the above docket number. Written comments and hearing testimony may be examined between 9 a.m. and 4 p.m., Monday through Friday at: U.S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Docket No. SO–RM–00–01, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586–3142.

FOR FURTHER INFORMATION CONTACT: Geralyn Praskievicz, Office of Security, SO–1, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–4451; Jo Ann Williams, Office of General Counsel, GC–53, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–6899.

SUPPLEMENTARY INFORMATION:

I. Introduction.

On October 5, 1999, Congress enacted section 3147 of the National Defense

Authorization Act for Fiscal Year 2000 (Pub.L. 106–65, October 5, 1999) that adds a new section 234B to the Atomic Energy Act of 1954, 42 U.S.C. 2282b. Subsection a. of section 234B provides that any person who: (1) Has entered into a contract or agreement with DOE, or a subcontract or subagreement thereto, and (2) violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary of Energy pursuant to the Atomic Energy Act relating to the safeguarding or security of Restricted Data or other classified or ''sensitive information,'' shall be subject to a civil penalty not to exceed $100,000 for each such violation. Subsection b. of section 234B requires that each DOE contract contain provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information.

On February 1, 2001, DOE published a Notice of Proposed Rulemaking (66 FR 8560) to implement subsection b. of section 234B, concerning reductions in fees or amounts paid to contractors in the event of a security violation. DOE received numerous comments in response to that notice of proposed rulemaking. Some of the commenters assumed that the procurement rulemaking was intended to address all of the provisions in section 234B. Two separate rulemakings, one establishing procedural rules similar to the procedural rules to achieve compliance with DOE nuclear safety requirements found at 10 CFR Part 820 and the other establishing a procurement clause like Conditional payment of fee, profit or incentives, 48 CFR (DEAR) 970.5204–86, were always contemplated and deemed necessary by DOE. The February 1, 2001, notice of proposed rulemaking was only intended to address subsection b. of 234B.

DOE in this rulemaking proposes to establish a new Part 824 to Chapter III of Title 10 of the Code of Federal Regulations (CFR) to implement all subsections of section 234B of the Atomic Energy Act, except subsection b., with respect to contractors of DOE, including those of the National Nuclear Security Administration (NNSA). To a large extent these proposed regulations are self-explanatory. There are, however, several features that require explanation.

In this rulemaking action, DOE proposes applying civil penalties only to violations of requirements for the protection of classified information. Classified information is ''Restricted Data'' or ''Formerly Restricted Data'' protected against unauthorized disclosure pursuant to the Atomic Energy Act of 1954, and ''National Security Information'' protected against unauthorized disclosure pursuant to Executive Order 12958 (April 17, 1995) or any predecessor or successor order. Although section 234B refers to ''sensitive information,'' DOE does not employ this term in the proposal because: (1) Neither the statute nor its legislative history defines the term; (2) there is no commonly accepted definition of ''sensitive information'' within DOE or the Executive Branch; (3) the legislative history indicates that the Congress was concerned with unauthorized disclosures of classified information; and (4) the only category of unclassified information that might merit inclusion in a regulation imposing civil penalties is Unclassified Controlled Nuclear Information (UCNI), a category of unclassified government information concerning atomic energy defense programs established by section 148 of the Atomic Energy Act of 1954 (42 U.S.C. 2168). Section 148 provides that any person who violates a regulation or order issued under that section shall be subject to a civil penalty not to exceed $100,000. DOE implemented the provisions of section 148 in regulations contained in 10 CFR Part 1017. Since Part 1017 already imposes a civil monetary penalty for unauthorized dissemination of UCNI comparable to the penalty specified in section 3147, we determined that it is unnecessary to include UCNI in regulations implementing section 3147.

DOE proposes to assess civil penalties only for violations described in proposed section 824.4. These are violations of: (1) Specified DOE regulations related to classified information security presently in the CFR, (2) any other DOE rule, regulation or order relating to the safeguarding or security of Restricted Data or other classified information that specifically indicates that violation of its provisions may result in a civil penalty pursuant to section 234B, and (3) compliance orders issued pursuant to proposed part 824.

With respect to compliance orders, section 161 of the Atomic Energy Act grants DOE broad authority to prescribe regulations and orders deemed necessary to protect the common defense and security, 42 U.S.C. 2201. Pursuant to this authority, the Secretary may issue a compliance order requiring a person to take corrective action if a person by act or omission jeopardizes the security of classified information even if that person has not violated a regulation listed in the proposed part. Violation of the compliance order may result in the assessment of a civil penalty. Compliance orders would not be subject to the DOE Acquisition Regulations or require any authorization by a contracting officer. While the recipient of a compliance order may request the Secretary to rescind or modify the compliance order, the request does not stay the effectiveness of the order unless the Secretary issues a new order to that effect. The compliance order provisions of today's proposed regulations are modeled after a similar mechanism in 10 CFR Part 820, the regulations implementing procedures for section 234A of the Atomic Energy Act of 1954 with respect to nuclear safety.

It is important to note that this proposed rule would only apply to contractors and others who have entered into agreements or subagreements with DOE. Subsection a. of section 234B clearly provides that the contractor or other entity that has entered into an agreement or subagreements thereto with DOE is liable for violations of its employees. Consequently, no civil penalties would be assessed against individual employees under Part 824 as proposed.

Subsection d. of section 234B sets limitations on civil penalties assessed against certain non-profit entities specified at subsection d. of section 234A. As to each of these seven named entities working at named sites, the statute provides that no civil penalty may be assessed until the entity enters into a new contract with DOE or an extension of a current contract with DOE. The statute also limits the total amount of civil penalties assessed against these entities in any fiscal year to the total amount of fees paid to that entity in that fiscal year. It should be noted that the limitations applicable to these seven entities at the named sites also apply to their subcontractors and suppliers regardless of whether they are for-profit or non-profit.

DOE has determined as a matter of discretion under section 234B.c. and section 234A.b.(2) to extend the cap on civil penalties assessed on non-profits provided in section 234B.d.(2) to any non-profit educational institution under the United States Internal Revenue Code. DOE exercised similar discretionary authority for educational non-profit institutions in Part 820 with respect to automatic remission from civil penalties for nuclear safety violations. DOE continues to believe these other non-profit entities should

receive uniform treatment concerning civil penalties. However, the for-profit subcontractors and suppliers of these other non-profits would not have their civil penalties limited to fee as in the case of the for-profit subcontractors and for-profit suppliers of the seven named entities at sites named in section 234A. Also, as a matter of discretion, these other non-profit entities would not be subject to civil penalties until they enter into a new contract with DOE or an extension of a current contract.

The fee that represents the cap for civil penalties of non-profits will be determined pursuant to the provisions of the specific contracts covered by the limitation on non-profits.

II. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

These proposed rules were reviewed under the Regulatory Flexibility Act of 1980, Pub. L 96–354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. This rulemaking will apply principally to large entities who are management and operating contractors with cost reimbursement contracts. Therefore, DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements are not substantially different from existing reporting requirements contained in DOE contracts with the Department's prime contractors covered by these rules. DOE will submit any new information collection requests concerning these proposed rules to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR Part 1320.

D. Review Under the National Environmental Policy Act

DOE has reviewed the promulgation of this proposed rule with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508). The proposed rulemaking specifies procedures and standards for DOE enforcement actions under section 3147 of the Defense Authorization Act for Fiscal Year 2000. As noted in the CEQ regulations, major Federal actions ''do not include bringing judicial or administrative civil or criminal enforcement actions'' (40 CFR 1508.18(a)). Therefore, DOE has concluded that the proposed rulemaking is not a major Federal action with significant effects on the human environment within the meaning of NEPA and that no further review under NEPA is required.

E. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996) imposes on Executive agencies the general duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and to promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that a regulation: (1) Clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of the applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. The DOE has completed the required reviews and has determined that, to the extent allowed by law, the proposed regulations meet the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4,1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a family policymaking assessment.

H. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

III. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments will be available for public inspection in the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the

hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Written comments received by the date indicated in the **DATES** section of this notice of proposed rulemaking will be assessed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information and to treat it in accordance with its determination. See 10 CFR Part 1004.11.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, the Department's contractors, or the Department itself.

B. Public Hearing.

Requests to speak at the hearings must be submitted to the address and by the date indicated in the **DATES** section of this notice of proposed rule making. Requests for oral presentations should contain a telephone number where the requester may be contacted prior to the hearing. Speakers are requested to submit seven copies of their statement to DOE at the hearings.

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to fifteen minutes. The hearings will begin at 9:30 a.m. A DOE official will be designated to preside at each hearing. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made available to the public. The entire record of each hearing, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Reading Room. Transcripts may be purchased from the hearing transcriber/reporter.

List of Subjects in 10 CFR Part 824

Classified information, Government contracts, Nuclear security, Penalties, Security measures.

Issued in Washington, DC on March 19, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set forth in the preamble, DOE proposes to amend Chapter III of Title 10 of the Code of Federal Regulations by adding a new part 824 as set forth below.

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

Sec.

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

§ 824.1 Purpose and scope.

This part implements subsections a., c., and d. of section 234B of the Atomic Energy Act of 1954, 42 U.S.C. 2282b, which provides that any person who has entered into a contract or agreement with the Department of Energy (DOE), or a subcontract or subagreement thereto, and violates (or whose employee violates) any applicable rule, regulation or order under the Atomic Energy Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $100,000 for each violation. Specifically, these regulations establish procedures for assessing civil penalties against any entity that violates DOE regulations which impose requirements for the protection of classified information or that violates a compliance order issued under this part.

§ 824.2 Applicability.

(a) *General.* These regulations apply to any entity that is subject to DOE security requirements for the protection of classified information.

(b) *Limitations.* In the case of the following entities, DOE may not assess any civil penalty against the entity until it enters into a new contract with DOE or an extension of a current contract with DOE, and the total amount of civil penalties may not exceed the total amount of fees paid by the DOE to that entity in that fiscal year:

(1) Entities (including subcontractors and suppliers thereto) specified at subsection d. of section 234A of the Atomic Energy Act of 1954; and

(2) Any nonprofit educational institution under the United States Internal Revenue Code.

(c) *Individual employees.* No civil penalty may be assessed against an individual employee of a contractor or any other entity which enters into an agreement with DOE.

§ 824.3 Definitions.

(a) As used in this part:

(1) *Act* means the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*)

(2) *Classified information* means Restricted Data and Formerly Restricted Data protected against unauthorized disclosure pursuant to the Act and National Security Information protected against unauthorized disclosure under Executive Order 12958 (April 17, 1995) or any predecessor or successor executive order.

(3) *Contractor* means any person under contract or other agreement (including suppliers and access permittees) with the Department of Energy, including the National Nuclear Security Administration (NNSA), or a subcontract or subagreement thereto, to perform activities or to supply services or products that are subject to DOE security requirements.

(4) *Deputy Secretary* means the Deputy Secretary of Energy.

(5) *Director* means the Director, Office of Security, or any person to whom the Director's authority under this part is re-delegated.

(6) *Person* means any person as defined in section 11.s. of the Atomic Energy Act, 42 U.S.C. 2014, or any affiliate or parent corporation thereof, who enters into a contract or agreement with the Department of Energy, including a subcontract or subagreement thereto.

(7) *Secretary* means the Secretary of Energy.

(b) Words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 824.4 Civil penalties.

(a) Any person who violates a requirement of any of the following is subject to a civil penalty under this part:

(1) 10 CFR Part 1016—Safeguarding of Restricted Data;

(2) 10 CFR Part 1045—Nuclear Classification and Declassification;

(3) 10 CFR Part 1046—Physical Protection of Security Interests; and

(4) Any other DOE rule, regulation or order related to the safeguarding or

security of classified information that specifically indicates that violation of its provisions may result in a civil penalty pursuant to subsection a. of section 234B of the Act.

(b) If, without violating any regulation listed in paragraph (a) of this section, a person by an act or omission jeopardizes the security of classified information, the Secretary may issue a compliance order to that person requiring the person to take corrective action and notifying the person that violation of the compliance order is subject to a notice of violation and assessment of a civil penalty. If a person wishes to contest the compliance order, the person must file a notice of appeal with the Secretary within 15 days of receipt of the compliance order.

(c) The Deputy Secretary, based on a recommendation from the Director, may propose imposition of a civil penalty for violation of a requirement of a rule, regulation or order listed in paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $100,000 for each violation.

(d) If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

§ 824.5 Notice of violation.

(a) In order to begin a proceeding to impose a civil penalty under this part, the Deputy Secretary, based upon a recommendation of the Director, shall notify the person by a written notice of violation sent by certified mail, return receipt requested, of—

(1) The date, facts, and nature of each act or omission with which the person is charged;

(2) The particular provision of the regulation involved in the violation;

(3) Each penalty which the Deputy Secretary proposes to impose and the amount;

(4) The right of the person to submit a written reply to each of the allegations in the notification letter to the Director within 30 calendar days of receipt of such a notice of violation; and,

(5) The right of the person to submit to the Director a written request for a hearing under § 824.7 or, in the alternative, to elect the procedures specified in 42 U.S.C. 2282a.(c)(3).

(b) Within ten days of receiving a reply or a hearing request letter, the Director shall acknowledge its receipt in writing. In the case of a hearing request letter, the acknowledgment from the Director shall provide information regarding scheduling of the hearing.

(c) The Director, at the request of a person accused of a violation, may extend for a reasonable period the time for submitting a reply or a hearing request letter.

(d) After notifying a person of a violation under paragraph (a) of this section, the Deputy Secretary, based upon the recommendation of the Director, may enter into a settlement regarding the violation with or without conditions.

(e) If a person fails to submit a written request for a hearing within the specified time period, the person relinquishes the right to a hearing. If the person does not request a hearing, the notice of violation including proposed civil penalties shall constitute the final order of DOE.

§ 824.6 Investigations

The Director, at the request of the Deputy Secretary, may conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with DOE security requirements specified in § 824.4 (a) and (b) and take such action as he deems necessary and appropriate to the conduct of the investigation or inspection, including issuing and serving subpoenas signed by the Deputy Secretary.

§ 824.7 Hearing.

Any person who receives a notification letter under § 824.5 may request a hearing to answer under oath or affirmation the allegations contained in the letter. The person shall mail or deliver any letter requesting a hearing to the Director within 30 calendar days of receipt of the notification letter. Upon receipt from a person of a written request for a hearing, the Deputy Secretary shall appoint a Hearing Counsel and select an administrative law judge appointed under section 3105 of Title 5, U.S.C., to serve as Hearing Officer.

§ 824.8 Hearing Counsel.

The Hearing Counsel—

(a) Represents DOE;

(b) Consults with the person or the person's counsel prior to the hearing;

(c) Examines and cross-examines witnesses during the hearing; and

(d) Enters into a settlement of the enforcement proceeding at any time if settlement is consistent with the objectives of the Atomic Energy Act and DOE security requirements.

§ 824.9 Hearing Officer.

The Hearing Officer—

(a) Administers oaths and affirmations;

(b) Issues subpoenas;

(c) Rules on offers of proof and receives relevant evidence;

(d) Takes depositions or has depositions taken when the ends of justice would serve;

(e) Conducts the hearing in a manner which is fair and impartial;

(f) Holds conferences for the settlement or simplification of the issues by consent of the parties;

(g) Disposes of procedural requests or similar matters;

(h) Makes an initial decision under § 824.12; and

(i) Requires production of documents.

§ 824.10 Rights of the person at the hearing.

The person may—

(a) Testify or present evidence through witnesses or by documents;

(b) Cross-examine witnesses and rebut records or other physical evidence, except as provided in § 824.11(d);

(c) Be present during the entire hearing, except as provided in § 824.11(d); and

(d) Be accompanied, represented and advised by counsel of the person's choosing.

§ 824.11 Conduct of the hearing.

(a) DOE shall make a transcript of the hearing;

(b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;

(c) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (d) of this section;

(d) The Hearing Officer must use procedures appropriate to safeguard and prevent disclosure of classified information or Unclassified Controlled Nuclear Information to unauthorized persons, with minimum impairment of rights and obligations under this part; and

(e) DOE bears the burden of proving, by a preponderance of the evidence, that a violation has occurred.

§ 824.12 Initial decision.

(a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

(1) The nature, circumstances, extent, and gravity of the violation or violations;

(2) The violator's ability to pay;

(3) Its effect on the person's ability to do business;

(4) Any history of prior violations;

(5) The degree of culpability; and

(6) Such other matters as justice may require.

(b) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE, unless within 15 days of receipt of notification a request for review by the Secretary is filed with the Director.

§ 824.13 Final order.

(a) Upon receipt of a request for review of the initial decision, the Director shall forward the request, along with the entire record, to the Secretary.

(b) The Secretary shall issue a final order as soon as practicable after completing his review. The Secretary may, at his discretion, order additional proceedings, remand the matter or modify the amount of the civil fines assessed in the initial determination. The person shall be notified of the Secretary's final order in writing by certified mail, return receipt requested.

§ 824.14 Special procedures.

A person receiving a notice of violation under § 824.5 may elect in writing within 30 days of receipt of such notice, the application of special procedures regarding payment of the penalty that are set forth in section 234A.c.(3) of the Atomic Energy Act, 42 U.S.C. 2282a.c.(3). The Deputy Secretary, based upon a recommendation of the Director, shall promptly assess a civil penalty, by order, after the date of such election. If the civil penalty has not been paid within sixty calendar days after the assessment has been issued, the Deputy Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty.

§ 824.15 Collection of civil fines.

If any person fails to pay an assessment of a civil penalty after it has become a final order or after the appropriate district court has entered final judgment for DOE under § 824.14, the Deputy Secretary shall institute an action to recover the amount of such penalty in an appropriate district court of the United States. In such action, the validity and appropriateness of such final order or judgment shall not be subject to review.

[FR Doc. 02–7764 Filed 3–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 212

[Docket No. 99N–4063]

Current Good Manufacturing Practice for Positron Emission Tomography Drug Products; Preliminary Draft Proposed Rule; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of preliminary draft proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a preliminary draft proposed rule on current good manufacturing practice (CGMP) for positron emission tomography (PET) drug products. We are developing CGMP regulations for PET drug products in accordance with the Food and Drug Administration Modernization Act of 1997 (Modernization Act). We are making a preliminary draft of a proposed rule available to allow full discussion of its contents at an upcoming public meeting on CGMP requirements for PET drug products. We are announcing the availability of a companion draft guidance on CGMP for PET drug products elsewhere in this issue of the **Federal Register**.

DATES: A public meeting on the preliminary draft proposed rule will be held on May 21, 2002. Submit written or electronic comments on the preliminary draft proposed rule by June 5, 2002.

ADDRESSES: A copy of the preliminary draft proposed rule will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the preliminary draft proposed rule to the Division of Drug Information (HFD–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the preliminary draft proposed rule. Submit written comments to the Dockets Management Branch (address above). Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Brenda Uratani, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0098.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed the Modernization Act (Public Law 105–115) into law. Section 121(c)(1)(A) of the Modernization Act directs us to establish appropriate approval procedures and CGMP requirements for PET drugs. Section 121(c)(1)(B) states that, in adopting such requirements, we must take due account of any relevant differences between not-for-profit institutions that compound PET drugs for their patients and commercial manufacturers of such drugs. Section 121(c)(1)(B) also directs us to consult with patient advocacy groups, professional associations, manufacturers, and physicians and scientists who make or use PET drugs as we develop PET drug CGMP requirements and approval procedures.

We presented our initial tentative approach to PET drug CGMP requirements and responded to numerous questions and comments about that approach at a public meeting on February 19, 1999. In the **Federal Register** of September 22, 1999 (64 FR 51274), we published a notice of availability of preliminary draft regulations on PET drug CGMP. Those preliminary draft regulations were discussed at a public meeting on September 28, 1999.

After considering the comments on the preliminary draft regulations, FDA has decided to make several revisions to its approach to CGMP for PET drug products. In accordance with 21 CFR 10.40(f)(4) and 10.80(b)(2), we are making revised preliminary draft regulations available for comment. The preliminary draft proposed rule does not include sections on the economic impact of the proposed rule, federalism concerns, and Paperwork Reduction Act issues. We will include these sections when we publish a proposed rule, but we invite comments on these matters at this time.

Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a companion draft guidance entitled ''PET Drug Products—Current Good Manufacturing Practice (CGMP).'' Both the preliminary draft proposed rule and the draft guidance

will be discussed at a public meeting to be held on May 21, 2002, from 9 a.m. to 4:30 p.m., at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the preliminary draft proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted to *http://www.fda.gov/dockets/ecomments.* The preliminary draft proposed rule and the comments submitted to this docket may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm or www.fda.gov/cder/fdama* under ''Section 121—PET (Positron Emission Tomography).''

(**Authority:** 21 U.S.C. 321 *et seq.*)

Dated: March 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7728 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007b, WY–001–0008b, WY–001–0009b; FRL–7166–3]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: Due to the State of Wyoming's withdrawal of the August 9, 2000, August 7, 2001 and August 13, 2001 submittals to the EPA that revise the Wyoming State Implementation Plan (SIP), EPA is withdrawing the proposed rule, published concurrently with a direct final rule, to partially approve and partially disapprove these revisions that restructure and modify the State's air quality rules. In the direct final rule, published on February 6, 2002 (67 FR 5485), we stated that if we received adverse comment by March 8, 2002, the rule would be withdrawn and would not take effect. EPA subsequently received a letter from the State of Wyoming (on March 8, 2002) withdrawing the three submittals that EPA is taking action on in our February 6, 2002 direct final rule. EPA also received adverse comments from the Wyoming Outdoor Council (on March 7, 2002). Since, in addition to receiving adverse comments, the State of Wyoming withdrew their submittals, the proposed rule and the direct final rule are withdrawn and will not take effect. In the ''Final Rules'' section of today's **Federal Register** publication, we are withdrawing the direct final rule published on February 6, 2002 (67 FR 5552).

EFFECTIVE DATE: The proposed rule is withdrawn as of April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA Region VIII, (303) 312–6431 or Laurel Dygowski, EPA Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the February 6, 2002 **Federal Register** (67 FR 5485).

List of Subjects in 40 CFR Part 52

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

Dated: March 25, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–7773 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 255–0320a; FRL–7164–8]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing both a conditional approval and a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). These revisions concern fugitive dust and particulate matter less than 10 microns in diameter (PM–10). We are proposing action on local rules that regulate these emissions under the Clean Air Act, as amended in 1990 (CAA or the Act). The proposed conditional approval is with respect to enforceability and reasonably available control measures (RACM), and the proposed limited approval and limited disapproval is with respect to best available control measures (BACM). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by May 31, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX; (415) 947–4116.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are proposing to approve with the dates that they were adopted by the District and submitted by the California Air Resources Board (CARB) to EPA.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	8011	General Requirements	11/15/01	12/06/01
SJVUAPCD	8021	Construction, Demolition, Excavation, Extraction and Other Earthmoving Activities.	11/15/01	12/06/01
SJVUAPCD	8031	Bulk Materials	11/15/01	12/06/01
SJVUAPCD	8041	Carryout and Trackout	11/15/01	12/06/01
SJVUAPCD	8051	Open Areas	11/15/01	12/06/01
SJVUAPCD	8061	Paved and Unpaved Roads	11/15/01	12/06/01
SJVUAPCD	8071	Unpaved Vehicle/Equipment Traffic Areas	11/15/01	12/06/01
SJVUAPCD	8081	Agricultural Sources	11/15/01	12/06/01

On January 22, 2002, EPA found that these submittals meet the completeness criteria in 40 CFR part 51, appendix V.

B. Are there other versions of these rules?

We approved prior versions of most of the submitted rules into the SIP on March 8, 2000 (65 FR 12188) with a limited approval and limited disapproval rulemaking. Table 2 summarizes source category coverage of the submitted rules compared to the applicable SIP rules.

TABLE 2.—SIP AND SUBMITTED RULE COMPARISON

Fugitive dust source	Applicable SIP rule	Submitted rule
General Requirements	8010	8011
Construction, Demolition, Excavation, Extraction	8020	8021
Bulk Materials	8030	8031
Landfills	8040	8021
Carryout/Trackout	8020, 8030, 8040, 8070	8041
Open Areas	NA	8051
Paved and Unpaved Roads	8060	8061
Vehicle/Equipment Parking Areas	8070	8071
Agricultural Sources	NA	8081

C. What is the purpose of the submitted rule revisions?

The purpose of the submitted rules is to remedy deficiencies described in EPA's limited approval and limited disapproval of SIP Rules 8010, 8020, 8030, 8040, 8060 and 8070 on March 8, 2000. SJVUAPCD also submitted the revised rules to fulfill BACM requirements in CAA section 189.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see section 110(l) and section 193). We evaluated these criteria using the CAA as amended in 1990, 40 CFR part 51, and various EPA policy and guidance documents. In addition, section 172(c)(1) and section 189(a) of the CAA require moderate PM–10 nonattainment areas to adopt RACM and section 189(b) of the CAA requires serious PM–10 nonattainment areas, including SJVUAPCD, to adopt BACM.

Guidance for RACM and BACM, respectively, includes the following:

- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (57 FR 13498 and 13540, April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (59 FR 41998, August 16, 1994).

B. Do the rules meet the evaluation criteria?

We believe relevant requirements in CAA section 110(a), section 110(l) and section 193 have been met because these rules are enforceable and more stringent overall than the existing SIP, which contains the District's 1996 adopted version of Regulation VIII. The District significantly strengthened Regulation VIII with the following requirements:

- Tightened general performance standard from 40% opacity to 20% opacity;
- Added requirements for existing (as opposed to 1993 and later) public access unpaved roads, including agricultural unpaved access roads, where none existed previously;
- Added surface stabilization standards and corresponding test methods for unpaved roads/unpaved traffic/equipment areas and disturbed surfaces;
- Added coverage of weed abatement activities and related surface disturbances where none existed previously;
- Added requirements for Dust Control Plans for certain construction, demolition, excavation, and extraction sites where none existed previously;
- Eliminated a 7-day allowance before inactive disturbed surface areas at construction, demolition, excavation and extraction sites are subject to control;
- Eliminated an option allowing a 24-hour period before trackout controls are required for sites subject to Rule 8041;
- Added a requirement for trackout extending 50 feet or more to be cleaned up immediately;
- Added a requirement for trackout control devices or paved interior roads for certain sites where none existed previously;
- Added coverage of agricultural unpaved traffic/equipment areas where none existed previously;
- Added coverage of off-field open area agricultural materials where none existed previously;
- Expanded coverage of bulk material requirements from ≥250 cubic yards of material to ≥100 cubic yards of material;

• Removed an exemption for unpaved roads or road segments <½ mile in length;
• Removed control measure options for unpaved roads that limit applicability of requirements to the entire length of the road;
• Added requirements for unpaved roads and inactive disturbed areas (not associated with the spreading of landfill daily cover) at landfills;
• Removed an exemption for paved road segments <3 miles in length from shoulder stabilization requirements for new/modified paved roads;
• Removed several other exemptions that potentially weakened rule coverage.

Because the version of Regulation VIII submitted on December 6, 2001 includes the types of measures commonly relied upon for achieving the bulk of PM–10 emission reductions from fugitive dust sources (*e.g.* stabilizing unpaved roads and unpaved parking/traffic areas, etc.) and because rule coverage for the significant source categories subject to Regulation VIII was significantly expanded, it is more likely than not that the regulation fulfills the requirements in CAA section 189(a) regarding RACM. However, the District has not completely fulfilled the requirement described in 57 FR 13498 and 13540 (April 16, 1992) to demonstrate that it has applied RACM to the significant source categories that are subject to Regulation VIII. By letter dated March 5, 2002, SJVUAPCD committed to fulfill this requirement by submitting a RACM demonstration to EPA within one year after the date of publication of final EPA action on this proposed rule. This commitment includes the following: (1) A complete list of candidate RACM for the following Regulation VIII significant sources: unpaved roads, unpaved vehicle/equipment traffic areas, paved roads and earthmoving sources, including bulk materials storage/handling; (2) a reasoned justification for any candidate measures that the District did not adopt for these sources, including descriptions of measures for these source categories that the District is implementing outside the context of Regulation VIII; and (3) information that supports the reasonableness of the Regulation VIII coverage.

In our prior proposed rulemaking (64 FR 51489, September 23, 1999), and subsequent final rulemaking (65 FR 12118, March 8, 2000) on Regulation VIII, we issued a limited approval and limited disapproval because of deficiencies in the submission. We established a sanctions clock under section 179 because the prior submission did not fulfill enforceability requirements pursuant to section 110(a) or demonstrate RACM pursuant to section 189(a). We also discussed deficiencies regarding section 189(b) because the prior submission did not demonstrate BACM. We did not, however, start a sanction clock for section 189(b) deficiencies because the District explicitly adopted the April 25, 1996, Regulation VIII rules for purposes of maintaining RACM, rather than for meeting BACM requirements. We have now concluded that the District's December 6, 2001 submittal corrected the enforceability and RACM deficiencies that were the basis for the sanction clock.

At the time of our March 2000 action, we could have made a finding of failure to submit rules constituting BACM pursuant to section 179(a). However, the District has now corrected this failure to submit because it submitted Regulation VIII for the stated purpose of meeting BACM on December 6, 2001. Now that the District has submitted Regulation VIII for BACM purposes, EPA has evaluated the December 6, 2001 version of Regulation VIII for BACM. EPA believes that the submittal does not adequately fulfill the section 189(b) requirement for a BACM demonstration, nor any upgrades or revisions to the control measures that are required as a result of the BACM demonstration. EPA is proposing a limited approval and limited disapproval of the submittal with respect to BACM. If this proposal is finalized, it will start a sanction clock for the BACM deficiencies in the December 6, 2001 submittal.

The TSD accompanying this proposal provides more information on our evaluation of the District's submittal and identifies how the District has addressed the enforceability and RACM deficiencies associated with our March 8, 2000 rulemaking. The TSD also provides more information about why the December 6, 2001 submittal of Regulation VIII does not fulfill BACM requirements.

C. Proposed Action and Public Comment

Today we propose to approve conditionally Rules 8011, 8021, 8031, 8041, 8061, 8071 and 8081 pursuant to CAA section 110(k)(4), with respect to section 172(c)(1) and section 189(a)(1)(C) [1]. Thus, we have concluded that the December 6, 2001 submittal resolves the prior enforceability and RACM deficiencies identified in the March 8, 2000 final action, subject to one condition. The condition is for the District to provide a comprehensive and adequate RACM demonstration for Regulation VIII in accordance with EPA policy and guidance documents. The SJVUAPCD has committed to provide this RACM demonstration within one year after the date of publication of the final action on this proposal. The conditional approval will be treated as a disapproval, with sanctions for section 189(a) immediately re-instated, if the SJVUAPCD fails to fulfill this commitment within the statutory one year period. The TSD associated with this proposed action provides more detail on our RACM evaluation.

Based on this proposed conditional approval, elsewhere in today's **Federal Register**, EPA has published an interim final determination which stays the existing section 179 offset sanction and defers the section 179 highway sanction triggered by EPA's final rulemaking on SJVUAPCD Rules 8010, 8020, 8030, 8040, 8060, and 8070 (65 FR 12118, March 8, 2000). EPA is staying and deferring these sanctions because the December 6, 2001 submittal corrects the previously identified enforceability and RACM deficiencies.

We further propose limited approval and limited disapproval of Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071 and 8081 per section 110(k)(3) and section 301(a) with respect to section 189(b)(1)(B) [2]. This is because the rules strengthen the SIP, but the State has not adequately demonstrated that they fulfill BACM requirements. The TSD associated with this proposed action provides more detail on our BACM evaluation. If finalized, this action would incorporate the submitted rules into the SIP, but sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the Regulation VIII BACM deficiencies as identified in the TSD within 18 months of final action. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the FIP requirement under section 110(c). Note that the submitted rules have been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on this proposal for the next 60 days. Unless we receive convincing new information during the comment period, we intend to publish a final action that will incorporate these rules into the federally enforceable SIP.

[1] CAA section 189(a)(1)(C) requires Reasonably Available Control Measures.

[2] CAA section 189(b)(1)(B) requires Best Available Control Measures.

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 3 lists some of the national milestones leading to the submittal of local agency rules that help control PM–10 emissions.

TABLE 3.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the CAA, as amended in 1977 (43 FR 8964; 40 CFR 81.305).
July 1, 1987	EPA replaced the TSP standards with new PM–10 standards (52 FR 24672).
November 15, 1990	CAA Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated non-attainment by operation of law and classified as moderate or serious pursuant to section 189(a) or section 189(b). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2002. 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 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–7634 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7165–1]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the

Atlantic Ocean offshore Wilmington, North Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This proposed action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Cape Fear River, North Carolina vicinity. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before May 16, 2002.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a new site offshore Wilmington, North Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. The existing ODMDS was designated and has been used since 1987. However, site capacity limitations and a proposed realignment of the ocean bar channel negate the utility of the existing site. The details of these issues can be found in the ''Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation.'' Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Wilmington District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation.'' On November 30, 2001, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (66 FR 59787 (November 30, 2001)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the final EIS closed on December 31, 2001.

EPA has received 3 letters on the final EIS. All comments were either supportive or unconcerned by this proposed action.

This rule proposes the permanent designation for continuing use of the new ODMDS near Wilmington, North Carolina. The purpose of the proposed action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a new Wilmington ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Cape Fear River area and the issues raised by site capacity and channel realignment. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the new Wilmington ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220 through 229) and the COE regulations (33 CFR 209.120 and 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (Section 102(a)) or conditions of designation (Section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

C. Proposed Site Designation

The proposed site is located approximately 5 nautical miles offshore Bald Head Island. The proposed ODMDS occupies an area of about 9.4 square nautical miles (nmi^2). Water depths within the area range from 35–52 feet (ft.). The coordinates of the New Wilmington site proposed for final designation are as follows: 33°46′ N., 78°02.5′ W.; 33°46′ N., 78°01′ W.; 33°41′ N., 78°01′ W.; 33°41′ N., 78°04′ W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary of the proposed site is given above. The northern boundary of the proposed site is located about 5 nmi offshore of Bald Head Island, North Carolina. The site is approximatelty 9.4 nmi^2 in area. Water depth in the area ranges from 35–52 ft.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the proposed site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed site is located approximately 5 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS and further distance that the proposed disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))

The type of materials to be disposed of within this proposed site is dredged material as described in type and quantity by Section 2 of the FEIS. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, Appendix A).

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agency. A copy of the SMMP may be obtained at the any of the addresses given above.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

A detailed current study, along with fate modelling of dredged material, was conducted within the proposed site and can be found described in the FEIS. The findings of these studies indicate that transport of disposed material should not present any adverse impacts.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

The existing ODMDS has been used to dispose of the material from the Cape Fear River project for fifteen years. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The shape of the proposed ODMDS was designed to avoid interference with commericial shipping. The location was also selected to move away from commercial fishing, particularly trawling bottoms. It is not anticipated that the proposed site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Appropriate water quality and ecological assessments have been performed at the site. Site-specific information concerning the water quality and ecology at the proposed ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

The only resource known to exist in close proximity to the proposed site is the wreck of the Virginius. This wreck lies outside the eastern boundary of the proposed site. Since no disposal will occur within 600 ft. of the boundary, and the wreck lies in shallower water, placement of material within the site is not expected to adversely affect it.

E. Site Management

Site management of the New Wilmington ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the proposed New Wilmington ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

F. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the New Wilmington site as an EPA-approved ODMDS is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The New Wilmington ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted,

however, to suitable dredged material from the greater Wilmington, North Carolina vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 8, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(20) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) New Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

(i) Location: 33°46′ N., 78°02.5′ W.; 33°46′ N., 78°01′ W.; 33°41′ N., 78°01′ W.; 33°41′ N., 78°04′ W.

(ii) Size: Approximately 9.4 square nautical miles.

(iii) Depth: Ranges from 35–52 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Wilmington, North Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 02–7774 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

[DFARS Case 2001–D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments and notice of public meeting.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002. Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts. In addition to the request for written comments on this proposed rule, DoD will hold one or more public meetings to hear the views of interested parties.

DATES: *Submission of comments:* Written comments on the proposed rule should be submitted to the address shown below on or before May 6, 2002, to be considered in the formation of the final rule.

Public meeting: The first public meeting will be held at the address shown below on April 29, 2002, from 12 p.m. to 3 p.m., local time.

ADDRESSES: *Submission of comments:* Respondents are encouraged to submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2001–D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D017.

As a test, public comments will be posted on the World Wide Web as they are received. Interested parties may view the public comments at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

Public meeting: The public meeting will be held in Room C–43, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: *Proposed rule information:* Ms. Susan Schneider, (703) 602–0326.

Public meeting information: Ms. Melissa Rider, (703) 695–1098.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Parts 208 and 216 to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.

The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed rule and hear the views of interested parties on what they believe to be the key issues pertaining to use of Federal Supply Schedules, Governmentwide acquisition contracts, multiple agency contracts, and multi-agency indefinite-delivery-indefinite-quantity contracts for the acquisition of services. Possible issues include (but are not limited to): procedures for establishing the basic contractual instruments; ordering procedures; ability to maintain a competitive environment; and suitability of current Government training on multiple award contracts. Subsequent meetings may be held, depending on the level of interest shown by the general public at the

initial meeting. Meeting dates and other pertinent information will be published on the Defense Procurement Web site at *www.acq.osd.mil/dp.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule clarifies and strengthens existing FAR requirements for competition in the placement of orders under multiple award contracts, and makes no change to the preferences afforded small business concerns under FAR 8.404(b)(6). Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208 and 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR parts 208 and 216 as follows:

1. The authority citation for 48 CFR parts 208 and 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. The heading of Subpart 208.4 is revised to read as follows:

Subpart 208.4—Federal Supply Schedules

3. Section 208.404 is amended by adding paragraph (b) to read as follows:

208.404 Using schedules.

* * * * *

(b) *Ordering procedures for optional use schedules—*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* The procedures at FAR 8.404(b)(2), regarding review of catalogs or pricelists of at least three schedule contactors, do not apply to orders for services exceeding $100,000. Instead, use the procedures at 208.404–70.

(3) *Orders exceeding the maximum order threshold.*

(i) For orders for services exceeding $100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(3)(i).

(7) *Documentation.* For orders for services exceeding $100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(7).

4. Section 208.404–70 is added to read as follows:

208.404–70 Additional ordering procedures for services.

(a) This subsection implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107).

(b) Each order for services exceeding $100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding $100,000 is made on a competitive basis only if—

(1) The contracting officer—

(i) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award schedule; and

(ii) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered; or

(2) The contracting officer provides the notice described in paragraph (c)(1)(i) of this subsection to as many contractors as practicable and—

(i) Receives offers from at least three qualified contractors; or

(ii) Determines in writing that no additional qualified contractors could be identified despite reasonable efforts to do so.

(d) Single and multiple blanket purchase agreements (BPAs) may be established against Federal Supply Schedules if the contracting officer—

(1) Follows the procedures in paragraphs (b) and (c) of this subsection; and

(2)(i) For a single BPA, defines the tasks and establishes a firm-fixed price for individual tasks or services identified in the statement of work; or

(ii) For multiple BPAs, forwards the statement of work and the selection criteria to all BPA awardees before placing orders against the BPAs. (See FAR 8.404(a) and (b)(4), and paragraph (b) of GSA's ordering procedures for services at http://www.gsa.gov/Portal/content/offerings _content.jsp?contentOID=116992&contentType=1004.)

PART 216—TYPES OF CONTRACTS

5. Section 216.501–1 is added to read as follows:

216.501–1 Definition.

Multiple award contract, as used in this subpart, means—

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite delivery, indefinite quantity contract that an agency enters into with two or more sources under the same solicitation.

6. Section 216.505–70 is added to read as follows:

216.505–70 Orders for services under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107); and

(2) Applies to orders for services exceeding $100,000 placed under multiple award contracts, instead of the procedures at FAR 16.505(b)(1) (see Subpart 208.4 for procedures applicable to orders placed against Federal Supply Schedules).

(b) Each order for services exceeding $100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding $100,000 is made on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations; and

(3) The competition requirements in FAR part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer must—

(i) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(ii) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(iii) Tailor the procedures to each acquisition;

(iv) Include the procedures in the solicitation and the contract; and

(v) Consider price or cost under each order as one of the factors in the selection decision.

(e) The contracting officer should consider the following when developing the procedures required by paragraph (d)(3) of this subsection:

(1) Past performance on earlier orders under the contract, including quality, timeliness, and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

[FR Doc. 02–7785 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–P

Proposed Rules

Federal Register
Vol. 67, No. 62
Monday, April 1, 2002

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 AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV02–905–1C]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Continuance Referendum; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Referendum order; correction.

SUMMARY: The Agricultural Marketing Service published in the **Federal Register** on March 14, 2002, a Referendum Order to conduct a continuance referendum for marketing agreement and order 905. This document corrects the ballot postmark deadline date, changing it from May 6, 2002 to April 26, 2002 in the **SUPPLEMENTARY INFORMATION** section of the Notice.

FOR FURTHER INFORMATION CONTACT: Melissa Schmaedick, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs; Agricultural Marketing Service, Department of Agriculture, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938.

SUPPLEMENTARY INFORMATION:

Background

The referendum order that is the subject of this correction provides that a referendum be conducted among eligible producers of Florida citrus to determine whether they favor continuance of the marketing order regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in the production area.

Need for Correction

As published, the ballot postmark deadline date in the **SUPPLEMENTARY INFORMATION** section is incorrect. The ballot postmark deadline date needs to be changed from May 6, 2002 to April 26, the ending date of the referendum period.

Correction of Publication

The publication of the referendum order (Docket No. FV02–905–1), which was the subject of FR Doc. 02–6108 published on March 14, 2002 (67 FR 11450) is corrected as follows:

On page 11450, column two, under **SUPPLEMENTARY INFORMATION**, the date ''May 6, 2002'' for ballots to be postmarked by is corrected to read ''April 26, 2002.''

Authority:
7 U.S.C. 601–674.

Dated: March 27, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–7905 Filed 3–28–02; 12:04 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF ENERGY

Office of Security

10 CFR Part 824

[Docket No. SO–RM–00–01]

RIN 1992–AA28

Procedural Rules for the Assessment of Civil Penalties for Classified Information Security Violations

AGENCY: Office of Security, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Department of Energy (DOE) proposes regulations to implement section 234B of the Atomic Energy Act of 1954 (Section 234B) which was added to that act by section 3147 of the National Defense Authorization Act for Fiscal Year 2000. Section 234B subjects contractors and others working for DOE to civil penalties for violations of DOE rules, regulations and orders regarding the safeguarding and security of Restricted Data and other classified information.

DATES: Written comments (7 copies) may be submitted by July 1, 2002. Public hearings will be held in Las Vegas, Nevada on May 22, 2002, and in Washington, DC on May 29, 2002. Requests to speak at the Las Vegas hearing must be submitted on or before May 15, 2002, or at the Washington, DC hearing on or before May 22, 2002.

ADDRESSES: Comments should be addressed to: Geralyn C. Praskievicz, Office of Security, SO–1, Docket No. SO–RM–00–01, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–4451.

The following two public hearings will be held: May 22, 2002, from 9:30 a.m. until 12:30 p.m. at the U.S. Department of Energy, National Nuclear Security Administration, Nevada Operations Office, 232 Energy Way, Las Vegas, Nevada, room A107, and May 29, 2002, from 9:30 a.m. until 12:30 p.m., at the U.S. Department of Energy, James Forrestal Building, 1000 Independence Avenue SW, Washington, DC, room GE–086.

The envelope and written comments should indicate the above docket number. Written comments and hearing testimony may be examined between 9 a.m. and 4 p.m., Monday through Friday at: U.S. Department of Energy, Freedom of Information Reading Room, room 1E–190, Docket No. SO–RM–00–01, 1000 Independence Avenue S.W., Washington, D.C. 20585, (202) 586–3142.

FOR FURTHER INFORMATION CONTACT: Geralyn Praskievicz, Office of Security, SO–1, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–4451; Jo Ann Williams, Office of General Counsel, GC–53, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586–6899.

SUPPLEMENTARY INFORMATION:

I. Introduction.

On October 5, 1999, Congress enacted section 3147 of the National Defense

Authorization Act for Fiscal Year 2000 (Pub.L. 106–65, October 5, 1999) that adds a new section 234B to the Atomic Energy Act of 1954, 42 U.S.C. 2282b. Subsection a. of section 234B provides that any person who: (1) Has entered into a contract or agreement with DOE, or a subcontract or subagreement thereto, and (2) violates (or whose employee violates) any applicable rule, regulation, or order prescribed or otherwise issued by the Secretary of Energy pursuant to the Atomic Energy Act relating to the safeguarding or security of Restricted Data or other classified or ''sensitive information,'' shall be subject to a civil penalty not to exceed $100,000 for each such violation. Subsection b. of section 234B requires that each DOE contract contain provisions which provide an appropriate reduction in the fees or amounts paid to the contractor under the contract in the event of a violation by the contractor or contractor employee of any rule, regulation or order relating to the safeguarding or security of Restricted Data or other classified or sensitive information.

On February 1, 2001, DOE published a Notice of Proposed Rulemaking (66 FR 8560) to implement subsection b. of section 234B, concerning reductions in fees or amounts paid to contractors in the event of a security violation. DOE received numerous comments in response to that notice of proposed rulemaking. Some of the commenters assumed that the procurement rulemaking was intended to address all of the provisions in section 234B. Two separate rulemakings, one establishing procedural rules similar to the procedural rules to achieve compliance with DOE nuclear safety requirements found at 10 CFR Part 820 and the other establishing a procurement clause like Conditional payment of fee, profit or incentives, 48 CFR (DEAR) 970.5204–86, were always contemplated and deemed necessary by DOE. The February 1, 2001, notice of proposed rulemaking was only intended to address subsection b. of 234B.

DOE in this rulemaking proposes to establish a new Part 824 to Chapter III of Title 10 of the Code of Federal Regulations (CFR) to implement all subsections of section 234B of the Atomic Energy Act, except subsection b., with respect to contractors of DOE, including those of the National Nuclear Security Administration (NNSA). To a large extent these proposed regulations are self-explanatory. There are, however, several features that require explanation.

In this rulemaking action, DOE proposes applying civil penalties only to violations of requirements for the protection of classified information. Classified information is ''Restricted Data'' or ''Formerly Restricted Data'' protected against unauthorized disclosure pursuant to the Atomic Energy Act of 1954, and ''National Security Information'' protected against unauthorized disclosure pursuant to Executive Order 12958 (April 17, 1995) or any predecessor or successor order. Although section 234B refers to ''sensitive information,'' DOE does not employ this term in the proposal because: (1) Neither the statute nor its legislative history defines the term; (2) there is no commonly accepted definition of ''sensitive information'' within DOE or the Executive Branch; (3) the legislative history indicates that the Congress was concerned with unauthorized disclosures of classified information; and (4) the only category of unclassified information that might merit inclusion in a regulation imposing civil penalties is Unclassified Controlled Nuclear Information (UCNI), a category of unclassified government information concerning atomic energy defense programs established by section 148 of the Atomic Energy Act of 1954 (42 U.S.C. 2168). Section 148 provides that any person who violates a regulation or order issued under that section shall be subject to a civil penalty not to exceed $100,000. DOE implemented the provisions of section 148 in regulations contained in 10 CFR Part 1017. Since Part 1017 already imposes a civil monetary penalty for unauthorized dissemination of UCNI comparable to the penalty specified in section 3147, we determined that it is unnecessary to include UCNI in regulations implementing section 3147.

DOE proposes to assess civil penalties only for violations described in proposed section 824.4. These are violations of: (1) Specified DOE regulations related to classified information security presently in the CFR, (2) any other DOE rule, regulation or order relating to the safeguarding or security of Restricted Data or other classified information that specifically indicates that violation of its provisions may result in a civil penalty pursuant to section 234B, and (3) compliance orders issued pursuant to proposed part 824.

With respect to compliance orders, section 161 of the Atomic Energy Act grants DOE broad authority to prescribe regulations and orders deemed necessary to protect the common defense and security, 42 U.S.C. 2201. Pursuant to this authority, the Secretary may issue a compliance order requiring a person to take corrective action if a person by act or omission jeopardizes the security of classified information even if that person has not violated a regulation listed in the proposed part. Violation of the compliance order may result in the assessment of a civil penalty. Compliance orders would not be subject to the DOE Acquisition Regulations or require any authorization by a contracting officer. While the recipient of a compliance order may request the Secretary to rescind or modify the compliance order, the request does not stay the effectiveness of the order unless the Secretary issues a new order to that effect. The compliance order provisions of today's proposed regulations are modeled after a similar mechanism in 10 CFR Part 820, the regulations implementing procedures for section 234A of the Atomic Energy Act of 1954 with respect to nuclear safety.

It is important to note that this proposed rule would only apply to contractors and others who have entered into agreements or subagreements with DOE. Subsection a. of section 234B clearly provides that the contractor or other entity that has entered into an agreement or subagreements thereto with DOE is liable for violations of its employees. Consequently, no civil penalties would be assessed against individual employees under Part 824 as proposed.

Subsection d. of section 234B sets limitations on civil penalties assessed against certain non-profit entities specified at subsection d. of section 234A. As to each of these seven named entities working at named sites, the statute provides that no civil penalty may be assessed until the entity enters into a new contract with DOE or an extension of a current contract with DOE. The statute also limits the total amount of civil penalties assessed against these entities in any fiscal year to the total amount of fees paid to that entity in that fiscal year. It should be noted that the limitations applicable to these seven entities at the named sites also apply to their subcontractors and suppliers regardless of whether they are for-profit or non-profit.

DOE has determined as a matter of discretion under section 234B.c. and section 234A.b.(2) to extend the cap on civil penalties assessed on non-profits provided in section 234B.d.(2) to any non-profit educational institution under the United States Internal Revenue Code. DOE exercised similar discretionary authority for educational non-profit institutions in Part 820 with respect to automatic remission from civil penalties for nuclear safety violations. DOE continues to believe these other non-profit entities should

receive uniform treatment concerning civil penalties. However, the for-profit subcontractors and suppliers of these other non-profits would not have their civil penalties limited to fee as in the case of the for-profit subcontractors and for-profit suppliers of the seven named entities at sites named in section 234A. Also, as a matter of discretion, these other non-profit entities would not be subject to civil penalties until they enter into a new contract with DOE or an extension of a current contract.

The fee that represents the cap for civil penalties of non-profits will be determined pursuant to the provisions of the specific contracts covered by the limitation on non-profits.

II. Procedural Requirements

A. Review Under Executive Order 12866

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

B. Review Under the Regulatory Flexibility Act

These proposed rules were reviewed under the Regulatory Flexibility Act of 1980, Pub. L 96–354, which requires preparation of an initial regulatory flexibility analysis for any rule that is likely to have significant economic impact on a substantial number of small entities. This rulemaking will apply principally to large entities who are management and operating contractors with cost reimbursement contracts. Therefore, DOE certifies that this regulation will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

The proposed information and reporting requirements are not substantially different from existing reporting requirements contained in DOE contracts with the Department's prime contractors covered by these rules. DOE will submit any new information collection requests concerning these proposed rules to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501.1 *et seq.*, and the procedures implementing that Act, 5 CFR Part 1320.

D. Review Under the National Environmental Policy Act

DOE has reviewed the promulgation of this proposed rule with respect to its responsibilities under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321 *et seq.*) and the Council on Environmental Quality regulations for implementing NEPA (40 CFR Parts 1500–1508). The proposed rulemaking specifies procedures and standards for DOE enforcement actions under section 3147 of the Defense Authorization Act for Fiscal Year 2000. As noted in the CEQ regulations, major Federal actions ''do not include bringing judicial or administrative civil or criminal enforcement actions'' (40 CFR 1508.18(a)). Therefore, DOE has concluded that the proposed rulemaking is not a major Federal action with significant effects on the human environment within the meaning of NEPA and that no further review under NEPA is required.

E. Review Under Executive Order 12988

With respect to the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996) imposes on Executive agencies the general duty to: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and to promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that a regulation: (1) Clearly specifies its preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies its retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of the applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. The DOE has completed the required reviews and has determined that, to the extent allowed by law, the proposed regulations meet the relevant standards of Executive Order 12988.

F. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4,1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's proposed rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

G. Review Under Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. Today's proposal would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a family policymaking assessment.

H. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), DOE may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. This proposed rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

III. Public Comment Procedures

A. Written Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed rule set forth in this notice. Seven copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments will be available for public inspection in the DOE Freedom of Information Reading Room, room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, between the

hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Written comments received by the date indicated in the **DATES** section of this notice of proposed rulemaking will be assessed and considered prior to publication of the final rule. Any information that a commenter considers to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the appropriateness of confidential status for the information and to treat it in accordance with its determination. See 10 CFR Part 1004.11.

DOE is interested in comments concerning the potential costs and benefits of this regulation, either to the general public, the Department's contractors, or the Department itself.

B. Public Hearing.

Requests to speak at the hearings must be submitted to the address and by the date indicated in the **DATES** section of this notice of proposed rule making. Requests for oral presentations should contain a telephone number where the requester may be contacted prior to the hearing. Speakers are requested to submit seven copies of their statement to DOE at the hearings.

DOE reserves the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. The length of each presentation is limited to fifteen minutes. The hearings will begin at 9:30 a.m. A DOE official will be designated to preside at each hearing. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearing. Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer. A transcript of the hearing will be made available to the public. The entire record of each hearing, including the transcript, will be retained by DOE and made available for inspection in the DOE Freedom of Information Reading Room. Transcripts may be purchased from the hearing transcriber/reporter.

List of Subjects in 10 CFR Part 824

Classified information, Government contracts, Nuclear security, Penalties, Security measures.

Issued in Washington, DC on March 19, 2002.

Spencer Abraham,

Secretary of Energy.

For the reasons set forth in the preamble, DOE proposes to amend Chapter III of Title 10 of the Code of Federal Regulations by adding a new part 824 as set forth below.

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

Sec.

Authority: 42 U.S.C. 2201, 2282b, 7101 *et seq.*, 50 U.S.C. 2401 *et seq.*

PART 824—PROCEDURAL RULES FOR THE ASSESSMENT OF CIVIL PENALTIES FOR CLASSIFIED INFORMATION SECURITY VIOLATIONS

§ 824.1 Purpose and scope.

This part implements subsections a., c., and d. of section 234B of the Atomic Energy Act of 1954, 42 U.S.C. 2282b, which provides that any person who has entered into a contract or agreement with the Department of Energy (DOE), or a subcontract or subagreement thereto, and violates (or whose employee violates) any applicable rule, regulation or order under the Atomic Energy Act relating to the security or safeguarding of Restricted Data or other classified information, shall be subject to a civil penalty not to exceed $100,000 for each violation. Specifically, these regulations establish procedures for assessing civil penalties against any entity that violates DOE regulations which impose requirements for the protection of classified information or that violates a compliance order issued under this part.

§ 824.2 Applicability.

(a) *General.* These regulations apply to any entity that is subject to DOE security requirements for the protection of classified information.

(b) *Limitations.* In the case of the following entities, DOE may not assess any civil penalty against the entity until it enters into a new contract with DOE or an extension of a current contract with DOE, and the total amount of civil penalties may not exceed the total amount of fees paid by the DOE to that entity in that fiscal year:

(1) Entities (including subcontractors and suppliers thereto) specified at subsection d. of section 234A of the Atomic Energy Act of 1954; and

(2) Any nonprofit educational institution under the United States Internal Revenue Code.

(c) *Individual employees.* No civil penalty may be assessed against an individual employee of a contractor or any other entity which enters into an agreement with DOE.

§ 824.3 Definitions.

(a) As used in this part:

(1) *Act* means the Atomic Energy Act of 1954 (42 U.S.C. 2011 *et seq.*)

(2) *Classified information* means Restricted Data and Formerly Restricted Data protected against unauthorized disclosure pursuant to the Act and National Security Information protected against unauthorized disclosure under Executive Order 12958 (April 17, 1995) or any predecessor or successor executive order.

(3) *Contractor* means any person under contract or other agreement (including suppliers and access permittees) with the Department of Energy, including the National Nuclear Security Administration (NNSA), or a subcontract or subagreement thereto, to perform activities or to supply services or products that are subject to DOE security requirements.

(4) *Deputy Secretary* means the Deputy Secretary of Energy.

(5) *Director* means the Director, Office of Security, or any person to whom the Director's authority under this part is re-delegated.

(6) *Person* means any person as defined in section 11.s. of the Atomic Energy Act, 42 U.S.C. 2014, or any affiliate or parent corporation thereof, who enters into a contract or agreement with the Department of Energy, including a subcontract or subagreement thereto.

(7) *Secretary* means the Secretary of Energy.

(b) Words in the singular also include the plural and words in the masculine gender also include the feminine and vice versa, as the case may require.

§ 824.4 Civil penalties.

(a) Any person who violates a requirement of any of the following is subject to a civil penalty under this part:

(1) 10 CFR Part 1016—Safeguarding of Restricted Data;

(2) 10 CFR Part 1045—Nuclear Classification and Declassification;

(3) 10 CFR Part 1046—Physical Protection of Security Interests; and

(4) Any other DOE rule, regulation or order related to the safeguarding or

security of classified information that specifically indicates that violation of its provisions may result in a civil penalty pursuant to subsection a. of section 234B of the Act.

(b) If, without violating any regulation listed in paragraph (a) of this section, a person by an act or omission jeopardizes the security of classified information, the Secretary may issue a compliance order to that person requiring the person to take corrective action and notifying the person that violation of the compliance order is subject to a notice of violation and assessment of a civil penalty. If a person wishes to contest the compliance order, the person must file a notice of appeal with the Secretary within 15 days of receipt of the compliance order.

(c) The Deputy Secretary, based on a recommendation from the Director, may propose imposition of a civil penalty for violation of a requirement of a rule, regulation or order listed in paragraph (a) of this section or a compliance order issued under paragraph (b) of this section, not to exceed $100,000 for each violation.

(d) If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

§ 824.5 Notice of violation.

(a) In order to begin a proceeding to impose a civil penalty under this part, the Deputy Secretary, based upon a recommendation of the Director, shall notify the person by a written notice of violation sent by certified mail, return receipt requested, of—

(1) The date, facts, and nature of each act or omission with which the person is charged;

(2) The particular provision of the regulation involved in the violation;

(3) Each penalty which the Deputy Secretary proposes to impose and the amount;

(4) The right of the person to submit a written reply to each of the allegations in the notification letter to the Director within 30 calendar days of receipt of such a notice of violation; and,

(5) The right of the person to submit to the Director a written request for a hearing under § 824.7 or, in the alternative, to elect the procedures specified in 42 U.S.C. 2282a.(c)(3).

(b) Within ten days of receiving a reply or a hearing request letter, the Director shall acknowledge its receipt in writing. In the case of a hearing request letter, the acknowledgment from the Director shall provide information regarding scheduling of the hearing.

(c) The Director, at the request of a person accused of a violation, may extend for a reasonable period the time for submitting a reply or a hearing request letter.

(d) After notifying a person of a violation under paragraph (a) of this section, the Deputy Secretary, based upon the recommendation of the Director, may enter into a settlement regarding the violation with or without conditions.

(e) If a person fails to submit a written request for a hearing within the specified time period, the person relinquishes the right to a hearing. If the person does not request a hearing, the notice of violation including proposed civil penalties shall constitute the final order of DOE.

§ 824.6 Investigations

The Director, at the request of the Deputy Secretary, may conduct investigations and inspections relating to the scope, nature and extent of compliance by a person with DOE security requirements specified in § 824.4 (a) and (b) and take such action as he deems necessary and appropriate to the conduct of the investigation or inspection, including issuing and serving subpoenas signed by the Deputy Secretary.

§ 824.7 Hearing.

Any person who receives a notification letter under § 824.5 may request a hearing to answer under oath or affirmation the allegations contained in the letter. The person shall mail or deliver any letter requesting a hearing to the Director within 30 calendar days of receipt of the notification letter. Upon receipt from a person of a written request for a hearing, the Deputy Secretary shall appoint a Hearing Counsel and select an administrative law judge appointed under section 3105 of Title 5, U.S.C., to serve as Hearing Officer.

§ 824.8 Hearing Counsel.

The Hearing Counsel—

(a) Represents DOE;

(b) Consults with the person or the person's counsel prior to the hearing;

(c) Examines and cross-examines witnesses during the hearing; and

(d) Enters into a settlement of the enforcement proceeding at any time if settlement is consistent with the objectives of the Atomic Energy Act and DOE security requirements.

§ 824.9 Hearing Officer.

The Hearing Officer—

(a) Administers oaths and affirmations;

(b) Issues subpoenas;

(c) Rules on offers of proof and receives relevant evidence;

(d) Takes depositions or has depositions taken when the ends of justice would serve;

(e) Conducts the hearing in a manner which is fair and impartial;

(f) Holds conferences for the settlement or simplification of the issues by consent of the parties;

(g) Disposes of procedural requests or similar matters;

(h) Makes an initial decision under § 824.12; and

(i) Requires production of documents.

§ 824.10 Rights of the person at the hearing.

The person may—

(a) Testify or present evidence through witnesses or by documents;

(b) Cross-examine witnesses and rebut records or other physical evidence, except as provided in § 824.11(d);

(c) Be present during the entire hearing, except as provided in § 824.11(d); and

(d) Be accompanied, represented and advised by counsel of the person's choosing.

§ 824.11 Conduct of the hearing.

(a) DOE shall make a transcript of the hearing;

(b) Except as provided in paragraph (d) of this section, the Hearing Officer may receive any oral or documentary evidence, but shall exclude irrelevant, immaterial or unduly repetitious evidence;

(c) Witnesses shall testify under oath and are subject to cross-examination, except as provided in paragraph (d) of this section;

(d) The Hearing Officer must use procedures appropriate to safeguard and prevent disclosure of classified information or Unclassified Controlled Nuclear Information to unauthorized persons, with minimum impairment of rights and obligations under this part; and

(e) DOE bears the burden of proving, by a preponderance of the evidence, that a violation has occurred.

§ 824.12 Initial decision.

(a) The Hearing Officer shall issue an initial decision as soon as practicable after the hearing. The initial decision shall contain findings of fact, conclusions regarding all material issues of law or discretion, as well as reasons therefor. If the Hearing Officer determines that a violation has occurred and that a civil penalty is appropriate, the initial decision shall set forth the amount of the civil penalty based on:

(1) The nature, circumstances, extent, and gravity of the violation or violations;

(2) The violator's ability to pay;

(3) Its effect on the person's ability to do business;

(4) Any history of prior violations;

(5) The degree of culpability; and

(6) Such other matters as justice may require.

(b) The Hearing Officer shall serve all parties with the initial decision by certified mail, return receipt requested. The initial decision shall include notice that it constitutes a final order of DOE, unless within 15 days of receipt of notification a request for review by the Secretary is filed with the Director.

§ 824.13 Final order.

(a) Upon receipt of a request for review of the initial decision, the Director shall forward the request, along with the entire record, to the Secretary.

(b) The Secretary shall issue a final order as soon as practicable after completing his review. The Secretary may, at his discretion, order additional proceedings, remand the matter or modify the amount of the civil fines assessed in the initial determination. The person shall be notified of the Secretary's final order in writing by certified mail, return receipt requested.

§ 824.14 Special procedures.

A person receiving a notice of violation under § 824.5 may elect in writing within 30 days of receipt of such notice, the application of special procedures regarding payment of the penalty that are set forth in section 234A.c.(3) of the Atomic Energy Act, 42 U.S.C. 2282a.c.(3). The Deputy Secretary, based upon a recommendation of the Director, shall promptly assess a civil penalty, by order, after the date of such election. If the civil penalty has not been paid within sixty calendar days after the assessment has been issued, the Deputy Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty.

§ 824.15 Collection of civil fines.

If any person fails to pay an assessment of a civil penalty after it has become a final order or after the appropriate district court has entered final judgment for DOE under § 824.14, the Deputy Secretary shall institute an action to recover the amount of such penalty in an appropriate district court of the United States. In such action, the validity and appropriateness of such final order or judgment shall not be subject to review.

[FR Doc. 02–7764 Filed 3–29–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 212

[Docket No. 99N–4063]

Current Good Manufacturing Practice for Positron Emission Tomography Drug Products; Preliminary Draft Proposed Rule; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability of preliminary draft proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a preliminary draft proposed rule on current good manufacturing practice (CGMP) for positron emission tomography (PET) drug products. We are developing CGMP regulations for PET drug products in accordance with the Food and Drug Administration Modernization Act of 1997 (Modernization Act). We are making a preliminary draft of a proposed rule available to allow full discussion of its contents at an upcoming public meeting on CGMP requirements for PET drug products. We are announcing the availability of a companion draft guidance on CGMP for PET drug products elsewhere in this issue of the **Federal Register**.

DATES: A public meeting on the preliminary draft proposed rule will be held on May 21, 2002. Submit written or electronic comments on the preliminary draft proposed rule by June 5, 2002.

ADDRESSES: A copy of the preliminary draft proposed rule will be on display at the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written requests for single copies of the preliminary draft proposed rule to the Division of Drug Information (HFD–240), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the preliminary draft proposed rule. Submit written comments to the Dockets Management Branch (address above). Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Brenda Uratani, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0098.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed the Modernization Act (Public Law 105–115) into law. Section 121(c)(1)(A) of the Modernization Act directs us to establish appropriate approval procedures and CGMP requirements for PET drugs. Section 121(c)(1)(B) states that, in adopting such requirements, we must take due account of any relevant differences between not-for-profit institutions that compound PET drugs for their patients and commercial manufacturers of such drugs. Section 121(c)(1)(B) also directs us to consult with patient advocacy groups, professional associations, manufacturers, and physicians and scientists who make or use PET drugs as we develop PET drug CGMP requirements and approval procedures.

We presented our initial tentative approach to PET drug CGMP requirements and responded to numerous questions and comments about that approach at a public meeting on February 19, 1999. In the **Federal Register** of September 22, 1999 (64 FR 51274), we published a notice of availability of preliminary draft regulations on PET drug CGMP. Those preliminary draft regulations were discussed at a public meeting on September 28, 1999.

After considering the comments on the preliminary draft regulations, FDA has decided to make several revisions to its approach to CGMP for PET drug products. In accordance with 21 CFR 10.40(f)(4) and 10.80(b)(2), we are making revised preliminary draft regulations available for comment. The preliminary draft proposed rule does not include sections on the economic impact of the proposed rule, federalism concerns, and Paperwork Reduction Act issues. We will include these sections when we publish a proposed rule, but we invite comments on these matters at this time.

Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a companion draft guidance entitled ''PET Drug Products—Current Good Manufacturing Practice (CGMP).'' Both the preliminary draft proposed rule and the draft guidance

will be discussed at a public meeting to be held on May 21, 2002, from 9 a.m. to 4:30 p.m., at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the preliminary draft proposed rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted to *http://www.fda.gov/dockets/ecomments.* The preliminary draft proposed rule and the comments submitted to this docket may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at *http://www.fda.gov/ohrms/dockets/default.htm or www.fda.gov/cder/fdama* under ''Section 121—PET (Positron Emission Tomography).''

(**Authority:** 21 U.S.C. 321 *et seq.*)

Dated: March 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7728 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WY–001–0007b, WY–001–0008b, WY–001–0009b; FRL–7166–3]

Approval and Promulgation of Air Quality Implementation Plans; Wyoming; Withdrawal of Proposed Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: Due to the State of Wyoming's withdrawal of the August 9, 2000, August 7, 2001 and August 13, 2001 submittals to the EPA that revise the Wyoming State Implementation Plan (SIP), EPA is withdrawing the proposed rule, published concurrently with a direct final rule, to partially approve and partially disapprove these revisions that restructure and modify the State's air quality rules. In the direct final rule, published on February 6, 2002 (67 FR 5485), we stated that if we received adverse comment by March 8, 2002, the rule would be withdrawn and would not take effect. EPA subsequently received a letter from the State of Wyoming (on March 8, 2002) withdrawing the three submittals that EPA is taking action on in our February 6, 2002 direct final rule. EPA also received adverse comments from the Wyoming Outdoor Council (on March 7, 2002). Since, in addition to receiving adverse comments, the State of Wyoming withdrew their submittals, the proposed rule and the direct final rule are withdrawn and will not take effect. In the ''Final Rules'' section of today's **Federal Register** publication, we are withdrawing the direct final rule published on February 6, 2002 (67 FR 5552).

EFFECTIVE DATE: The proposed rule is withdrawn as of April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Megan Williams, EPA Region VIII, (303) 312–6431 or Laurel Dygowski, EPA Region VIII, (303) 312–6144.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule located in the Rules and Regulations section of the February 6, 2002 **Federal Register** (67 FR 5485).

List of Subjects in 40 CFR Part 52

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

Dated: March 25, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–7773 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 255–0320a; FRL–7164–8]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing both a conditional approval and a limited approval and limited disapproval of revisions to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD or District) portion of the California State Implementation Plan (SIP). These revisions concern fugitive dust and particulate matter less than 10 microns in diameter (PM–10). We are proposing action on local rules that regulate these emissions under the Clean Air Act, as amended in 1990 (CAA or the Act). The proposed conditional approval is with respect to enforceability and reasonably available control measures (RACM), and the proposed limited approval and limited disapproval is with respect to best available control measures (BACM). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by May 31, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

You can inspect copies of the submitted rule revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revisions and TSD at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 ''I'' Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 East Gettysburg Street, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Karen Irwin, Planning Office (AIR–2), U.S. Environmental Protection Agency, Region IX; (415) 947–4116.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are proposing to approve with the dates that they were adopted by the District and submitted by the California Air Resources Board (CARB) to EPA.

TABLE 1.—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	8011	General Requirements	11/15/01	12/06/01
SJVUAPCD	8021	Construction, Demolition, Excavation, Extraction and Other Earthmoving Activities.	11/15/01	12/06/01
SJVUAPCD	8031	Bulk Materials	11/15/01	12/06/01
SJVUAPCD	8041	Carryout and Trackout	11/15/01	12/06/01
SJVUAPCD	8051	Open Areas	11/15/01	12/06/01
SJVUAPCD	8061	Paved and Unpaved Roads	11/15/01	12/06/01
SJVUAPCD	8071	Unpaved Vehicle/Equipment Traffic Areas	11/15/01	12/06/01
SJVUAPCD	8081	Agricultural Sources	11/15/01	12/06/01

On January 22, 2002, EPA found that these submittals meet the completeness criteria in 40 CFR part 51, appendix V.

B. Are there other versions of these rules?

We approved prior versions of most of the submitted rules into the SIP on March 8, 2000 (65 FR 12188) with a limited approval and limited disapproval rulemaking. Table 2 summarizes source category coverage of the submitted rules compared to the applicable SIP rules.

TABLE 2.—SIP AND SUBMITTED RULE COMPARISON

Fugitive dust source	Applicable SIP rule	Submitted rule
General Requirements	8010	8011
Construction, Demolition, Excavation, Extraction	8020	8021
Bulk Materials	8030	8031
Landfills	8040	8021
Carryout/Trackout	8020, 8030, 8040, 8070	8041
Open Areas	NA	8051
Paved and Unpaved Roads	8060	8061
Vehicle/Equipment Parking Areas	8070	8071
Agricultural Sources	NA	8081

C. What is the purpose of the submitted rule revisions?

The purpose of the submitted rules is to remedy deficiencies described in EPA's limited approval and limited disapproval of SIP Rules 8010, 8020, 8030, 8040, 8060 and 8070 on March 8, 2000. SJVUAPCD also submitted the revised rules to fulfill BACM requirements in CAA section 189.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the CAA) and must not relax existing requirements (see section 110(l) and section 193). We evaluated these criteria using the CAA as amended in 1990, 40 CFR part 51, and various EPA policy and guidance documents. In addition, section 172(c)(1) and section 189(a) of the CAA require moderate PM–10 nonattainment areas to adopt RACM and section 189(b) of the CAA requires serious PM–10 nonattainment areas, including SJVUAPCD, to adopt BACM.

Guidance for RACM and BACM, respectively, includes the following:

- *General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (57 FR 13498 and 13540, April 16, 1992).
- *Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990* (59 FR 41998, August 16, 1994).

B. Do the rules meet the evaluation criteria?

We believe relevant requirements in CAA section 110(a), section 110(l) and section 193 have been met because these rules are enforceable and more stringent overall than the existing SIP, which contains the District's 1996 adopted version of Regulation VIII. The District significantly strengthened Regulation VIII with the following requirements:

- Tightened general performance standard from 40% opacity to 20% opacity;
- Added requirements for existing (as opposed to 1993 and later) public access unpaved roads, including agricultural unpaved access roads, where none existed previously;
- Added surface stabilization standards and corresponding test methods for unpaved roads/unpaved traffic/equipment areas and disturbed surfaces;
- Added coverage of weed abatement activities and related surface disturbances where none existed previously;
- Added requirements for Dust Control Plans for certain construction, demolition, excavation, and extraction sites where none existed previously;
- Eliminated a 7-day allowance before inactive disturbed surface areas at construction, demolition, excavation and extraction sites are subject to control;
- Eliminated an option allowing a 24-hour period before trackout controls are required for sites subject to Rule 8041;
- Added a requirement for trackout extending 50 feet or more to be cleaned up immediately;
- Added a requirement for trackout control devices or paved interior roads for certain sites where none existed previously;
- Added coverage of agricultural unpaved traffic/equipment areas where none existed previously;
- Added coverage of off-field open area agricultural materials where none existed previously;
- Expanded coverage of bulk material requirements from ≥250 cubic yards of material to ≥100 cubic yards of material;

• Removed an exemption for unpaved roads or road segments <½ mile in length;
• Removed control measure options for unpaved roads that limit applicability of requirements to the entire length of the road;
• Added requirements for unpaved roads and inactive disturbed areas (not associated with the spreading of landfill daily cover) at landfills;
• Removed an exemption for paved road segments <3 miles in length from shoulder stabilization requirements for new/modified paved roads;
• Removed several other exemptions that potentially weakened rule coverage.

Because the version of Regulation VIII submitted on December 6, 2001 includes the types of measures commonly relied upon for achieving the bulk of PM–10 emission reductions from fugitive dust sources (*e.g.* stabilizing unpaved roads and unpaved parking/traffic areas, etc.) and because rule coverage for the significant source categories subject to Regulation VIII was significantly expanded, it is more likely than not that the regulation fulfills the requirements in CAA section 189(a) regarding RACM. However, the District has not completely fulfilled the requirement described in 57 FR 13498 and 13540 (April 16, 1992) to demonstrate that it has applied RACM to the significant source categories that are subject to Regulation VIII. By letter dated March 5, 2002, SJVUAPCD committed to fulfill this requirement by submitting a RACM demonstration to EPA within one year after the date of publication of final EPA action on this proposed rule. This commitment includes the following: (1) A complete list of candidate RACM for the following Regulation VIII significant sources: unpaved roads, unpaved vehicle/equipment traffic areas, paved roads and earthmoving sources, including bulk materials storage/handling; (2) a reasoned justification for any candidate measures that the District did not adopt for these sources, including descriptions of measures for these source categories that the District is implementing outside the context of Regulation VIII; and (3) information that supports the reasonableness of the Regulation VIII coverage.

In our prior proposed rulemaking (64 FR 51489, September 23, 1999), and subsequent final rulemaking (65 FR 12118, March 8, 2000) on Regulation VIII, we issued a limited approval and limited disapproval because of deficiencies in the submission. We established a sanctions clock under section 179 because the prior submission did not fulfill enforceability requirements pursuant to section 110(a) or demonstrate RACM pursuant to section 189(a). We also discussed deficiencies regarding section 189(b) because the prior submission did not demonstrate BACM. We did not, however, start a sanction clock for section 189(b) deficiencies because the District explicitly adopted the April 25, 1996, Regulation VIII rules for purposes of maintaining RACM, rather than for meeting BACM requirements. We have now concluded that the District's December 6, 2001 submittal corrected the enforceability and RACM deficiencies that were the basis for the sanction clock.

At the time of our March 2000 action, we could have made a finding of failure to submit rules constituting BACM pursuant to section 179(a). However, the District has now corrected this failure to submit because it submitted Regulation VIII for the stated purpose of meeting BACM on December 6, 2001. Now that the District has submitted Regulation VIII for BACM purposes, EPA has evaluated the December 6, 2001 version of Regulation VIII for BACM. EPA believes that the submittal does not adequately fulfill the section 189(b) requirement for a BACM demonstration, nor any upgrades or revisions to the control measures that are required as a result of the BACM demonstration. EPA is proposing a limited approval and limited disapproval of the submittal with respect to BACM. If this proposal is finalized, it will start a sanction clock for the BACM deficiencies in the December 6, 2001 submittal.

The TSD accompanying this proposal provides more information on our evaluation of the District's submittal and identifies how the District has addressed the enforceability and RACM deficiencies associated with our March 8, 2000 rulemaking. The TSD also provides more information about why the December 6, 2001 submittal of Regulation VIII does not fulfill BACM requirements.

C. Proposed Action and Public Comment

Today we propose to approve conditionally Rules 8011, 8021, 8031, 8041, 8061, 8071 and 8081 pursuant to CAA section 110(k)(4), with respect to section 172(c)(1) and section 189(a)(1)(C) [1]. Thus, we have concluded that the December 6, 2001 submittal resolves the prior enforceability and RACM deficiencies identified in the March 8, 2000 final action, subject to one condition. The condition is for the District to provide a comprehensive and adequate RACM demonstration for Regulation VIII in accordance with EPA policy and guidance documents. The SJVUAPCD has committed to provide this RACM demonstration within one year after the date of publication of the final action on this proposal. The conditional approval will be treated as a disapproval, with sanctions for section 189(a) immediately re-instated, if the SJVUAPCD fails to fulfill this commitment within the statutory one year period. The TSD associated with this proposed action provides more detail on our RACM evaluation.

Based on this proposed conditional approval, elsewhere in today's **Federal Register**, EPA has published an interim final determination which stays the existing section 179 offset sanction and defers the section 179 highway sanction triggered by EPA's final rulemaking on SJVUAPCD Rules 8010, 8020, 8030, 8040, 8060, and 8070 (65 FR 12118, March 8, 2000). EPA is staying and deferring these sanctions because the December 6, 2001 submittal corrects the previously identified enforceability and RACM deficiencies.

We further propose limited approval and limited disapproval of Rules 8011, 8021, 8031, 8041, 8051, 8061, 8071 and 8081 per section 110(k)(3) and section 301(a) with respect to section 189(b)(1)(B) [2]. This is because the rules strengthen the SIP, but the State has not adequately demonstrated that they fulfill BACM requirements. The TSD associated with this proposed action provides more detail on our BACM evaluation. If finalized, this action would incorporate the submitted rules into the SIP, but sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the Regulation VIII BACM deficiencies as identified in the TSD within 18 months of final action. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the FIP requirement under section 110(c). Note that the submitted rules have been adopted by the SJVUAPCD, and EPA's final limited disapproval would not prevent the local agency from enforcing them.

We will accept comments from the public on this proposal for the next 60 days. Unless we receive convincing new information during the comment period, we intend to publish a final action that will incorporate these rules into the federally enforceable SIP.

[1] CAA section 189(a)(1)(C) requires Reasonably Available Control Measures.

[2] CAA section 189(b)(1)(B) requires Best Available Control Measures.

III. Background Information

Why Were These Rules Submitted?

PM–10 harms human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control PM–10 emissions. Table 3 lists some of the national milestones leading to the submittal of local agency rules that help control PM–10 emissions.

TABLE 3.—PM–10 NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of total suspended particulate (TSP) nonattainment areas under the CAA, as amended in 1977 (43 FR 8964; 40 CFR 81.305).
July 1, 1987	EPA replaced the TSP standards with new PM–10 standards (52 FR 24672).
November 15, 1990	CAA Amendments of 1990 were enacted, Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671*q*.
November 15, 1990	PM–10 areas meeting the qualifications of section 107(d)(4)(B) of the CAA were designated non-attainment by operation of law and classified as moderate or serious pursuant to section 189(a) or section 189(b). States are required by section 110(a) to submit rules regulating PM–10 emissions in order to achieve the attainment dates specified in section 188(c).

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 32111, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045, ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2002. 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 52

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: March 20, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–7634 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7165–1]

Ocean Dumping; Proposed Site Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate a new Ocean Dredged Material Disposal Site (ODMDS) in the

Atlantic Ocean offshore Wilmington, North Carolina, as an EPA-approved ocean dumping site for the disposal of suitable dredged material. This proposed action is necessary to provide an acceptable ocean disposal site for consideration as an option for dredged material disposal projects in the greater Cape Fear River, North Carolina vicinity. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable adverse environmental impacts do not occur.

DATE: Comments must be received on or before May 16, 2002.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean disposal sites to the Regional Administrator of the Region in which the sites are located. This proposed designation of a new site offshore Wilmington, North Carolina, which is within Region 4, is being made pursuant to that authority.

The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping sites will be designated by promulgation in this Part 228. The existing ODMDS was designated and has been used since 1987. However, site capacity limitations and a proposed realignment of the ocean bar channel negate the utility of the existing site. The details of these issues can be found in the ''Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation.'' Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, 42 U.S.C. 4321 *et seq.*, requires that federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into the Agency decision making process careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EISs in connection with ocean disposal site designations such as this (see 39 FR 16186 (May 7, 1974)).

EPA, in cooperation with the Wilmington District of the U.S. Army Corps of Engineers (COE), has prepared a Final EIS (FEIS) entitled ''Final Environmental Impact Statement for the New Wilmington Ocean Dredged Material Disposal Site Designation.'' On November 30, 2001, the Notice of Availability (NOA) of the FEIS for public review and comment was published in the **Federal Register** (66 FR 59787 (November 30, 2001)). Anyone desiring a copy of the EIS may obtain one from the address given above. The public comment period on the final EIS closed on December 31, 2001.

EPA has received 3 letters on the final EIS. All comments were either supportive or unconcerned by this proposed action.

This rule proposes the permanent designation for continuing use of the new ODMDS near Wilmington, North Carolina. The purpose of the proposed action is to provide an environmentally acceptable option for the continued ocean disposal of dredged material. The need for the permanent designation of a new Wilmington ODMDS is based on a demonstrated COE need for ocean disposal of maintenance dredged material from the Federal navigation projects in the greater Cape Fear River area and the issues raised by site capacity and channel realignment. However, every disposal activity by the COE is evaluated on a case-by-case basis to determine the need for ocean disposal for that particular case. The need for ocean disposal for other projects, and the suitability of the material for ocean disposal, will be determined on a case-by-case basis as part of the COE's process of issuing permits for ocean disposal for private/federal actions and a public review process for their own actions.

For the new Wilmington ODMDS, the COE and EPA would evaluate all federal dredged material disposal projects pursuant to the EPA criteria given in the Ocean Dumping Regulations (40 CFR parts 220 through 229) and the COE regulations (33 CFR 209.120 and 335–338). The COE then issues Marine Protection, Research, and Sanctuaries Act (MPRSA) permits after compliance with regulations is determined to private applicants for the transport of dredged material intended for ocean disposal. EPA has the right to disapprove any ocean disposal project if, in its judgment, the MPRSA environmental criteria (Section 102(a)) or conditions of designation (Section 102(c)) are not met.

The FEIS discusses the need for this site designation and examines ocean disposal site alternatives to the proposed action. Non-ocean disposal options have been examined and are discussed in the FEIS.

C. Proposed Site Designation

The proposed site is located approximately 5 nautical miles offshore Bald Head Island. The proposed ODMDS occupies an area of about 9.4 square nautical miles (nmi^2). Water depths within the area range from 35–52 feet (ft.). The coordinates of the New Wilmington site proposed for final designation are as follows: 33°46′ N., 78°02.5′ W.; 33°46′ N., 78°01′ W.; 33°41′ N., 78°01′ W.; 33°41′ N., 78°04′ W.

D. Regulatory Requirements

Pursuant to the Ocean Dumping Regulations, 40 CFR 228.5, five general criteria are used in the selection and approval for continuing use of ocean disposal sites. Sites are selected so as to minimize interference with other marine activities, to prevent any temporary perturbations associated with the disposal from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf and other sites that have been historically used are to be chosen. If, at any time, disposal operations at a site cause unacceptable adverse impacts, further use of the site can be restricted or terminated by EPA. The proposed site conforms to the five general criteria.

In addition to these general criteria in § 228.5, § 228.6 lists the 11 specific criteria used in evaluating a proposed disposal site to assure that the general criteria are met. Application of these 11 criteria constitutes an environmental assessment of the impact of disposal at the site. The characteristics of the proposed site are reviewed below in terms of these 11 criteria (the EIS may be consulted for additional information).

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast (40 CFR 228.6(a)(1))

The boundary of the proposed site is given above. The northern boundary of the proposed site is located about 5 nmi offshore of Bald Head Island, North Carolina. The site is approximatelty 9.4 nmi^2 in area. Water depth in the area ranges from 35–52 ft.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult or Juvenile Phases (40 CFR 228.6(a)(2))

Many of the area's species spend their adult lives in the offshore region, but are estuary-dependent because their juvenile stages use a low salinity estuarine nursery region. Specific migration routes are not known to occur within the proposed site. The site is not known to include any major breeding or spawning area. Due to the motility of finfish, it is unlikely that disposal activities will have any significant impact on any of the species found in the area.

3. Location in Relation to Beaches and Other Amenity Areas (40 CFR 228.6(a)(3))

The proposed site is located approximately 5 nautical miles from the coast. Considering the previous disposal activities of the existing ODMDS and further distance that the proposed disposal site is offshore of beach areas, dredged material disposal at the site is not expected to have an effect on the recreational uses of these beaches.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any (40 CFR 228(a)(4))

The type of materials to be disposed of within this proposed site is dredged material as described in type and quantity by Section 2 of the FEIS. Disposal would be by hopper dredge or dump scow. All disposals shall be in accordance with the approved Site Management and Monitoring Plan developed for this site (FEIS, Appendix A).

5. Feasibility of Surveillance and Monitoring (40 CFR 228.6(a)(5))

Due to the relative proximity of the site to shore and its depth, surveillance will not be difficult. The Site Management and Monitoring Plan (SMMP) for the New Wilmington ODMDS has been developed and was included as an appendix in the FEIS. This SMMP establishes a sequence of monitoring surveys to be undertaken to determine any impacts resulting from disposal activities. The SMMP may be modified for cause by the responsible agency. A copy of the SMMP may be obtained at the any of the addresses given above.

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area Including Prevailing Current Direction and Velocity, if Any (40 CFR 228.6(a)(6))

A detailed current study, along with fate modelling of dredged material, was conducted within the proposed site and can be found described in the FEIS. The findings of these studies indicate that transport of disposed material should not present any adverse impacts.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects) (40 CFR 228.6(a)(7))

The existing ODMDS has been used to dispose of the material from the Cape Fear River project for fifteen years. Subsequent monitoring of these disposals and the long-term effects show that no adverse impacts have, or are likely to occur to the area.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance and Other Legitimate Uses of the Ocean (40 CFR 228.6(a)(8))

The shape of the proposed ODMDS was designed to avoid interference with commericial shipping. The location was also selected to move away from commercial fishing, particularly trawling bottoms. It is not anticipated that the proposed site would interfere with any recreational activity. In addition, mineral extraction, fish and shellfish culture, and desalination activities do not occur in the area.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or by Trend Assessment or Baseline Surveys (40 CFR 228.6(a)(9))

Appropriate water quality and ecological assessments have been performed at the site. Site-specific information concerning the water quality and ecology at the proposed ODMDS is presented in the FEIS. A copy of the FEIS may be obtained at any of the addresses given above.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site (40 CFR 228.6(a)(10))

The disposal of dredged materials should not attract or promote the development of nuisance species. No nuisance species have been reported to occur at previously utilized disposal sites in the vicinity.

11. Existence at or in Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance (40 CFR 228.6(a)(11))

The only resource known to exist in close proximity to the proposed site is the wreck of the Virginius. This wreck lies outside the eastern boundary of the proposed site. Since no disposal will occur within 600 ft. of the boundary, and the wreck lies in shallower water, placement of material within the site is not expected to adversely affect it.

E. Site Management

Site management of the New Wilmington ODMDS is the responsibility of EPA as well as the COE. The COE issues permits to private applicants for ocean disposal; however, EPA/Region 4 assumes overall responsibility for site management.

The Site Management and Monitoring Plan (SMMP) for the proposed New Wilmington ODMDS was developed as a part of the process of completing the EIS. This plan provides procedures for both site management and for the monitoring of effects of disposal activities. This SMMP is intended to be flexible and may be modified by the responsible agency for cause.

F. Proposed Action

The EIS concludes that the proposed site may appropriately be designated for use. The proposed site is compatible with the 11 specific and 5 general criteria used for site evaluation.

The designation of the New Wilmington site as an EPA-approved ODMDS is being published as Proposed Rulemaking. Overall management of this site is the responsibility of the Regional Administrator of EPA/Region 4.

It should be emphasized that, if an ODMDS is designated, such a site designation does not constitute EPA's approval of actual disposal of material at sea. Before ocean disposal of dredged material at the site may commence, the COE must evaluate a permit application according to EPA's Ocean Dumping Criteria. EPA has the right to disapprove the actual disposal if it determines that environmental concerns under MPRSA have not been met.

The New Wilmington ODMDS is not restricted to disposal use by federal projects; private applicants may also dispose suitable dredged material at the ODMDS once relevant regulations have been satisfied. This site is restricted,

however, to suitable dredged material from the greater Wilmington, North Carolina vicinity.

G. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this proposed action will not have a significant impact on small entities since the designation will only have the effect of providing a disposal option for dredged material. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12866, EPA must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) 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;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

This Proposed Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: February 8, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

In consideration of the foregoing, subchapter H of chapter I of title 40 is proposed to be amended as follows:

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by adding paragraph (h)(20) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(20) New Wilmington, North Carolina; Ocean Dredged Material Disposal Site.

(i) Location: 33°46′ N., 78°02.5′ W.; 33°46′ N., 78°01′ W.; 33°41′ N., 78°01′ W.; 33°41′ N., 78°04′ W.

(ii) Size: Approximately 9.4 square nautical miles.

(iii) Depth: Ranges from 35–52 feet.

(iv) Primary use: Dredged material.

(v) Period of use: Continuing use.

(vi) Restriction: Disposal shall be limited to suitable dredged material from the greater Wilmington, North Carolina vicinity. Disposal shall comply with conditions set forth in the most recent approved Site Management and Monitoring Plan.

* * * * *

[FR Doc. 02–7774 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 216

[DFARS Case 2001–D017]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchase of Services Under Multiple Award Contracts

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments and notice of public meeting.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002. Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts. In addition to the request for written comments on this proposed rule, DoD will hold one or more public meetings to hear the views of interested parties.

DATES: *Submission of comments:* Written comments on the proposed rule should be submitted to the address shown below on or before May 6, 2002, to be considered in the formation of the final rule.

Public meeting: The first public meeting will be held at the address shown below on April 29, 2002, from 12 p.m. to 3 p.m., local time.

ADDRESSES: *Submission of comments:* Respondents are encouraged to submit comments directly on the World Wide Web at *http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm.* As an alternative, respondents may e-mail comments to: *dfars@acq.osd.mil.* Please cite DFARS Case 2001–D017 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan L. Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062; facsimile (703) 602–0350. Please cite DFARS Case 2001–D017.

As a test, public comments will be posted on the World Wide Web as they are received. Interested parties may view the public comments at *http://emissary.acq.osd.mil/dar/dfars.nsf.*

Public meeting: The public meeting will be held in Room C–43, Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: *Proposed rule information:* Ms. Susan Schneider, (703) 602–0326.

Public meeting information: Ms. Melissa Rider, (703) 695–1098.

SUPPLEMENTARY INFORMATION:

A. Background

This rule proposes amendments to DFARS Parts 208 and 216 to implement section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107). Section 803 requires DoD to issue DFARS policy requiring competition in the purchase of services under multiple award contracts.

The Director of Defense Procurement is sponsoring a public meeting to discuss the proposed rule and hear the views of interested parties on what they believe to be the key issues pertaining to use of Federal Supply Schedules, Governmentwide acquisition contracts, multiple agency contracts, and multi-agency indefinite-delivery-indefinite-quantity contracts for the acquisition of services. Possible issues include (but are not limited to): procedures for establishing the basic contractual instruments; ordering procedures; ability to maintain a competitive environment; and suitability of current Government training on multiple award contracts. Subsequent meetings may be held, depending on the level of interest shown by the general public at the

initial meeting. Meeting dates and other pertinent information will be published on the Defense Procurement Web site at *www.acq.osd.mil/dp.*

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule clarifies and strengthens existing FAR requirements for competition in the placement of orders under multiple award contracts, and makes no change to the preferences afforded small business concerns under FAR 8.404(b)(6). Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2001–D017.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 208 and 216

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, DoD proposes to amend 48 CFR parts 208 and 216 as follows:

1. The authority citation for 48 CFR parts 208 and 216 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. The heading of Subpart 208.4 is revised to read as follows:

Subpart 208.4—Federal Supply Schedules

3. Section 208.404 is amended by adding paragraph (b) to read as follows:

208.404 Using schedules.

* * * * *

(b) *Ordering procedures for optional use schedules—*

(2) *Orders exceeding the micro-purchase threshold but not exceeding the maximum order threshold.* The procedures at FAR 8.404(b)(2), regarding review of catalogs or pricelists of at least three schedule contactors, do not apply to orders for services exceeding $100,000. Instead, use the procedures at 208.404–70.

(3) *Orders exceeding the maximum order threshold.*

(i) For orders for services exceeding $100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(3)(i).

(7) *Documentation.* For orders for services exceeding $100,000, use the procedures at 208.404–70 in addition to the procedures at FAR 8.404(b)(7).

4. Section 208.404–70 is added to read as follows:

208.404–70 Additional ordering procedures for services.

(a) This subsection implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107).

(b) Each order for services exceeding $100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iii) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding $100,000 is made on a competitive basis only if—

(1) The contracting officer—

(i) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award schedule; and

(ii) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered; or

(2) The contracting officer provides the notice described in paragraph (c)(1)(i) of this subsection to as many contractors as practicable and—

(i) Receives offers from at least three qualified contractors; or

(ii) Determines in writing that no additional qualified contractors could be identified despite reasonable efforts to do so.

(d) Single and multiple blanket purchase agreements (BPAs) may be established against Federal Supply Schedules if the contracting officer—

(1) Follows the procedures in paragraphs (b) and (c) of this subsection; and

(2)(i) For a single BPA, defines the tasks and establishes a firm-fixed price for individual tasks or services identified in the statement of work; or

(ii) For multiple BPAs, forwards the statement of work and the selection criteria to all BPA awardees before placing orders against the BPAs. (See FAR 8.404(a) and (b)(4), and paragraph (b) of GSA's ordering procedures for services at http://www.gsa.gov/Portal/content/offerings _content.jsp?contentOID=116992&contentType=1004.)

PART 216—TYPES OF CONTRACTS

5. Section 216.501–1 is added to read as follows:

216.501–1 Definition.

Multiple award contract, as used in this subpart, means—

(1) A multiple award task order contract entered into in accordance with FAR 16.504(c); or

(2) Any other indefinite delivery, indefinite quantity contract that an agency enters into with two or more sources under the same solicitation.

6. Section 216.505–70 is added to read as follows:

216.505–70 Orders for services under multiple award contracts.

(a) This subsection—

(1) Implements Section 803 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107); and

(2) Applies to orders for services exceeding $100,000 placed under multiple award contracts, instead of the procedures at FAR 16.505(b)(1) (see Subpart 208.4 for procedures applicable to orders placed against Federal Supply Schedules).

(b) Each order for services exceeding $100,000 must be made on a competitive basis in accordance with paragraph (c) of this subsection, unless the contracting officer waives this requirement on the basis of a written determination that—

(1) One of the circumstances described at FAR 16.505(b)(2)(i) through (iv) applies to the order; or

(2) A statute expressly authorizes or requires that the purchase be made from a specified source.

(c) An order for services exceeding $100,000 is made on a competitive basis only if the contracting officer—

(1) Provides a fair notice of the intent to make the purchase, including a description of the work the contractor must perform and the basis upon which the contracting officer will make the selection, to all contractors offering such services under the multiple award contract; and

(2) Affords all contractors responding to the notice a fair opportunity to submit an offer and have that offer fairly considered.

(d) When using the procedures in this subsection—

(1) The contracting officer should keep submission requirements to a minimum;

(2) The contracting officer may use streamlined procedures, including oral presentations; and

(3) The competition requirements in FAR part 6 and the policies in FAR Subpart 15.3 do not apply to the ordering process, but the contracting officer must—

(i) Develop placement procedures that will provide each awardee a fair opportunity to be considered for each order and that reflect the requirement and other aspects of the contracting environment;

(ii) Not use any method (such as allocation or designation of any preferred awardee) that would not result in fair consideration being given to all awardees prior to placing each order;

(iii) Tailor the procedures to each acquisition;

(iv) Include the procedures in the solicitation and the contract; and

(v) Consider price or cost under each order as one of the factors in the selection decision.

(e) The contracting officer should consider the following when developing the procedures required by paragraph (d)(3) of this subsection:

(1) Past performance on earlier orders under the contract, including quality, timeliness, and cost control.

(2) Potential impact on other orders placed with the contractor.

(3) Minimum order requirements.

[FR Doc. 02–7785 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–P

Notices

Federal Register
Vol. 67, No. 62
Monday, April 1, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children: Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempted from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112 June 24, 1983).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2002 was published by the Department of Health and Human Services (DHHS) at 67 FR 6931, February 14, 2002. The guidelines published by DHHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2002, through June 30, 2003. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 2002. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2002. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies. The text of the table showing income eligibility guidelines appears as an appendix at the end of this notice.

Authority: 42 U.S.C. 1786

Dated: March 16, 2002.

Ruthie Jackson,

Acting Administrator.

Appendix to Notice—Income Eligibility Guidelines

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2002 to June 30, 2003)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	8,860	739	370	341	171	16,391	1,366	683	631	316
2	11,940	995	498	460	230	22,089	1,841	921	850	425
3	15,020	1,252	626	578	289	27,787	2,316	1,158	1,069	535
4	18,100	1,509	755	697	349	33,485	2,791	1,396	1,288	644
5	21,180	1,765	883	815	408	39,183	3,266	1,633	1,508	754
6	24,260	2,022	1,011	934	467	44,881	3,741	1,871	1,727	864
7	27,340	2,279	1,140	1,052	526	50,579	4,215	2,108	1,946	973
8	30,420	2,535	1,268	1,170	585	56,277	4,690	2,345	2,165	1,083
Each Add'l Member Add	+3,080	+257	+129	+119	+60	+5,698	+475	+238	+220	+110
Alaska										
1	11,080	924	462	427	214	20,498	1,709	855	789	395
2	14,930	1,245	623	575	288	27,621	2,302	1,151	1,063	532
3	18,780	1,565	783	723	362	34,743	2,896	1,448	1,337	669
4	22,630	1,886	943	871	436	41,866	3,489	1,745	1,611	806
5	26,480	2,207	1,104	1,019	510	48,988	4,083	2,042	1,885	943
6	30,330	2,528	1,264	1,167	584	56,111	4,676	2,338	2,159	1,080
7	34,180	2,849	1,425	1,315	658	63,233	5,270	2,635	2,433	1,217
8	38,030	3,170	1,585	1,463	732	70,356	5,863	2,932	2,706	1,353
Each Add'l Member Add	+3,850	+321	+161	+149	+75	+7,123	+594	+297	+274	+137
Hawaii										
1	10,200	850	425	393	197	18,870	1,573	787	726	363
2	13,740	1,145	573	529	265	25,419	2,119	1,060	978	489
3	17,280	1,440	720	665	333	31,968	2,664	1,332	1,230	615
4	20,820	1,735	868	801	401	38,517	3,210	1,605	1,482	741
5	24,360	2,030	1,015	937	469	45,066	3,756	1,878	1,734	867
6	27,900	2,325	1,163	1,074	537	51,615	4,302	2,151	1,986	993
7	31,440	2,620	1,310	1,210	605	58,164	4,847	2,424	2,238	1,119
8	34,980	2,915	1,458	1,346	673	64,713	5,393	2,697	2,489	1,245
Each Add'l Member Add	+3,540	+295	+148	+137	+69	+6,549	+546	+273	+252	+126

[FR Doc. 02–7757 Filed 3–29–02; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Mt. Ashland Ski Area Expansion, Rogue River National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of a proposal to expand the Mt. Ashland Ski Area (MASA). The project area is located approximately 7 miles south of Ashland, Oregon, within the Siskiyou Mountains in Southern Oregon. The proposed expansion would include construction of two chairlifts, two surface lifts, and approximately 73 acres of associated new ski run terrain primarily within the western half of the Special Use Permit area. There would be an additional 11 acres of clearing for lift corridors, widening of existing runs, and staging areas. In addition, expanded features would include a tubing facility in the southern portion of the permit area; three guest services buildings, a yurt, additional night lighting; additional maintenance access road segments; additional power, water lines and storage tanks, sewer lines; an additional snow fence, and an increase in parking by 220 spaces. Additional watershed restoration projects would be implemented, including structural storm water control, and non-structural controls, such as the placement of coarse woody material. The proposed projects would be implemented and financed by the Mt. Ashland Association (MAA) as soon as possible after Forest Service authorization. Overall completion may take 10 or more years. The agency will give notice of the full environmental analysis and decision making process on the proposed expansion so interested and affected members of the public may participate and contribute in the final decision.

DATES: Additional comments concerning the scope of this analysis should be received by May 3, 2002.

ADDRESSES: Submit additional written comments to Linda Duffy, District Ranger, Ashland Ranger District, Rogue River National Forest, 645 Washington Street, Ashland, Oregon, 97520.

FOR FURTHER INFORMATION CONTACT: Linda Duffy or Steve Johnson, Ashland Ranger District, Rogue River National Forest, 645 Washington Street, Ashland, Oregon, 97520, Telephone (541) 482–3333; FAX (541) 858–2402.

SUPPLEMENTARY INFORMATION: This site specific EIS will focus on a project proposal for expansion within the existing ski permit area. A draft EIS was released in February 2000, documenting detailed analysis of three alternatives including No-Action. Extraordinary public response on that draft EIS has caused the Forest Service to conduct additional analysis that will result in a new environmental impact statement. The new EIS will result in an analysis that reflects active citizen participation and improves the range of alternatives considered in detail. This process is designed as a continuation of the ongoing environmental analysis and all input previously received will be utilized in the formulation of the new EIS. The stated purpose and need is modified from the February 2000 draft EIS. The proposal, as received from MAA, has also been modified to reflect further refinements that reduce environmental impacts. The environmental analysis will consider and include new information or changed circumstances since the programmatic decision on the ''Master Plan'' was made in 1991, including an action partially contained within an inventoried roadless area.

In a 1991 Record of Decision (ROD) and final EIS, the Forest Service decided that expanding the Mt. Ashland Ski Area (MASA) was an appropriate use of National Forest System Lands. In this current EIS process, the Forest Service is responding to a modified request (March 2002) by Mt. Ashland Association (MAA) to allow construction of some of the expanded ski facilities programmatically approved in 1991. MAA believes that operations and economic viability at the MASA would be enhanced by construction of proposed new facilities, which are intended to bring the ski area up to date relative to ski industry terrain and safety standards. The Forest Service agrees that this overall need exists and has agreed to consider options for meeting this need. The Forest Service and MAA have cooperatively determined six specific purpose elements for ski area expansion at the MASA at this time. Purpose 1 is terrain balance and diversity, including: develop a balance of terrain by ability level, develop suitable terrain for beginners, provide accessibility of existing lower level terrain, increase terrain for special programs and competitions, increase diversity of non-traditional terrain, and provide recreational opportunities for non-skiers. Purpose 2 is guest access and circulation including: enhance lift access and skier density, and improve access to facilities. Purpose 3 is update and balance guest services and facilities including: enhance guest experience by updating the quality of existing skier services, and provide additional guest services to improve accessibility. Purpose 4 is skier safety including: enact improvements that provide for and improve user safety. Purpose 5 is economic viability and longevity including: augment and modernize existing facilities to provide an economically viable and stable ski area, and provide a quality recreation experience appealing to the broadest spectrum of the skiing and snowboarding market. Purpose 6 is watershed restoration including: implement restoration projects to maintain or improve the trend of recovering watersheds.

Concurrent with the analysis of the Proposed Action under NEPA, the Forest Service will document several non-significant Forest Plan Amendments to make the Land and Resource Management Plans for the Rogue River and Klamath National Forests, consistent with the decision reached in the 1991 ROD/final EIS.

Based on extensive previous scoping, analysis and public comment received on the February 2000 draft EIS, a preliminary site specific list of project issues has been developed. The significant issue categories that will be used to develop the range of alternatives in the forthcoming draft EIS include: Effects on Water Quality, Effects to Wetlands and Riparian Reserves, Effects to Englemann Spruce, Effects to Mt. Ashland Lupine and Henderson's Horkelia, Effects Associated with Human Social Values, and Effects Associated with Economics.

Based on extensive public input and detailed field survey and analysis conducted by ski area planners, the following five alternatives will be analyzed in detail (at a minimum) in the forthcoming draft EIS: No-Action (as required by NEPA, the Proposed Action (based on a revised proposal received from Mt. Ashland Association), an alternative to the Proposed Action in the Middle Fork Ashland Creek area that addresses a reduced impact to Englemann spruce and wetlands, an expansion alternative based on development of additional facilities sited in the ''Knoll'' area, and an alternative that would primarily expand ski area facilities in areas already

developed (current facility expansion). The legal location description for all actions being considered is T. 40 S., R. 1 E., in sections 15, 16, 17, 20, 21, and 22, W.M., Jackson County, Oregon.

Comments received on the draft EIS will be considered in the preparation of the final EIS. The draft EIS is now expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in July 2002. The comment period on the draft EIS will be 45-days from the date EPA publishes the Notice of Availability in the **Federal Register.** At the end of the comment period on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by fall 2002.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

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

The Forest Service, Rogue River National Forest, is the Lead Agency for this EIS. The Forest Supervisors of the Rogue River and Klamath National Forests are the Responsible Officials. The Responsible Officials will consider the comments, responses to the comments, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The Responsible Officials will document the Mt. Ashland Ski Area Expansion decision and the rationale for the decision in a Record of Decision (ROD). The Forest Service decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: March 25, 2002.

Thomas K. Reilly,

Acting Forest Supervisor.

[FR Doc. 02–7759 Filed 3–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Thursday, April 25, 2002, at the Washington State University Puyallup Research and Extension Center, 7612 E. Pioneer Way, Puyallup, WA 98371–4998.

The meeting will begin at 9 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) Background for the Secure Rural Schools and Community Self-Determination Act of 2000, (2) Organization and future program of work for the South Mt. Baker-Snoqualmie Resource Advisory Committee.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: March 26, 2002.

Ron DeHart,

Acting Designated Federal Official.

[FR Doc. 02–7758 Filed 3–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Wood River Irrigation District, Gravity Pressurized Irrigation Delivery System, Blaine County, ID

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

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 being prepared for a federally assisted proposed project by the Little Wood River Irrigation District, Blaine County, Idaho.

FOR FURTHER INFORMATION CONTACT: Richard Sims, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, Idaho, 83709–1574, telephone: 208–378–5700.

SUPPLEMENTARY INFORMATION: The preliminary information of this federally assisted proposed action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard Sims, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The Little Wood River Irrigation District objectives include water and energy savings, public safety, and energy generation. The proposed project would convert the open canal irrigation delivery system to a closed, gravity pressurized delivery system and includes a hydroelectric generating facility. Alternatives under consideration to reach these objectives include: No Action, Concrete Lined Canals, Gravity Pressurized Irrigation Delivery System, and Gravity Pressurized Irrigation Delivery System with Hydroelectric Generation.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement.

NRCS will hold public scoping meetings in Carey, Idaho, to determine the scope of the evaluation of the proposed action. Further information on the proposed action or future public meetings may be obtained from Richard Sims, State Conservationist, at the above address or telephone 208–378–5700.

Dated: March 11, 2002.

Joyce Swartzendruber,

Acting State Conservationist.

[FR Doc. 02–7787 Filed 3–29–02; 8:45 am]

BILLING CODE 3210–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 02–00001.'' A summary of the application follows.

Summary of the Application

Applicant: ROCACO INC., dba REIS Network & World Business Exchange Network, 5777 W. Century Blvd., Suite 300, Los Angeles, California 90045.

Contact: Roosevelt Roby, Founder and Chairman.

Telephone: (310) 829–2606.

Application No.: 02–00001.

Date Deemed Submitted: March 18, 2002.

Members (in addition to applicant): The REIS Foundation, Los Angeles, CA.

ROCACO INC., dba REIS Network and World Business Exchange Network seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection and dissemination of information on trade opportunities; marketing; negotiations; joint ventures; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions and seminars; organizational development; management and labor strategies; transfer of technology and facilitating transportation and shipping.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Applicant seeks to have the following export conduct certified:

1. To promote all Products and Services suitable for Export Trade;

2. To recruit and train individuals, companies and entrepreneurs on the

methods of facilitating the exportation of goods and service produced in the U.S.;

3. To stimulate productive business attitudes and create well-developed export trade intermediaries;

4. To assist in creating and maintaining manufacturing and other trade related jobs to achieve economies of scale and acquire expertise enabling them to export goods and services profitably;

5. To participate in those activities of State and local government authorities which initiate, facilitate or expand exports of goods and services for the expansion of total U.S. exports; as well as for experimentation in the development of innovative export programs keyed to local, State and regional economic needs;

6. Be able to draw upon the resources, expertise and knowledge of the United States banking system, both in the U.S. and abroad;

7. Work closely with the Department of Commerce for the development and promotion of U.S. exports, and especially for facilitating the export of finished products by U.S. manufacturers;

8. Promote Technology Rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services;

9. Provide Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights);

10. With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, Applicant may:

a. Develop Export Trading Companies who provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers.

11. Applicant may:

a. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

b. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; or

c. Enter into contracts for shipping.

12. Applicant and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by applicant with its distributor trainees in Export Markets.

Definitions

1. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Dated: March 27, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–7786 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060600B]

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program

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

ACTION: Announcement of approval of data collection.

SUMMARY: NMFS is announcing the approval of information collection requirements under the Individual Fishing Quota (IFQ) Program, first, for gear type as an additional question on the landing report and, second, for annual updates on the status of corporations, partnerships, and other collective entities holding IFQ quota shares. National Marine Fisheries Service

DATES: Effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.

SUPPLEMENTARY INFORMATION: The information collection requirements for §§ 679.5(l)(2)(vi) and 679.42(j)(6), which were contained in the final rule to amend regulations implementing the IFQ Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska (67 FR 27908, May 21, 2001) were approved by the Office of Management and Budget (OMB) on March 11, 2002, in the renewal of OMB control number 0648–0272.

Dated: March 26, 2002.

John H. Dunnigan,

Director Office of Sustainable Fisheries, National marine Fisheries Service.

[FR Doc. 02–7812 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022702A]

Nominations for the Marine Fisheries Advisory Committee (MAFAC)

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

ACTION: Notice of request for nominations.

SUMMARY: The Marine Fisheries Advisory Committee (the ''Committee'') is the only Federal Advisory Committee with the responsibility to advise the Secretary of Commerce (the ''Secretary'') on all matters concerning living marine resources that are the responsibility of the Department of Commerce. The Committee makes recommendations to the Secretary to assist in the development and implementation of Departmental regulations, policies and programs critical to the mission and goals of the National Marine Fisheries Service (the ''Agency''). The Committee is composed of leaders in the commercial, recreational, environmental, academic, state, tribal, and consumer interests from the nation's coastal regions. The Department of Commerce is seeking up to ten highly qualified individuals knowledgeable about fisheries and living marine resources to serve on the Committee.

DATES: Nominations must be postmarked on or before May 16, 2002.

ADDRESSES: Nominations should be sent to MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway, 14743, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone (301)713-9501 x171. E-mail: *Laurel.Bryant@noaa.gov*.

SUPPLEMENTARY INFORMATION: The establishment of MAFAC was approved by the Secretary on December 28, 1970, and initially chartered under the Federal Advisory Committee Act, 5, U.S.C. App.2, on February 17, 1971. The Committee meets twice a year with supplementary subcommittee meetings as determined necessary by the Secretary. Individuals serve for a term of 3 years for no more than two consecutive terms if reappointed. No less than 15 and no more than 21 individuals may serve on the Committee. Membership is comprised of highly qualified individuals representing commercial and recreational fisheries interests, environmental organizations, academic institutions, governmental, tribal and consumer groups from a balance of geographical regions, including the Hawaii and the Pacific Islands, and the U.S. Virgin Islands.

Nominations are encouraged from all interested parties involved with or representing interests affected by the Agency's actions in managing living marine resources. Nominees should possess demonstrable expertise in a field related to the management of living marine resources and be able to fulfill the time commitments required for two meetings annually.

A MAFAC member cannot be a Federal agency employee or a member of a Regional Fishery Management Council. Selected candidates must have security checks and complete financial disclosure forms. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each submission should include the submitting person's or organization's name and affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of nominee, and no more than three supporting letters describing the qualifications of the nominee. Self nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, phone number, fax number, and e-mail address if available.

Nominations should be sent to (*see* **ADDRESSES**) and nominations must be received by (*see* **DATES**). The full text of the Committee Charter and its current membership can be viewed at the Agency's web page at *www.nmfs.noaa.gov/mafac.htm*.

Dated: March 4, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–7811 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030702A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Reflection Data off Southern California

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

ACTION: Notice of receipt of application and proposed authorization for a small take authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Geological Survey (USGS) for an authorization to take small numbers of marine mammals by harassment incidental to collecting marine seismic reflection data to investigate the landslide and earthquake hazards off Southern California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the USGS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area during June, 2002.

DATES: Comments and information must be received no later than May 1, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, which includes a list of references used in this document, and other documents referenced herein may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, NMFS, 562–960–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

The USGS proposes to conduct a high-resolution seismic-reflection survey offshore from southern California for two weeks during June 2002. The USGS will collect this seismic-reflection data to investigate the hazards posed by landslides, tsunamis, and potential earthquake faults in the nearshore region from Ventura to Santa Barbara, CA. This task is part of a multiyear hazard analysis that requires high-resolution, seismic-reflection data using several acoustic sources. In addition, a few days of survey time will be used to

conduct a seafloor imaging survey in support of environmental studies in the area offshore Pt. Conception.

The USGS plans to collect seismic-reflection data using three basic instrument systems:

(1) A Huntec™ or a Geopulse™ boomer sound-source to collect high-resolution seismic-reflection data of the sub-seafloor;

(2) A high-resolution multi-channel system for which the primary source will be either a 2–kilo-Joule (kJ) sparker system for shallow water or a small GI airgun in deeper water. The type of sparker to be used will depend on the results of a sparker feasibility study completed earlier this year in the Seattle, Washington area. A 250–m-long (820.2–ft) hydrophone streamer is used for both multi-channel sources.

(3) A Klein sidescan sonar for the environmental survey off Pt. Conception, CA.

The high-resolution Huntec™ boomer system uses an electrically powered sound source that is towed behind the ship at depths between 30 m (98.4 ft) and 160 m (525 ft) below the sea surface. The hydrophone arrays for listening are attached to the tow vehicle that houses the sound source. The USGS plans to use the Huntec™ primarily in water depths greater than 300 m (984.2 ft). The system is triggered at 0.5–to 1.25–second intervals, depending upon the source tow depth. This system provides detailed information about stratified sediment, so that dates obtained from fossils in sediment samples can be correlated with episodes of fault offset. The sound pressure level (SPL) for the Huntec™ unit is 205 dB re 1 μPa-m (root-mean-squared (RMS)). The output-sound bandwidth is 0.5 kHz to 8 kHz, with the main peak at 4.5 kHz.

The USGS plans to use the surface-towed Geopulse™ boomer system in the shallow water parts of the survey area, typically in water depths from 20 m to 300 m (65.6 to 984.2 ft). The sound source consists of two Geopulse 5813A boomer plates mounted on a catamaran sled built in-house. The catamaran is towed just behind the vessel, while the 5–m-long (16.4–ft) hydrophone streamer is usually towed from a boom on one side of the vessel. The source level for the Geopulse is 204 dB re 1 μPa-m (RMS), and its effective bandwidth is about 0.75 to 3.5 kHz. The firing rate is generally 0.5 to 1 second interval.

The primary sound source for the high-resolution multi-channel system will be a 2.0 kJ sparker system such as the SQUID 2000™ minisparker system manufactured by Applied Acoustic Engineering, Inc. This minisparker includes electrodes that are mounted on a small pontoon sled. The electrodes simultaneously discharge electric current through the seawater to an electrical ground. This discharge creates an acoustic signal. The pontoon sled that supports the minisparker is towed on the sea surface, approximately 5 meters (16.4 ft) behind the ship.

Source characteristics of the SQUID 2000™ provided by the manufacturer show an SPL of 209 dB re 1 μPa-m (RMS). The amplitude spectrum of this pulse indicates that most of the sound energy lies between 150 Hz and 1700 Hz, and the peak amplitude is at 900 Hz. The output sound pulse of the minisparker has a duration of about 0.8 ms. When operated at sea for the proposed multichannel seismic-reflection survey, the minisparker will be discharged every 1 to 4 seconds.

The second source for the multi-channel system is a small airgun of special type called a generator-injector, or GI gun (trademark of Seismic Systems, Inc., Houston, TX). This type of airgun consists of two small airguns within a single steel body. The two small airguns are fired sequentially, with the precise timing required to nullify the bubble oscillations that typify sound pulses from a single airgun of common type. These oscillations impede detailed analysis of fault structure. For arrays consisting of many airguns, bubble oscillations are cancelled by careful selection of airgun sizes. The GI gun is a mini-array that is carefully adjusted to achieve the desired bubble cancellation. Airguns and GI guns with similar chamber sizes have similar peak output pressures. The GI gun for this survey has two chambers of equal size (35 in^3) and the gun will be fired every 12 seconds. Compressed air delivered to the GI gun will have a pressure of about 3000 psi. The gun will be towed 5 meters (16.4 ft) behind the vessel and suspended from a float to maintain a depth of about 1 m (3.2 ft).

The manufacturer's literature indicates that a GI gun of the size the USGS will use has an SPL of about 220 dB re 1 μPa-m (RMS). The GI gun's output sound pulse has a duration of about 10 ms. The amplitude spectrum of this pulse, as shown by the manufacturer's data, indicates that most of the sound energy is at frequencies below 500 Hz. Field measurements by USGS personnel indicates that the GI gun produces low-sound-amplitudes at frequencies above 500 Hz. Thus high-amplitude sound from this source is at frequencies that are outside the main hearing band of odontocetes and pinnipeds (Richardson *et al.*, 1995).

The environmental survey off Pt. Conception will be accomplished with sidescan-sonar surveying. The system that will be used will be the Klein 3000 or the Klein 2000. The Klein 2000 sidescan sonar uses an electrically powered sound source. In operation, the sound source, or ''fish'', is towed behind the research vessel at depths of 1 to 10 m (3.2 to 32.8 ft) below the sea surface. The unit emits a short pulse of sound about every 0.25 second; the interval depends on the swath width (i.e., the area of seafloor to be imaged). The sidescan-sonar system measures the return time and intensity of echoes to create a high-resolution image of the seafloor that is similar to an air photo on land. The sidescan system has a sound pressure level (SPL) of about 210 dB re 1 μPa-m (RMS). The output sound pulse is very short, with a time duration of less than 0.1 ms. The frequency bandwidth of the outgoing signal is 100kHz or 500 kHz.

The Klein 3000 is a system that has just been developed and its operating frequencies are 128kHz and 445 kHz. The SPL for these frequencies are 212 dB re 1 μPa-m (RMS) for the 125 kHz and 200 dB re 1 μPa-m (RMS) for the 455 kHz source. The pulse lengths are selectable from among 50/100/200/400 ms.

The work is planned for thirteen days during June 2002. The possible operational window is from mid-May to mid-August 2002, but the preferred time is early June. At this time, the USGS is in the process of leasing a vessel, and exact availability is not yet known. The primary work area (70 percent of the time) is between Pt. Dume and offshore Gaviota, California, in the western Santa Monica Basin and Santa Barbara Channel. The secondary work area is offshore between Pt. Conception and Pt. Arguello (but staying within 30 km (18.6 mi) of the coast). If authorized, the USGS will work inside a small part of the Channel Islands Marine Sanctuary. Some work might be attempted during transit between the two work areas.

Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Phocoena phocoena*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whales

(*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whales (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), northern sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otters (*Enhydra lutris*). General information on these species can be found in the USGS application and in Forney *et al.* (2000). Forney *et al.* (2000) is available at the following URL:

http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html Please refer to these documents for information on these species in California waters.

Potential Effects of Marine Seismic Reflection Studies on Marine Mammals

Discussion

Disturbance by acoustic noise is the principal means of taking incidental to this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessels could also lead to some non-acoustic effects involving visual or other cues.

The effects of underwater sounds on marine mammals are highly variable, and can be categorized as follows: (1) The sounds may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the sounds may be audible but not strong enough to elicit any overt behavioral response; (3) the sounds may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any sound that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics and/or echolocation sounds, and environmental sounds such as storms and surf noise; and (6) very strong sounds have the potential to cause either a temporary or a permanent reduction in hearing sensitivity (i.e., temporary threshold shift (TTS) or permanent threshold shift (PTS), respectively). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Few data on the effects of non-explosive sounds on hearing thresholds of marine mammals have been obtained. However, in terrestrial mammals (and presumably in marine mammals), received sound levels must far exceed the animal's hearing threshold for there to be any TTS and must be even higher for there to be risk of PTS (Richardson *et al.*, 1995).

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by seismic operations may be detectable some substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or masking a signal of comparable frequency. Harassment is presumed to occur when marine mammals in the vicinity of the acoustic source (or vessel) show a significant behavioral response to the generated sounds or visual cues.

Seismic pulses are known to cause some species of whales, including gray and bowhead whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of the acoustic pulses created by the planned survey's instruments will limit the extent of masking. Bowhead whales, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and season. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses, include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors such as feeding, socializing or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal very close to one of the acoustic devices would be at risk of temporary or permanent hearing impairment, TTS is a theoretical possibility for animals within a few hundred meters (Richardson *et al.*, 1995), if the SPL of an acoustic source is of sufficient intensity, such as with large seismic airgun arrays. However, considering the low intensity of the proposed acoustic devices, and the planned monitoring and mitigation measures (described later in this document), which are designed to detect marine mammals occurring near the acoustic sources and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing hearing damage, neither TTS, nor PTS are considered likely.

Maximum Sound-Exposure Levels for Marine Mammals

The adverse effects of underwater sound on mammals have been documented for exposure times that for up to several minutes, but adverse effects have not been documented for the brief pulses typical of the minisparker (0.8 ms) and the Huntec system (typically 0.3 ms).

For impulse noise, NMFS has previously established that activities should avoid, to the greatest extent practicable, exposing mysticetes and sperm whales to an SPL of 180 dB re 1 μPa-m (RMS) or higher. For odontocetes and pinnipeds, activities should avoid, to the greatest extent practicable, exceeding a level of 190 dB re 1 μPa-m (RMS). These determinations were based on findings at the High-Energy Seismic Workshop held at Pepperdine University in 1997 as updated by the NMFS' Acoustics Workshop held in Silver Spring, MD in 1999. In 1999 however, the California Coastal Commission (CCC) limited this maximum sound-exposure level to 180 dB re 1 μPa-m (RMS) for all marine mammals, including pinnipeds, within the coastal zone of California and NMFS expects that the CCC will require similar limitations for this action.

However, current scientific consensus indicates that a safe level for impulse sounds for pinnipeds that avoids TTS is higher than the level indicated for

cetaceans (e.g., 180 dB). As a result, although scientists have preliminarily established an SPL of 190 dB re 1 µPa-m (RMS) as a safe level for pinnipeds underwater, and while NMFS adopts this information as the best scientific information available, the USGS has agreed to abide by the conditions contained in its CCC consistency determination.

NMFS notes moreover, that the recent precautionary application of a 180–dB safety zone for protecting marine mammals does not necessarily mean that animals entering that zone will be adversely affected. It simply means that animals have the *potential* to incur a temporary elevation in hearing threshold (i.e., TTS), lasting, at worst, for a few minutes at the 180 dB sound pressure level.

The USGS has provided two estimates of how close marine mammals can approach each sound source before it needs to be shut off. The first estimate follows the procedure required by the CCC in 1999, in that underwater sound is assumed to attenuate with distance according to 20log(R), and the maximum SPL to which marine mammals can be exposed is 180 dB re 1µPa-m (RMS). The alternative estimate of safe distance is proposed for operations in shallow water. In shallow water, sound from the sources will decay with distance more sharply than 20log(R) because some of the sound energy will exit the water and penetrate the seafloor when the source is physically close to the seafloor.

The zone of impact for the sound sources is a circle whose radius is the distance from the source to where the SPL is reduced to 180 dB re 1 µPa-m (RMS). In the deeper water (>50 m; >164 ft) areas of the proposed survey, for a 20log(R) sound attenuation, the zone of impact for a 209 dB (RMS) minisparker source has a radius of 28 m (92 ft). The 204 dB Geopulse™ and 205 dB Huntec™ boomers yield radii of 16 and 18 m (52.5 and 59 ft) respectively. The 210 dB Klein sidescan yields a safety radius of 32 m (105 ft), and the 220 dB GI gun yields a safety radius of 100 m (328 ft). The USGS proposes that safety zones of 30 m (98 ft) around the boomers, minisparker, sidescan fish, and of 100 m (328 ft) around the airgun be used in water deeper than 50 m (164 ft).

In water <50 m (<164 ft) deep, underwater sound commonly attenuates more sharply than 20log(R). In 1999, the USGS measured a sound attenuation of 27log(R) off southern California, so it proposes that for inshore areas, underwater sound attenuates approximately like 25log(R). Strictly for inshore areas, then, an attenuation of 25log(R) yields zones of influence for the boomers of 10 m (32.8 ft), for minisparker 15 m (49 ft), and for sidescan 20 m (65.6 ft).

Potential Level of Taking by Harassment of Marine Mammals

The following summary is from a report by Calambokidis and Chandler (2001) that was submitted in compliance with an Incidental Harassment Authorization (IHA) issued to the USGS on June 5, 2000 (65 FR 39871, June 28, 2000). During a similar acoustic survey in early June, 2000, there were a total of 241 marine mammal sightings (not including re-sightings), representing at least 11 species and 4,792 marine mammals. (Sighting a marine mammal should not be interpreted to mean that the animal was being harassed.) Small cetaceans were the most numerous and accounted for 54 percent of the sightings and 96 percent of the animals. Common dolphins made up 74 sightings and 3,764 of the sighted animals. Risso's dolphins, bottlenose dolphins and Dall's porpoises were seen in smaller numbers. Pinnipeds accounted for 98 sightings and these were predominantly California sea lions. Smaller numbers of harbor seals and a single elephant seal were also sighted. Four species of large cetaceans were sighted in small numbers. Blue whales were most common with 5 sightings of single animals. Fin, humpback and minke whales were each sighted once or twice. Sighting rates versus acoustic source appeared to be related to habitat of operations and not to the sound source itself.

The sound source was shutdown a total of 40 times (22 daylight and 18 nightime). Shutdowns were in response to five different species. Common dolphins triggered a shutdown in 29 instances; Risso's dolphin, bottlenose dolphins and California sea lions each resulted in 3 to 4 shutdowns each. The only shutdown for a large whale was for a sighting of a blue whale which, although still outside the 250–m (820–ft) mitigation zone, was prompted as precautionary measure.

The high proportion of shutdowns caused by common dolphins was a result both of their being one of the most common species in the area and their tendency to approach the ship. Common dolphins accounted for 31 percent of marine mammal sightings but were responsible for 72 percent of the shutdowns. California sea lions, which accounted for 36 percent of the sightings were responsible for only 7 percent of the shutdowns. Although other dolphin species were less common, both Risso's and bottlenose dolphins had shutdown rates that were similar to common dolphins. Overall, 30 percent of small cetacean sightings made while the sound source was operational led to shutdowns compared to only 4 percent of pinniped sightings. A low proportion of large whale sightings led to shutdowns. The 11 sightings of whales made during sound source operations led to only a single precautionary shutdown.

Behavioral observations were made both while the sources were on and when they were off. For small dolphins and pinnipeds there did not appear to be a difference in behavior between the two operational modes. There was also no apparent difference in the orientation (direction of swimming) of these animals in relation to transmissions. Breaching was observed in two cases for large cetaceans; a minke whale and a group of two humpback whales. Sound transmissions were occurring only during the minke whale sighting.

The Need for 24–hour Seismic Operations

The USGS has requested that the IHA allow for 24–hour operations, specifically for the minisparker and/or boomers or sidescan. The reasons for around-the-clock operation that benefit the environment are: (1) When the sound sources cease to operate, marine mammals might move back into the survey area and incur an increased potential for harm when operations resume, and (2) Daylight-only operations prolong activities in a given area, thus increasing the likelihood that marine mammals will be harassed.

The 2002 survey will require only two weeks, and the ship will be moving continuously through the Santa Barbara Channel, so no single area will see long-term activity. The USGS believes that the best course is to complete the survey as expeditiously as possible. Also, operating less than 24 hours each day incurs substantially increased cost for the leased ship, for which the USGS has not been provided funding (Normark *et al.*, 1999b). The ship schedule provides a narrow time window for this project; typically, other experiments are scheduled to precede and follow the USGS project. Thus they are not able arbitrarily to extend the survey time to include large delays for dark or poor visibility. Delays could require scheduling additional surveys in future years to complete the missed work.

Mitigation

Several mitigation measures to reduce the potential for marine mammal

harassment will be implemented by USGS as part of their proposed activity. These include:

(1) The survey is planned for June, when gray whales are not migrating.

(2) The smallest possible acoustic sources have been selected to minimize the chances of incidental harassment.

(3) To avoid potential incidental injury to marine mammals, safety zones will be established and monitored continuously. Whenever the seismic source(s) approaches a marine mammal closer than the assigned safe distance the USGS will shut them down.

(4) For mysticetes and sperm whales, the marine mammal species near the survey area that are considered to be most sensitive to the frequency and intensity of sound that will be emitted by the seismic sources, operations will cease when members of these species approach within 250 m (820 ft) of the sound source.

(5) For odontocetes, with their lower sensitivity to low frequency sound, operations will cease when these animals approach a safety zone of 30 m (98.4 ft) from the boomer, minisparker, or sidescan fish, and a zone of 100 m (328 ft) from the airgun.

(6) For pinnipeds (seals and sealions): if the research vessel approaches a pinniped, a safety radius of 30 m (98.4 ft) around the boomer, minisparker, or sidescan fish and 100 m (328 ft) around the airgun will be maintained from the animal(s). However, if a pinniped approaches the acoustic source, the USGS will not be required to shut it down. Experience indicates that pinnipeds will come from great distances to scrutinize seismic-reflection operations. Seals have been observed swimming within airgun bubbles, 10 m (33 ft) away from active arrays. More recently, Canadian scientists, who were using a high-frequency seismic system that produced sound closer to pinniped hearing than will the USGS sources, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, because pinnipeds indicate no adverse reaction to seismic noise, the above-mentioned mitigation plan is proposed. In addition, the USGS will gather information on how often pinnipeds approach the sound source(s) on their own volition, and what effect the source(s) appears to have on them.

(7) During seismic-reflection survey operations, the ship's speed will be 4 to 5 knots so that when the seismic sources are being discharged, nearby marine mammals will have gradual warning of the ship's approach and can move away.

(8) The USGS will have marine biologists onboard the seismic vessel who will have the authority to stop seismic operations whenever a mammal enters the safety zone. These observers will monitor the safety zone to ensure that no marine mammals enter the zone, and record observations on marine mammal abundance and behavior.

(9) If observations are made that one or more marine mammals of any species are attempting to beach themselves when the seismic source is operating in the vicinity of the beaching, the seismic sources will be immediately shut off and NMFS contacted.

(10) Upon notification by a local stranding network that a marine mammal has stranded where the acoustic sources had recently been operated, NMFS will investigate the stranding to determine whether a reasonable chance exists that the seismic survey caused the animal's death. If NMFS determines, based upon a necropsy of the animal(s), that the death was likely due to the seismic source, the survey shall cease until procedures are altered to eliminate the potential for future deaths.

Monitoring

Monitoring of marine mammals while the sparker or airgun sound sources are active will be conducted continuously. Trained marine mammal observers will be onboard the vessel to mitigate the potential environmental impact from either of the two systems and to gather data on the species, number, and reaction of marine mammals to the sources. Each observer will use equipment, such as Tasco 7x50 binoculars with internal compasses and reticules, to record the horizontal and vertical angle to sighted mammals. Nighttime operations in shallow water will be conducted with a spotlight to illuminate the radius of influence around the minisparker tow sled and observers will have night-vision goggles.

Monitoring data to be recorded during seismic-reflection operations include which observer is on duty and what the weather conditions are like, such as Beaufort Sea state, wind speed, cloud cover, swell height, precipitation and visibility. For each mammal sighting the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut all active seismic sources whenever a marine mammal enters a safety zone.

Reporting

The USGS will provide an initial report to NMFS within 120 days of the completion of the marine seismic reflection survey project. This report will provide dates and locations of seismic operations, details of marine mammal sightings, and estimates of the amount and nature of all takes by harassment. A final technical report will be provided by USGS within 1 year of completion of the project. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an IHA. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

National Environmental Policy Act (NEPA)

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995 that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this proposed seismic reflection survey will use acoustic instruments that are significantly less intense and thereby have a significantly lower impact on the marine environment than acoustic sources used in other surveys for which EAs and resulting FONSIs have been prepared previously. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and, therefore, a new EA will not be prepared. A copy of relevant previous EAs are available (*see* **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a marine seismic survey in southern California waters will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from airgun arrays, this behavioral change is expected to result in the harassment of only small numbers of each of several species of marine mammals and would have no more than a negligible impact on these affected species or stocks.

In addition, no take by injury and/or death is anticipated and takes by harassment will be at the lowest level

practicable due to incorporation of the mitigation measures mentioned previously. Known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals that occur within or near the planned area of operations during the season of operations are unlikely to be affected.

As a result, NMFS proposes to issue an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic reflection data in southern California waters, provided the above-mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (*see* **ADDRESSES**).

Dated: March 26, 2002.

Wanda Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7813 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 MAR 2002
In reply refer to:
I-02/001996

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-17 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and service estimated to cost $1.2 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Republic of Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$0.533 billion
Other	$0.667 billion
TOTAL	$1.200 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three AEGIS Shipboard Combat Systems, three AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe systems, three shipboard gridlock systems, three Common Data Link Management System/Joint Tactical Distribution Systems, three MK 34 gun weapon systems, three Navigation Sensor System Interfaces, testing and combat system engineering technical assistance, computer program maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support.**

(iv) **Military Department: Navy (LPN)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 18 MAR 2002**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea – AEGIS Combat Systems

The Republic of Korea (ROK) has requested a possible sale of three AEGIS Shipboard Combat Systems, three AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe systems, three shipboard gridlock systems, three Common Data Link Management System/Joint Tactical Distribution Systems, three MK 34 gun weapon systems, three Navigation Sensor System Interfaces, testing and combat system engineering technical assistance, computer program maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support. The estimated cost is $1.2 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by significantly improving the defense capabilities and security of a key defense treaty ally which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

Installation of the AEGIS Combat System on ships of the ROK naval force will provide enhanced capabilities to defend against possible aggression by the Democratic People's Republic of Korea (DPRK), as well as protect sea lines of communications. AEGIS is the keystone in Korea's efforts to upgrade its shipboard anti-air warfare capability. Korea is fully capable of integrating this system into their operational forces and will receive data sufficient for basic maintenance of the equipment.

The proposed sale of this equipment and support will have a positive impact on the military balance in the region by improving the inter-operability of U.S. and ROK naval forces and increasing the ROK's ability to defend against any aggressive naval, air or missile attack undertaken by the DPRK.

The principal contractors will be Lockheed Martin Naval Electronic Systems and Support of Morristown, New Jersey; Raytheon Company of Andover, Massachusetts; General Dynamics Armament Systems of Burlington, Vermont; and Lockheed Martin Naval Electronics Systems and Support or Eagan, Minnesota. One or more proposed offset agreements may be related to proposed sale.

Implementation of this sale will not require the assignment to Korea of any U.S. Government representatives. It will require the assignment of approximately 50 contractor representatives for approximately five years to support integration and testing of the AEGIS Combat Systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. AEGIS Weapon System (AWS) hardware is unclassified, with the exception of the RF oscillator used in the Fire Control transmitter, which is classified Confidential. AEGIS documentation in general is unclassified. However, seven operation and maintenance manuals are classified Confidential, and there is also a classified Secret supplement to the AEGIS Combat System Maintenance Manual. The manuals and technical documents are limited to those necessary for operational use and organizational maintenance.

2. While the hardware associated with the SPY-1D radar is unclassified, the computer programs are classified Secret. It is the combination of the SPY-1D hardware and the computer program for the SPY-1D radar that constitutes the technology sensitive aspects of the AWS. SPY-1D radar hardware design and computer program documentation will not be released. Additionally, life cycle maintenance of the AWS computer programs will be performed by the U.S. Navy.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–7733 Filed 3–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–19 with attached transmittal and policy justification.

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 MAR 2002
In reply refer to:
I-02/002418

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-19 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Austria for defense articles and service estimated to cost $1 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Classified Annex
Offset certificate
Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Austria

(ii) Total Estimated Value:

Major Defense Equipment*	$0.595 billion
Other	$0.405 billion
TOTAL	$1.000 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 30 F-16A/B aircraft upgraded with the Falcon Up structural modification and the Mid-Life Update (MLU) capability modification. The aircraft includes: F-100-PW-220 alternate fighter engines, AN/APG-66(V)2 radar sets, LAU-129 launchers, M61A1 20mm cannons, provisions for AN/ALQ-131 Electronic Counter Measure pods, PANTERA (LANTIRN derivative) or LITENING II targeting pods, and the capability to employ a wide variety of munitions. This possible sale includes: four F-16A Block 10 operational capabilities upgrade aircraft for cannibalization, four spare F-100-PW-220 engines, 4,000 rounds of 20mm cannon ammunition, eight AN/ALQ-131 Electronic Counter Measure pods, 16 PANTERA (LANTIRN derivative) or 16 LITENING II targeting pods, 30 M61A1 20mm cannons, associated support equipment, software development/integration, ammunition, radar, modem, receivers, installation, avionics, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability.

(iv) Military Department: Air Force (ACB)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(viii) Date Report Delivered to Congress: 18 MAR 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Austria – F-16A/B Aircraft

The Government of Austria has requested a possible sale of 30 F-16A/B aircraft upgraded with the Falcon Up structural modification and the Mid-Life Update (MLU) capability modification. The aircraft includes: F-100-PW-220 alternate fighter engines, AN/APG-66(V)2 radar sets, LAU-129 launchers, M61A1 20mm cannons, provisions for AN/ALQ-131 Electronic Counter Measure pods, PANTERA (LANTIRN derivative) or LITENING II targeting pods, and the capability to employ a wide variety of munitions. This possible sale includes: four F-16A Block 10 operational capabilities upgrade aircraft for cannibalization, four spare F-100-PW-220 engines, 4,000 rounds of 20mm cannon ammunition, eight AN/ALQ-131 Electronic Counter Measure pods, 16 PANTERA (LANTIRN derivative) or 16 LITENING II targeting pods, 30 M61A1 20mm cannons, associated support equipment, software development/integration, ammunition, radar, modem, receivers, installation, avionics, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability. The estimated cost is $1 billion.

The MLU modification is an outgrowth of the development program notified to the Congress in August 1990. This multi-national effort has included the countries of Belgium, Denmark, The Netherlands, Norway, and Portugal who have participated with the United States Air Force in the full scale MLU engineering development and integration effort. The MLU is an avionics retrofit program for F-16 aircraft consisting of: Heads-Up Display Pilot's Display Unit, AN/APX-113 Advanced Identification Friend or Foe, Common Color Multi-Function Displays, Common Programmable Display Generator, Modular Mission Computer, Voice Message Unit, Common Data Entry Electronics Unit, Global Positioning System antennas, Interference Blanking Unit, and configuration of the APG-66(V)2 radar.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Europe.

The Austrian Air Force currently operates SAAB JAS-35 Draken and SAAB-105 aircraft. These aging fighters are expensive to operate and maintain. This proposed sale will provide operational capabilities as the SAAB aircraft eventually are retired. It will also allow AAF to meet training requirements starting in early 2003. This proposed sale will not impact the regional military balance of power.

The principal contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas; Pratt and Whitney in East Hartford, Connecticut; SABCA in Gosselies, Belgium; and Fokker Services in The Netherlands. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of approximately 12 each U.S. Government and contractor representatives for a period of up to four years to provide program support commencing with delivery of the aircraft to Austria.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–7734 Filed 3–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of Secretary

National Security Education Program, National Flagship Language Initiative; Advanced Language Institutional Grants Pilot Program

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The National Security Education Program (NSEP) announces a special competition for Advanced Language Institutional Grants under a pilot program. The competition is administered for NSEP by the National Foreign Language Center (NFLC), University of Maryland.

DATES: Grant Solicitations will be available online beginning Monday, April 1, 2002. Proposals must be received no later than Wednesday, May 15, 2002. Electronic submissions will not be accepted.

ADDRESSES: Obtain copies of the solicitation, beginning April 1, 2002 via Internet at *http://www.nfl.org.* Requests for copies of the proposal to those who are unable to obtain copies through the Internet should be directed by email to NFLC at: *flagships@nflc.org>mailto: tgething@nfc.org>* or by fax: 301–403–1754.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Gething, Deputy Director, National Foreign Language Centers, 7100 Baltimore Avenue, #300, College Park, Maryland 20742; Electronic mail address: *tgething @nflc. org<mailto: tgething@nflc.org>*

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7732 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act, compensation and pension is hereby giving notice to the record subjects of a computer matching program between Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD) that their records are being matched by computer. The purpose of the computer matching program is to attempt to verify eligibility for VA Compensation and Pension (C&P) benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

DATES: This proposed action will become effective May 1, 2002, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the VA OIG and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to attempt to verify eligibility for VA C&P benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by VA OIG to verify the military service record of veterans eligible for VA (C&P) benefits, to identify potential fraudulent payments to fictitious veterans, and to identify payments that should be adjusted where the beneficiary is not entitled to all or part of the VA C&P benefits received. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all veterans or their beneficiaries receiving VA (C&P) benefits with the other files. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion on the individual's privacy, and would result in additional delay in the eventual response to possible fraud and abuse. By comparing the information received through the computer matching program between VA OIG and DMDC on a recurring basis, information on successful matches (hits) can be provided to VA to initiate research on these discrepancies, thus assuring that benefit payments are proper.

A copy of the computer matching agreement between VA OIG and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Office of Inspector General (52CO), 810 Vermont Avenue NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 20, 2002 to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Agreement Between; Office of the Inspector General, the Department of Veterans Affairs and Defense Manpower Data Center, the Department of Defense for Verification of Eligibility

A. Participating Agencies

Participants in this computer matching program are the Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD), Defense Manpower Data Center (DMDC). The VA OIG is the source agency, i.e., the activity

disclosing the records for the purpose of the match. The DoD is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

Upon the execution of this agreement, VA will provide and disclose VA Compensation and Pension (C&P) and Veterans Assistance Discharge Systems (VADS) records to DMDC to identify individuals that have not separated from military service and/or confirm elements of military service relevant to the adjudication of VA benefits. VA OIG will use this information to initiate an independent verification process to determine eligibility and entitlement to VA benefits.

C. Authority for Conducting the Match

The authority to conduct this match is 5 U.S.C. App. 3, the Inspector General Act of 1978 (IG Act). The IG Act authorizes the VA OIG to conduct audits and investigations relating to the programs and operations of VA. IG Act, § 2. In addition, § 4 of the IG Act provides that the IG will conduct activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in VA's programs and operations.

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. Agencies must publish ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose information. The systems of records described below contain an appropriate routine use provision which pertains to disclosure of information between the agencies.

2. VA will use personal data from the following Privacy Act record system for the match: Compensation, Pension, Education and Rehabilitation Records—VA, 58VA21/22, first published at 41 FR 9294, March 3, 1976, and last amended at 65 FR 37605, June 15, 2000, with other amendments as cited therein.

3. DoD will use personal data from the following Privacy Act record system for the match: Defense Manpower Data Center Data Base—S322.10 DMDC, published in the **Federal Register** at 66 FR 29552 on May 31, 2001.

E. Description of Computer Matching Program

VA, as the source agency, will provide DMDC with two electronic files, the C&P and VADS files. The C&P file contains names of veterans, SSNs, and compensation and pension records. The VADS file contains names of veterans, SSNs, and DD214 data. Upon receipt of the electronic files, DMDC will perform a match using the SSNs in the VA C&P file, and the VADS file against the DMDC Active Duty Transaction, Reserve Transaction, and Reserve Master files. DMDC will provide VA OIG an electronic listing of VA C&P and VADS records for which there is no matching record from any of the three DMDC files, and an electronic listing of records that contain data that are inconsistent with data contained in the VA C&P or VADS files. VA OIG is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the VA source file and for resolving any discrepancies or inconsistencies on an individual basis.

F. Inclusive Dates of the Matching Program

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter on an annual basis. The 40-day OMB and Congressional review period and the mandatory 30-day public comment period for the **Federal Register** publication of the notice will run concurrently. By agreement between VA OIG and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 02–7735 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.356A]

Alaska Native Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

Purpose of Program: To meet the unique educational needs of Alaska Natives and to support the development of supplemental educational programs to benefit Alaska Natives.

Permissible Activities: Activities may include the following: (1) The development and implementation of plans, methods, and strategies to improve the education of Alaska Natives; (2) the development of curricula and educational programs that address the educational needs of Alaska Native students; (3) professional development activities for prospective or current educators of Alaska Native students; (4) the development and operation of home instruction programs for Alaska Native preschool children, to ensure the active involvement of parents in their children's education from the earliest ages; (5) family literacy services; (6) the development and operation of student enrichment programs in science and mathematics; (7) research and data collection activities to determine the educational status and needs of Alaska Native children and adults; (8) other research and evaluation activities related to the purposes of this program; (9) remedial and enrichment programs to assist Alaska Native students in performing at a high level on standardized tests; (10) education and training of Alaska Native students enrolled in a degree program that will lead to certification or licensing as teachers; (11) parenting education for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development), including parenting education provided through in-home visitation of new mothers; (12) activities carried out through Even Start programs carried out under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965, as amended, and Head Start programs carried out under the Head Start Act, including the training of teachers; (13) other early learning and preschool programs; (14) dropout prevention programs such as the Cook Inlet Tribal Council's Partners for Success program; (15) career preparation activities to enable Alaska Native children and adults to prepare for meaningful employment, including programs providing tech-prep,

mentoring, training, and apprenticeship activities; (16) provision of operational support and purchasing of equipment to develop regional vocational schools in rural areas of Alaska, including boarding schools for Alaska Native students in grades 9 through 12, or at higher levels of education, to provide the students with necessary resources to prepare for skilled employment opportunities; and (17) other activities, consistent with the purposes of the Alaska Native Education Programs, to meet the educational needs of Alaska Native children and adults.

Eligible Applicants: Alaska Native organizations, educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages, cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Natives, and consortia of organizations and entities described in this paragraph to carry out programs that meet the purposes of the program. A State educational agency or local educational agency may apply for an award under this program only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

Applications Available: April 1, 2002.

Deadline for Transmittal of Applications: May 16, 2002.

Estimated Available Funds: $10.2 million, including not less than $1 million for parenting education programs and not less than $2 million for dropout prevention programs (*see PRIORITIES* section in this notice).

Estimated Range of Awards: $500,000—$2,000,000.

Estimated Number of Awards: 16.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 86, 97, 98, and 99. Title VII, Part C of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Pub. L. No. 107–110.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition (the specific selection criteria and factors that will be used in evaluating applications are detailed in the application package). The maximum score for all of the selection criteria is 100 points. The maximum points for each criterion is as follows:

(a) Need for Project—5 points.

(b) Significance—5 points.

(c) Quality of Project Design—25 points.

(d) Adequacy of Project Services—25 points.

(e) Quality of Project Personnel—15 points.

(f) Adequacy of Resources—5 points.

(g) Quality of Management Plan—10 points.

(h) Quality of Project Evaluation—10 points.

Priorities

(a) *Competitive Preference.* Except for activities listed in section 7304(d)(2) of the authorizing statute, which have statutory minimum funding levels, the Secretary will award up to 5 bonus points to applications from Alaska Native regional nonprofit organizations and up to 5 bonus points to applications from consortia that include at least one Alaska Native regional nonprofit organization. These priorities are specified in the authorizing statute for this program. The bonus points are in addition to any points the applicant earns under the selection criteria listed above. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority.

(b) *Absolute Preferences.* In accordance with statutory requirements, the Secretary is establishing two separate priorities for proposals to use grant funds to support (1) dropout prevention programs; and (2) parenting education programs for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development), including parenting education provided through in-home visitation of new mothers. To implement the priority for dropout prevention programs, the Secretary is establishing a separate competition for applications that meet this priority and reserves $2 million solely for this competition. To implement the priority for parenting education programs, the Secretary is establishing a separate competition for applications that meet this priority and reserves $1 million solely for this competition. The Secretary may adjust the amount reserved for these separate competitions after determining the number of high-quality applications received.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Alaska Native Education Program, CFDA 84.356A is one of the programs included in the pilot project. If you are an applicant under the Alaska Native Education Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement. If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Alaska Native Education Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications and Information Contact: Mrs. Lynn Thomas, (202) 260–1541, U.S. Department of Education, 400 Maryland Avenue, SW., FOB6, Room 3C126, Mail Stop 6140, Washington, DC 20202. The e-mail address for Mrs. Thomas is: *Lynn.thomas@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Individuals with disabilities may also obtain a copy of the application package in an alternate format on request to the contact person listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet 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 preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations are available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Pub. L. No. 107–110.

Dated: March 26, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–7810 Filed 3–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1360–000]

DTE East China, LLC; Notice of Filing

March 26, 2002.

Take notice that on March 21, 2002, DTE East China, LLC tendered for filing under Section 205 of the Federal Power Act a proposed FERC Electric Tariff No. 2 pursuant to which it proposes to make wholesale sales of test power at negotiated rates per MWh up to, but not exceeding, the purchaser's avoided costs in such hour.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: April 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7745 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–106–000, et al.]

Vandolah Power Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

March 26, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Vandolah Power Company, L.L.C.

[Docket No. EG02–106–000]

On March 21, 2002, Vandolah Power Company, L.L.C. (Vandolah Power), a Delaware limited liability corporation with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Vandolah Power owns a 630–MW power generation facility that is under construction in Hardee County, Florida. (the ''Facility''). When completed, the Facility will be interconnected to the transmission system of Florida Power Corporation. The Facility is scheduled to begin commercial operation in June 2002.

Comment Date: April 16, 2002.

2. New England Power Pool

[Docket No. EL00–62–044, ER98–3853–013]

Take notice that on March 18, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Sprague Energy Corp. (Sprague); and (2) to terminate the memberships of Niagra Mohawk Energy Inc. (NIMO) and Amerada Hess Corporation (Hess). The Participants Committee requests an effective date of March 1, 2002 for commencement of participation in NEPOOL by Sprague and December 31, 2001 and February 1, 2002 for the terminations of NIMO and Hess, respectively.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: April 15, 2002.

3. PPL Large Scale Distributed Generation II, LLC and PPL Midwest Finance, LLC

[Docket No. EL02–72–000]

Take notice that on March 15, 2002, PPL Large Scale Distributed Generation II, LLC and PPL Midwest Finance, LLC filed with the Federal Energy Regulatory Commission (Commission), a Petition for Declaratory Order Disclaiming Jurisdiction.

Comment Date: April 15, 2002.

4. Access Energy Cooperative

[Docket No. EL02–73–000]

Take notice that on March 21, 2002, Access Energy Cooperative (AEC) filed a conditional request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. AEC also requests waiver of 18 CFR 35.28(d)(ii)'s 60-day notice requirement. AEC's filing is available for public inspection at its offices in Mt. Pleasant, Iowa.

Comment Date: April 15, 2002.

5. Virginia Electric and Power Company

[Docket No. ER01–3032–003]

Take notice that on March 18, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) the revised description of the work to be performed (Revised Description) and cost support for the estimated total cost for the direct assignment interconnection facilities (Cost Support) set forth in the executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Tenaska Virginia Partners, L.P. (Tenaska). This filing is being made to comply with the Commission's February 15, 2002 unpublished letter order in Docket No. ER01–3032–002.

Dominion Virginia Power respectfully requests that the Commission accept the Revised Description and Cost Support to allow the Interconnection Agreement to become effective on November 9, 2001, the same date the Commission made the Interconnection Agreement effective in its December 6, 2001 order in these proceedings. Copies of the filing were served upon Tenaska and the Virginia State Corporation Commission.

Comment Date: April 8, 2002.

6. El Paso Electric Company

[Docket No. ER02–1141–001]

Take notice that on March 20, 2002, El Paso Electric Company (El Paso) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Arizona Electric Power Cooperative, Inc. for Firm Transmission Service under El Paso's Open Access Transmission Tariff. The Service Agreement was originally submitted for filing on February 27, 2002 but contained an erroneous service agreement designation. This filing corrects the error.

El Paso requests that the proposed Service Agreement be permitted to become effective on January 24, 2002. El Paso states that this filing is in accordance with Part 35 of the Commission's regulations, 18 CFR part 35, and that a copy has been served on the Texas Public Utility Commission.

Comment Date: April 10, 2002.

7. El Paso Electric Company

[Docket No. ER02–1142–001]

Take notice that on March 20, 2002, El Paso Electric Company (El Paso) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Arizona Electric Power Cooperative, Inc. for Non-Firm Transmission Service under El Paso's Open Access Transmission Tariff. The Service Agreement was originally submitted for filing on February 27, 2002 but contained an erroneous service agreement designation. This filing corrects the error.

El Paso requests that the proposed Service Agreement be permitted to become effective on January 24, 2002. El Paso states that this filing is in accordance with Part 35 of the Commission's regulations, 18 CFR 35, and that a copy has been served on the Texas Public Utility Commission.

Comment Date: April 10, 2002.

8. Ocean State Power II

[Docket No. ER02–1178–001]

Take notice that on March 19, 2002, Ocean State Power II (Ocean State II) tendered for filing revisions to Attachments A and B to Ocean State II's annual rate of return on equity (ROE) to Rate Schedule FERC Nos. 5–8. Ocean State II states that these sheets are being filed to correct omissions from their February 28, 2002 filing in this proceeding.

Ocean State II requests an effective date of April 29, 2002, for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: April 9, 2002.

9. Ocean State Power

[Docket No. ER02–1184–001]

Take notice that on March 19, 2002, Ocean State Power (Ocean State) tendered for filing revisions to Attachments A and B to Ocean State's annual rate of return on equity (ROE) to Rate Schedule FERC Nos. 1–4. Ocean State states that these sheets are being filed to correct omissions from their February 28, 2002 filing in this proceeding.

Ocean State requests an effective date of April 29, 2002, for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: April 9, 2002.

10. American Electric Power Service Corporation

[Docket No. ER02–1215–001]

Take notice that on March 19, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), a revised Interim Qualified Scheduling Entity Service Agreement (Agreement).

AEP requests that the revised Agreement substitute an agreement that AEP previously filed in this docket. AEP requests that the revised Agreement be made effective on March 3, 2002. Copies of the transmittal letter have been served on the party to the Agreement as well as on the Public Utility Commission of Texas.

Comment Date: April 9, 2002.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1323–001]

Take notice that on March 18, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Second Revised Service Agreement No. 110 and Supplement No. 1 to Second Revised Service Agreement No. 110 under Allegheny Power's Open Access Transmission Service Tariff. Second Revised Service Agreement No. 110 and its supplement consist of an executed Network Integration Transmission Service Agreement and Network Operating Agreement with the Borough of Tarentum and replace First Revised Service Agreement No. 110 and its Supplement No. 1. Allegheny Power

requests that the effective date for Second Revised Service Agreement No. 110 and its Supplement No. 1 remain March 16, 2002.

Copies of the filing have been provided to the Customer and the Pennsylvania Public Utility Commission.

Comment Date: April 8, 2002.

12. Mirant Oregon, L.L.C.

[Docket No. ER02–1331–001]

Take notice that on March 20, 2002, Mirant Oregon, L.L.C. (Mirant Oregon) tendered for filing an amendment to its application filed on March 18, 2002 to correct an error in the initial filing. Mirant Oregon states that correct location of the Coyote Springs 2 generating facility (Facility) is the Avista Corporation control area and not the Portland General Electric Company control area referred to in the initial filing. Accordingly, Mirant Oregon has included a new Supply Margin Assessment for the Avista Corporation control area in Mirant Oregon's application for market-based rates.

Comment Date: April 10, 2002.

13. American Transmission Systems, Inc.

[Docket No. ER02–1346–000]

Take notice that on March 20, 2002, American Transmission Systems, Inc. filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Dominion Energy Marketing, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is March 18, 2002 for the above mentioned Service Agreement in this filing.

Comment Date: April 10, 2002.

14. Pacific Gas and Electric Company

[Docket No ER02–1351–000]

Take notice that on March 21, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) between PG&E and King City Energy Center, LLC (King City), Gilroy Energy Center, LLC (Gilroy), Duke Energy Morro Bay LLC (Duke Morro Bay), Wellhead Power Panoche, LLC (Wellhead Panoche) and Wellhead Power Gates, LLC (Wellhead Gates) (collectively, Parties). In addition, PG&E is filing Supplemental Letter Agreements with King City and Gilroy. PG&E has requested certain waivers.

Copies of this filing have been served upon King City, Gilroy, Duke Morro Bay, Wellhead Panoche, Wellhead Gates, the California Independent System Operator Corporation and the CPUC.

Comment Date: April 16, 2002.

15. Black Hills Corporation, n/k/a Black Hills Power, Inc.

[Docket No. ER02–1352–000]

Take notice that on March 21, 2002, Black Hills Corporation, d/b/a Black Hills Power, Inc., a wholly-owned subsidiary of Black Hills Corporation, Inc. (a South Dakota holding corporation), tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Black Hills Generation, Inc.

Copies of the filing were provided to the regulatory commission of the states of Montana, South Dakota and Wyoming. Black Hills Power, Inc. has requested that further notice requirement be waived and the executed Service Agreement be allowed to become effective February 1, 2002.

Comment Date: April 16, 2002.

16. Appalachian Power Company

[Docket No. ER02–1353–000]

Take notice that Appalachian Power Company (APCo), on March 21, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation for Rate Schedule FERC No. 99, which became effective on May 21, 1984.

APCo states that the current version of Rate Schedule 99 on file with the Commission contains a one (1) year notice of cancellation provision and that APCo gave Central Virginia Electric Cooperative, Inc. (CVEC), the only customer served by Apco under Rate Schedule FERC No. 99, timely written notification of its election to terminate Rate Schedule FERC No. 99 and service to CVEC under APCo's cost-based rates.

Since no service is to be provided by APCo under Rate Schedule No. 99 after May 20, 2002, APCo requests, for good cause shown, in accordance with Section 35.15 of the Commission's Regulations, that its Notice of Cancellation be made effective as of May 21, 2002. APCo further states that copies of its filing have been served upon the Virginia State Corporation Commission and CVEC.

Comment Date: April 16, 2002.

17. Twelvepole Creek, LLC

[Docket No. ER02–1354–000]

Take notice that on March 21, 2002, Twelvepole Creek, LLC (Twelvepole Creek) tendered for filing six copies of the Umbrella Service Agreement for Short-Term Sales Under Market-Based Rate Tariff between Twelvepole Creek, LLC and Orion Power MidWest, L.P. (Umbrella Service Agreement), as Original Service Agreement No. 1 under Twelvepole Creek's market-based rate tariff.

Comment Date: April 16, 2002.

18. Orion Power MidWest, L.P.

[Docket No. ER02–1355–000]

Take notice that on March 21, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Valu Source Energy Services, LLC (Agreement) as Original Service Agreement No. 2 under Orion Power MidWest's market-based rate tariff. Orion Power MidWest requested confidential treatment for the unredacted copy of the Agreement.

Comment Date: April 16, 2002.

19. Orion Power MidWest, L.P.

[Docket No. ER02–1356–000]

Take notice that on March 21, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Reliant Energy Services, Inc., (Agreement) as Original Service Agreement No. 1 under Orion Power MidWest's market-based rate tariff. Orion Power MidWest requested confidential treatment for the unredacted copy of the Agreement.

Comment Date: April 16, 2002.

20. California Independent System Operator Corporation

[Docket No. ER02–1357–000]

Take notice that on March 21, 2002, the California Independent System Operator Corporation (ISO) filed Third Revised Service Agreement No. 32 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement between the ISO and Pacific Gas and Electric Company. The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA.

The ISO requests an effective date for the filing of March 22, 2002. The ISO has served copies of this filing upon all entities that are on the official service

list for Docket Nos. ER98–1002 and ER01–2433.

Comment Date: April 16, 2002.

21. West Valley Leasing Company, LLC

[Docket No. ER02–1358–000]

Take notice that on March 21, 2002, West Valley Leasing Company, LLC, an Oregon limited liability company (WVLC), f/k/a/ PPM Five LLC (PPM Five) is canceling its FERC Rate Schedule No. 1 and related State of Policy and Code of Conduct.

WVLC request that the cancellation of the Rate Schedule be made effective March 20, 2002.

Comment Date: April 16, 2002.

22. Kansas Electric Power Cooperative, Inc.

[Docket No. NJ02–4–000]

Take notice that on March 21, 2002, Kansas Electric Power Cooperative, Inc., a non-jurisdictional generation and transmission cooperative, tendered for filing a request for waiver of Order No. 889.

Comment Date: April 15, 2002.

23. California Independent System Operator Corporation

[Docket No. EL02–18–001]

Take notice that on March 18, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Compliance Report pursuant to the Commission's March 1, 2002 Order, 98 FERC ¶ 61,228.

Comment Date: April 17, 2002.

24. PacifiCorp

[Docket No. ER01–3071–002]

Take notice that PacifiCorp on March 25, 2002, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission (Commission) Rules and Regulations, a First Revised Service Agreement No. 50 under PacifiCorp's FERC Electric Tariff Vol. 12 between PacifiCorp and Flathead Electric Cooperative, Inc.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: April 15, 2002.

25. Michigan Electric Transmission Company and Consumers Energy Company

[Docket No. ER02–800–001]

Take Notice that on March 22, 2002, Consumers Energy Company (Consumers) and Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Second Supplemental Notice of Succession and a Revised Rate Schedule for Consumers related to the transfer of transmission assets from Consumers to Michigan Transco. The Second Supplemental Notice of Succession and Revised Rate Schedule were to become effective April 1, 2001.

By acceptance letter dated February 20, 2002, that submittal was accepted by the Commission effective April 1, 2001, conditioned upon compliance with Order No. 614 within 30 days of the issuance of that acceptance letter. A Compliance Filing in the referenced docket, purporting to satisfy the aforementioned condition, was made by Consumers and Michigan Transco on March 22, 2002.

A full copy of the filing was served upon the Michigan Public Service Commission, and Customers: Michigan South Central Power Authority, Michigan Public Power Authority and Wolverine Power Supply Cooperative, were sent the Notice of Succession and related materials.

Comment Date: April 12, 2002.

26. Somerset Windpower LLC

[Docket No. ER02–954–001]

Take notice that on March 22, 2002, Somerset Windpower LLC (''Somerset'') submitted to the Federal Energy Regulatory Commission (Commission) an amendment to the Request for Authorization to Amend Market-Based Rate Tariff that it previously filed with the Commission on February 1, 2002. Somerset is engaged exclusively in the business of owning and operating a 9 MW wind-powered electric generating facility located in Somerset Township, Somerset County, Pennsylvania and selling its capacity and energy at wholesale to Exelon Power Generation LLC.

Comment Date: April 12, 2002.

27. Mill Run Windpower LLC

[Docket No. ER02–955–001]

Take notice that on March 22, 2002, Mill Run Windpower LLC (Mill Run) submitted to the Federal Energy Regulatory Commission (Commission) an amendment to the Request for Authorization to Amend Market-Based Rate Tariff that it previously filed with the Commission on February 1, 2002. Mill Run is engaged exclusively in the business of owning and operating a 15 MW wind-powered electric generating facility located in Springfield and Stuart townships, Fayette County, Pennsylvania and selling its capacity and energy at wholesale to Exelon Power Generation LLC.

Comment Date: April 12, 2002.

28. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER02–1359–000]

Take notice that on March 21, 2002, Florida Keys Electric Cooperative Association, Inc. tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment Date: April 11, 2002.

29. Western Resources, Inc.

[Docket No. ER02–1361–000]

Take notice that on March 22, 2002, Western Resources, Inc. (WR) (d.b.a. Westar Energy) tendered for filing a Service Agreement between WR and Morgan Stanley Capital Group (MSCG). WR states that the purpose of this agreement is to permit MSCG to take service under WR's Market Based Power Sales Tariff on file with the Commission. This agreement is proposed to be effective March 1, 2002.

Copies of the filing were served upon MSCG and the Kansas Corporation Commission.

Comment Date: April 12, 2002.

30. Western Resources, Inc.

[Docket No. ER02–1362–000]

Take notice that on March 22, 2002, Western Resources, Inc. (WR) (d.b.a. Westar Energy) tendered for filing a Revised Sheet No. 2 to the Service Agreement between WR and the City of Larned. WR states that the purpose of revision is to correct an inadvertent error in the originally filed document. This agreement is proposed to be effective June 15, 2001.

Copies of the filing were served upon the City of Larned and the Kansas Corporation Commission.

Comment Date: April 12, 2002.

31. Virginia Electric and Power Company

[Docket No. ER02–1363–000]

Take notice that on March 22, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation and a revised cover sheet to cancel an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) between

Dominion Virginia Power and GenPower Earleys, L.L.C. (GenPower).

Dominion Virginia Power respectfully requests that the Commission allow the Notice of Cancellation and the revised cover sheet to become effective March 25, 2002. Copies of the filing were served upon GenPower and the Virginia State Corporation Commission.

Comment Date: April 12, 2002.

32. Potlatch Corporation

[Docket No. ER02–1364–000]

Take notice that on March 22, 2002, Potlatch Corporation filed a Notice of Withdrawal of its Power Purchase Agreement with Minnesota Power in the above-referenced docket.

A copy of the filing was served upon Minnesota Power, the sole customer of Potlatch Corporation and on the Minnesota Public Utilities Commission.

Comment Date: April 12, 2002.

33. Cokinos Power Trading Co.

[Docket No. ER02–1365–000]

Take notice that on March 22, 2002, Cokinos Power Trading Co. (Cokinos) petitioned the Commission for acceptance of Cokinos Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Cokinos intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cokinos is not in the business of generating or transmitting electric power. Cokinos is a wholly-owned subsidiary of Cokinos Energy Corporation, which, through its affiliates, is primarily engaged in the marketing of crude oil and natural gas.

Comment Date: April 12, 2002.

34. Hess Energy Power & Gas Company, LLC

[Docket No. ER02–1366–000]

Take notice that on March 22, 2002, Hess Energy Power & Gas Company, LLC (Seller) petitioned the Federal Energy Regulatory Commission (Commission) for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: April 12, 2002.

35. Calpine Oneta Power, L.P.

[Docket No. ER02–1367–000]

Take notice that on March 22, 2002, Calpine Oneta Power, L.P. (the Applicant) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a nominal 1000 megawatt electric generation facility located in Wagoner County, Oklahoma. Applicant also submitted for filing a power marketing agreement for which it requests privileged and confidential treatment.

Comment Date: April 12, 2002.

36. Orion Power MidWest, L.P.

[Docket No. ER02–1368–000]

Take notice that on March 22, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Dominion Retail, Inc. (Agreement) as Original Service Agreement No. 3 under Orion Power MidWest's market-based rate tariff.

Comment Date: April 12, 2002.

37. Orion Power MidWest, L.P.

[Docket No. ER02–1369–000]

Take notice that on March 22, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Allegheny Energy Supply Company, LLC (Agreement) as Original Service Agreement No. 4 under Orion Power MidWest's market-based rate tariff.

Comment Date: April 12, 2002.

38. Commonwealth Edison Company

[Docket No. ER02–1370–000]

Take notice that on March 22, 2002, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Firm Point to Point Transmission Service and a corresponding Network Upgrade Agreement with MidAmerican Energy Company (MidAmerican) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of March 14, 2002 and, accordingly, seeks waiver of the Commission's notice requirements.

ComEd states that a copy of this filing has been served on MidAmerican and the Illinois Commerce Commission.

Comment Date: April 12, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7765 Filed 3–29–02; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–80–000]

Reliant Energy Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed White River Compressor Station Project and Request for Comments on Environmental Issues

March 26, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the White River Compressor Station. This project involves the construction and operation of a new compressor station by Reliant Energy Gas Transmission Company (Reliant) on its Line J system in Jackson County,

Arkansas.[1] These facilities would consist of a new 4,740-horsepower White River Compressor Station and other facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Reliant provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

Reliant wants to expand the capacity of its facilities in Arkansas by 108,000 dekatherms per day (Dth/d) in order to render firm natural gas transportation service of 102,000 Dth/d to TPS Dell, LLC (Dell). Reliant seeks authority to construct and operate the White River Compressor Station consisting of two 2,370-horsepower Ariel JGK/6 compressors and two Caterpillar G3608TALE drivers complete with inlet filters, H.G. exhaust silencers, PLC control panels, motor driver water coolers, pulsation bottles, an inlet scrubber, and lube oil tanks. The location of the project facilities is shown in appendix 1.[2]

Dell is constructing the Teco Dell, LLC Power Plant (Power Plant), a 640-megawatt combined cycle generating plant in Dell, Arkansas. Reliant is constructing a 2.2 mile, 6-inch-diameter pipeline and a tap in Mississippi County, Arkansas, under parts 157.208 and 157.211 of the Commission's regulations, to connect Line J to the Power Plant.

Land Requirements for Construction

Construction of the proposed compressor station would require about 5 acres. Of this total, approximately 1 acre would be maintained as the new compressor station site. The remaining 4 acres would be returned to agricultural use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified one issue (air and noise impacts of the proposed compressor station) that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Reliant. This preliminary list of issues may be changed based on your comments and our analysis.

Also we have made a preliminary decision not to address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.
- Reference Docket No. CP02–80–000.
- Mail your comments so that they will be received in Washington, DC on or before April 25, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal service. As a result, we will include all comments that we receive within a rerasonable time frame

[1] Reliant's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting the RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link to the User's Guide. Before you can file comments or interventions you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2) [4]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7744 Filed 3–29–02; 8:45 am]

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[4] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, Motions To Intervene, Rcommendations, and Terms and Conditions

March 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12147–000.

c. *Date filed:* January 30, 2002.

d. *Applicant:* City of Burbank.

e. *Name of Project:* Valley Power Plant.

f. *Location:* At the City of Burbank's existing domestic water pumping facility within the City of Burbank, in Los Angeles County, California. The source of water for the conduit is purchased water from the Metropolitan Water District of Southern California taken from the Sacramento and San Joaquin Rivers in California and locally produced groundwater. The project would not occupy Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald E. Davis, General Manager, Burbank Water and Power Department, 164 West Magnolia Boulevard, Burbank, CA 91502, (818) 238–3500.

i. *FERC Contact:* Tom Papsidero, (202) 219–2715.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing comments, protests and motions to intervene:* April 26, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12147–000) on any comments, protests, or motions filed.

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.

l. *Description of Project:* The purchased water is delivered at higher pressure than the groundwater and blending now requires pressure reducing valves; the city proposes to use a turbine/generator as the primary pressure reducer. The project would consist of two proposed turbine/generator units with a total generating capacity of 300 kilowatts which would be connected to the City of Burbank's existing Valley Pumping Plant. The average annual generation would be 900,000 kilowatthours.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing maybe 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 shown in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

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.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7746 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 346–037]

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Terms and Conditions, Recommendations and Prescriptions

March 26, 2002.

Take notice that the following hydroelectric application and applicant prepared environmental assessment (APEA) have been filed with the Commission and are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 346–037.

c. *Date Filed:* August 23, 2001.

d. *Applicant:* Minnesota Power Inc.

e. *Name of Project:* Blanchard Hydroelectric Project.

f. *Location:* On the Mississippi River near the City of Little Falls, in Morrison County, MN. The project occupies Federal lands of the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Bob Bohm, Minnesota Power, Inc., P.O. Box 60, Little Falls, MN 56345, *rbohm@mnpower.com* 320–632–2318, ext. 5042.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* 202–219–2778.

j. *Deadline for filing comments, final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's web site at under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application and the APEA have been accepted for filing and are now ready for environmental analysis. No additional information or studies are needed to prepare the Commission's environmental assessment. Comments are now being requested from interested parties. The applicant will have 45 days following the end of this comment period to respond to any comments filed within the comment period.

l. *The existing Blanchard Project consists of:* (1) a 750-foot-long, 62-foot-high concrete gravity dam comprising: (a) a 190-foot-long non-overflow section; (b) a 437-foot-long gated spillway section; (c) eight 44-foot-wide by 14.7-foot-high Taintor gates; and (d) a 124-foot-wide integral powerhouse; (2) approximately 3,540-foot-long earth dikes extending from both sides of the concrete dam; (3) a 1,152-acre reservoir at normal water surface elevation of 1,081.7 feet NGVD; (4) a powerhouse containing three generating units with a total installed capacity of 18,000 kW; and (5) other appurtenances.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application and APEA be filed with the Commission within 60 days from

the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

These deadlines may be extended by the Commission, but only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must; (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant, and the project number of the application, to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filings must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7748 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8361–037]

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

March 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 8361–037.

c. *Date Filed:* March 8, 2002.

d. *Applicant:* Olsen Power Partners.

e. *Name of Project:* Belleville Hydroelectric Project.

f. *Location:* The project is located on Old Cow Creek in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825'') and Section 4.201 of the Commission's regulations.

h. *Applicant Contact:* Arthur Hagood; Synergics Energy Services, LLC, 191 Main Street, Annapolis, MD 21401; (410) 268–8820.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Thomas LoVullo at (202) 219–1168, or e-mail address: *thomas.lovullo@ferc.gov*.

j. *Deadline for filing comments, motions to intervene and protests:* April 26, 2002.

All documents (an original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–8361–037) on any comments or motions filed.

k. *Description of Request:* Olsen Power Partners (licensee) proposes to study, over a five-year period, the minimum flow released into the project's bypass reach and its effect on fishery resources. The current license requirement states that the licensee shall discharge from the project diversion, a continuous minimum flow of 30 cubic feet per second (cfs), or inflow to the project, whichever is less, for the protection of fish and wildlife resources in Old Cow Creek. The licensee stated that it believes the required minimum flow is set too high exceeding any necessary protection for the fishery and needlessly constraining generation. The licensee would like to reduce the minimum flow from 16 cfs during the first year of the study to 10 cfs for the next two years, followed by 5 cfs for the last two years of the study. The licensee indicated that at any time during the five year study, if and when impacts are detected, the continuation of the testing would be re-evaluated and a long term release flow recommendation developed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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.

n. 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.

o. 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. 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.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7749 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11541–000, Idaho]

Atlanta Power Station; Notice of Meeting

March 26, 2002.

A telephone conference will be convened by staff of the Office of Energy Projects on April 2, 2002, at 1 p.m. eastern standard time. It's a follow up meeting was necessary to further clarify our position on the relicensing process

for the Atlanta Power Station Hydroelectric Project.

Any person wishing to be included in the telephone conference should contact Gaylord W. Hoisington at (202) 219–2756 or e-mail at *gaylord.hoisington@ferc.fed.us*. Please notify Mr. Hoisington if you want to be included in the telephone conference.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7747 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[HI02–01; FRL –7166–1]

Notice of Deficiency for Clean Air Operating Permits Program; State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Hawaii's (Hawaii or State) Clean Air Act title V operating permits program, which is administered by the Hawaii Department of Health. The notice of deficiency is based upon EPA's finding that Hawaii's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Hawaii's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: March 22, 2002. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Robert Baker, EPA, Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3979.

SUPPLEMENTARY INFORMATION:

I. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act (CAA or Act) title V operating permits program for the State of Hawaii. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiency that is the subject of this notice relates to Hawaii's requirements for insignificant emissions units (IEUs) and applies to the State permitting authority that implements Hawaii's title V program.

A. Approval of Hawaii's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Hawaii's operating permits program was submitted in response to this directive. EPA granted interim approval to Hawaii's air operating permits program on December 1, 1994 (59 FR 61549).

After Hawaii revised its program to address the conditions of the interim approval, EPA promulgated final full approval of Hawaii's title V operating permits program on November 26, 2001 (66 FR 62945).

B. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in part 70, however, authorizes a state to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6.

Hawaii's regulations contain criteria for identifying IEUs. *See* HAR § 11–60.1–82(f) thru (g). Hawaii's regulations also require that the permit application include identification and description of all points of emissions and all applicable requirements. *See* HAR § 11–60.1–83. The Hawaii program, however, exempts IEUs from all permitting requirements including testing, monitoring, recordkeeping, reporting, and compliance certification requirements. *See* HAR § 11–60.1–82(e). Because part 70 does not exempt IEUs from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, EPA has determined that Hawaii must revise its IEU regulations.

The deficiency involving the provisions in the State's program that exempt insignificant activities from part 70 permitting requirements, came to light as a result of the court decision in *Western States Petroleum Association (WSPA)* v. *Environmental Protection Agency*, 87 F.3d 280 (9th Cir. 1996).

The court found in the WSPA case that EPA had acted inconsistently in its approval of the insignificant activities provisions in several part 70 programs, including the State of Hawaii's program. In order to address the inconsistencies identified by the Ninth Circuit, EPA is now notifying Hawaii that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and Local title V programs or face withdrawal of its title V operating permits program.

C. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply either of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this notice within 18 months after signature of this notice. In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Hawaii's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Hawaii has taken significant action to correct the deficiency.

II. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of April 1, 2002.

Dated: March 22, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 02–7775 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Small Package Tender of Service

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of issuance of the GSA Small Package Tender of Service for comment.

SUMMARY: The General Services Administration (GSA), in compliance with 41 U.S.C. 418b, is publishing the GSA Small Package Tender of Service (SPTOS) for comments. The SPTOS establishes a uniform basis for buying routine small package transportation. GSA's solicitation and acceptance of small package rates and charges provides highly competitive pricing, which in certain cases includes the solicitation and acceptance of rates specific to an individual agency that accommodate that agency's particular traffic characteristics. GSA's Federal customer agencies benefit from the SPTOS, which leverages the Government's buying power to provide agencies, standardized cost effective small package transportation services. All submitted comments will be considered prior to issuing the SPTOS. Publication in the **Federal Register** of the revised SPTOS will effectively cancel this issue.

DATES: Please submit your comments by May 31, 2002.

ADDRESSES: Mail comments to the General Services Administration, Travel and Transportation Management Division (FBL), Washington, DC 20406, Attn: Raymond Price.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch by phone at 703–305–7536 or by e-mail at *raymond.price@gsa.gov.*

Dated: March 14, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

GSA Small Package Tender of Service (SPTOS)

Part 1

General Small Package Tender of Service No. 10

General Services Administration, Federal Supply Service, Freight Program Management Office (6FBD–X), 1500 E. Bannister Rd., Kansas City, MO 64131

Table of Contents

Section 1—General

Item 1–1 Scope of the Small Package Tender of Service (SPTOS)

A. The GSA Small Package Tender of Service (SPTOS) Consists of the Following Parts

- Part 1 The GSA General Small Package Tender of Service No. 10 (GSA SPTOS No. 10);
- Part 2 The GSA National Small Package Rules Tender No. 11 (GSA No. 11); and
- Part 3 The GSA Small Package Baseline Rate Publication No. 12 (GSA No. 12).

B. General

Hereinafter, GSA or the other Government agencies participating in the TOS will be referred to as a participating agency. This TOS provides terms and conditions for the transportation and all related services within CONUS for GSA or the other Government agencies participating in the TOS. This TOS is applicable to all tenders filed with the TOS participating agencies.

C. Description of Freight

The property to be moved under this SPTOS consists of a variety of commodities to be used by Government agencies or authorized contractors for the Government and will be generally described as freight-all-kinds (FAK) except Class 1.1, 1.2, and 1.3 explosives (these are new designations for previous Class A and B explosives), hazardous wastes, and radioactive articles requiring a hazardous material label, and items of extraordinary value. It is further required that all transportation service providers (TSPs) participating in the TOS possess the required insurance and authority to transport hazardous

materials other than those restricted herein.

D. TSP Liability

For small package shipments moved under this TOS, the TSP shall provide liability coverage of $100 per package, or the amount offered commercially, whichever is greater, unless a higher liability coverage is declared on the transportation documentation at the time the shipment is tendered. If additional protection is desired, insurance may be purchased for amounts in excess of $100. See GSA No. 11 Item 110 Additional Insured Value.

E. Freight Excluded

Excluded from the scope of this TOS are shipments that can be more advantageously or economically moved via truckload or less-truck-load carriers; parcel post; shipments of Class 1.1, 1.2, and 1.3 explosives (former Class A and Class B explosives); hazardous wastes; radioactive articles requiring a hazardous material label; uncrated used household goods; shipments that the Government may elect to move in Government vehicles; freight subject to specific agency programs or contracts, (e.g. Guaranteed Freight Programs or local drayage contracts.), and items of extraordinary value.

F. Hazardous Material Authority

Any Government agency shipping hazardous materials requires TSPs participating in this TOS to maintain a ''satisfactory'' safety rating from the Department of Transportation (DOT). If a TSP receives a ''conditional'' or ''unsatisfactory'' safety rating from DOT, the TSP will be placed in nonuse status until documentary evidence is furnished to the office placing the TSP in nonuse that such rating has been upgraded by DOT to ''satisfactory''.

Item 1–2 Participating Government Agencies

A. General

Participating agencies include GSA's Federal Supply Service and those agencies identified in the applicable Request for Offers (RFO) distributed by the Freight Program Management Office (6FBD–X), Kansas City, MO or another GSA Travel and Transportation Management Zone Office.

B. Rights of Participating Agencies

1. Participating agencies are entitled to issue their own RFOs referencing the terms and conditions of the GSA Small Package Tender of Service No. 10, the GSA National Small Package Rules Tender No. 11, and the GSA Small Package Baseline Rate Publication No. 12, supplements thereto and reissues thereof; and

2. Participating agencies are entitled to accept rate offers submitted by those TSPs approved in accordance with Item 2–2 which reference the terms and conditions of the GSA Small Package Tender of Service No. 10, the GSA National Small Package Rules Tender No. 11, and the GSA Small Package Baseline Rate Publication No. 12, supplements thereto and reissues thereof.

Item 1–3 Revising SPTOS Provisions and Method of Canceling Original or Revised Pages

This TOS will be revised by the Freight Program Management Office (6FBD–X), Kansas City, MO, through publication of the changes on GSA's WorldWide Web Page (*http://www.kc.gsa.gov/fsstt*), the issuance of page revisions (original or revised), or the reissuance of the document on an ''as needed'' basis.

A. *TOS Page Revisions:* Reserved.

B. *Reissuing the SPTOS:* Reserved.

Item 1–4 Unintentionally Accepted Tender Rule

Tenders that are unintentionally accepted and distributed for use, which are later found not to be in compliance with the TOS, are subject to immediate removal by the tender accepting agency. The TSP will be notified when tenders are removed under these circumstances and will be advised the basis for their removal. Even though a tender was unintentionally accepted, such tender may be used until it is canceled by the TSP.

Item 1–5 Lawful Performance, Operating Authority, and Insurance

All service shall be performed in accordance with applicable Federal, State, and local laws and regulations. TSPs shall possess the required carrier operating authority and maintain cargo as well as public liability insurance as required by Federal, State, and local regulatory agencies.

Item 1–6 Acceptance of the SPTOS

The acceptance of this TOS is a prerequisite for any small package TSP desiring to be considered for the transportation of Government property shipped by a participating agency.

The terms and conditions in this TOS are applicable to all interlining TSPs.

The conditions of the TOS are in addition to all service provisions of any applicable tender or tariff (including the GSA National Small Package Rules Tender No. 11 and the GSA Baseline Rate Publication No. 12) under which a shipment may be routed, except where these conditions may be in conflict with applicable Federal, State, and local laws and regulations.

If a conflict exists between the provisions of the TOS and the provisions named in the GSA National Small Package Rules Tender No. 11, the provisions of this TOS will apply.

The acceptance of the GSA TOS by a TSP shall be accomplished as specified in Section 2 of this document.

Item 1–7 Basis for Determining Applicable Distance

Unless otherwise authorized, all tenders shall be predicated on ITEM 30 Mileage To Zone Conversion of the GSA No. 12, regardless of the distance actually traveled by the carrier.

Item 1–8 Application of the Terms and Conditions Set Forth for Use of a Bill of Lading (BL) for the Government

The terms and conditions governing acceptance and use of Bills of Lading (BLs) as cited in 41 CFR 102–118.135 and 140 apply to all shipments handled pursuant to this Small Package Tender of Service (SPTOS) as follows:

A. When using commercial forms, all shipments must be subject to the terms and conditions set forth for use of a bill of lading for the Government. Any other non-conflicting applicable contracts or agreements between the TSP and an agency involving buying transportation services for Government traffic remain binding.

B. The shipment must be made at the restricted or limited valuation specified in the tariff or classification or established under section 13712 of the Interstate Commerce Commission (ICC) Termination Act of 1995 (49 U.S.C. 13712), formerly section 10721 of the Interstate Commerce Act, or limited contract, arrangement or exemption at or under which the lowest rate is available, unless indicated on the transportation documentation. (This is commonly referred to as an alternation of rates);

C. Receipt for the shipment is subject to the consignee's annotation of loss, damage, or shrinkage on the delivering TSP's documents and the consignee's copy of the same documents. If loss or damage is discovered after delivery or receipt of the shipment, the consignee must promptly notify the nearest office of the last delivering TSP and extend to the TSP the privilege of examining the shipment;

D. The rules and conditions governing commercial shipments for the time period within which notice must be given to the TSP, or a claim must be filed, or suit must be instituted, shall

not apply if the shipment is lost, damaged or undergoes shrinkage in transit. Only with the written concurrence of the Government official responsible for making the shipment is the deletion of this item considered valid;

E. Interest shall accrue from the voucher payment date on the overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3717).

Section 2—Participation

Item 2–1 General

Participation in the GSA Small Package Tender Of Service (SPTOS) Small Package Freight Traffic Management Program is open to any TSP possessing the operating authority and insurance required in ITEM 1–5 of this TOS and who has met the approval requirements identified in Item 2–2, below.

Item 2–2 Approval To Participate

In order for a TSP to become eligible to transport traffic under this TOS, it must meet the approval requirements identified below. The applicable approval documentation must be mailed to: General Services Administration, Freight Program Management Office (6FBD–X), 1500 East Bannister Road, Kansas City, MO 64131 3088. Questions relating to the approval requirements may be directed to (816) 823–3646 or e-mail at internet *reg6.transportation@gsa.gov.*

Approval Requirements for Small Package TSPs

Small package TSPs must submit the following documentation to the address contained in Item 2–2 in order to meet the approval requirements for participation:

One (1) copy of the TSP's operating authority issued by the Department of Transportation. This copy of the TSP's operating authority must be provided in accordance with MC107 and/or The Motor Carrier Act of 1980;

One (1) signed copy of the TSP Certification of Eligibility for Submission of Rate Tenders for Transportation (See Section 15—Forms). Even if the TSP already has a copy of this form on file with a GSA Travel and Transportation Management Zone Office or the Freight Program Management Office (6FBD–X), Kansas City, MO, the TSP must re-submit the form to the address contained in Item 2–2 in order to meet the carrier approval requirements;

One (1) copy of the TSP's Standard Carrier Alpha Code (SCAC) assignment letter from the National Motor Freight Traffic Association (NMFTA); and

One (1) signed copy of the Trading Partner Agreement (See Section 15—Forms). Once the TSP has met all of the established approval requirements for participation, GSA will return to the TSP a signed copy of the Trading Partner Agreement.

Section 3—Offers of Service

Item 3–1 Solicitation of Rate Offers

Any participating agency as defined in Item 1–2.A. may solicit rate offers referencing the SPTOS from carriers approved in accordance with Item 2–2. The participating agency will make the determination if the rate offer(s) is to be submitted electronically or non-electronically.

Item 3–2 Submission of Rate Offers

A. Submission of Electronic Rate Offers

When a participating agency has determined that rate offers must be submitted electronically, those rate offers must be submitted electronically in accordance with the electronic filing instructions established by the General Services Administration Freight Program Management Office (6FBD–X), Kansas City, MO. All accepted electronic rate offers will be made available to GSA's Office of Transportation and Property Management's Audit Division.

1. Items in the GSA No. 11 that Contain Rates or Charges: The following Items from the GSA National Small Package Rules Tender No. 11 are all the Items that contain rates or charges. Carriers must indicate in their electronic rate offer either one percentage for all of these Items or separate percentages for each.

Item 100 Addition Handling Charge (each package)
Item 110 Additional Insured Value
Item 150 Each Address Correction
Item 200 Each Acknowledgement of Delivery
Item 210 Each Recall of a Prior Delivery
Item 220 Each C.O.D.
Item 230 Hazardous Material Surcharge (each package)
Item 270 Pickup Or Delivery Service—At Private Residences
Item 290 Pickup Or Delivery Service—Saturday

B. Submission of Non-Electronic Rate Offers

When a participating agency has determined that rate offers must be submitted non-electronically, the participating agency will provide the appropriate filing instructions.

Item 3–3 Time of Filing

A. Electronic Rate Offers

The time period(s) during which an electronic rate offer may be submitted will be identified by the participating agency requesting the submission of electronic rate offers. Requests for electronic rate offers made by GSA will automatically be distributed to all carriers approved to participate in accordance with Item 2–2. Requests for electronic rate offers made by other participating agencies will be distributed per the discretion of the requesting participating agency.

B. Non-Electronic Rate Offers

The time period(s) during which a non-electronic rate offer may be submitted will be identified by the participating agency requesting the submission of non-electronic rate offers. Requests for non-electronic rate offers made by GSA will automatically be distributed to all carriers approved to participate in accordance with Item 2–2. Requests for non-electronic rate offers made by other participating agencies will be distributed per the discretion of the requesting participating agency.

Item 3–4 Non-Alternation Tender Acceptance Policy

A. Unless specifically requested, TOS participating agencies will not accept electronic or non-electronic rate offers from carriers which contain a non-alternating provision.

B. Where a shipment involves both a Non-DOD government agency participating in this TOS and a DOD agency, the applicable tender will be that of the transportation documentation issuing office.

Section 4—Statement of Work

Item 4–1 Performance of Service

Carriers accepting shipments offered under this TOS shall establish effective service controls for the prompt and complete performance of all ordered pick-up, transport, active tracking, and delivery of general commodities to and from points within the continental United States (CONUS).

Item 4–2 Services To Be Provided

TSPs participating in this TOS shall provide the following:

A. Adequate terminal facilities at origin to effectively service the agency shipping facility.

B. Adequate facilities at destination to effectively service the receiving activity/customer.

C. Pickup and delivery pursuant to the standards set forth in this TOS.

D. Lowest overall transportation cost to the U.S. Government commensurate with satisfactory service.

E. Equipment spotting in accordance with the consignor or consignee's instructions.

F. Accessorial and special services, as requested or annotated on the transportation documentation.

G. Prompt inspection of damaged material.

H. Settlement of all claims for loss or damage attributable to carrier liability within 120 days.

I. Protection from elements and securing of the loads.

J. Transportation of hazardous materials other than Class 1.1, 1.2, and 1.3 explosives; hazardous wastes; and radioactive articles requiring a hazardous material label in accordance with Title 49 of the Code of Federal Regulations (49 CFR). TSPs which do not ordinarily provide transportation of hazardous materials are not required to do so.

K. Inside pickup or delivery, when requested and annotated on the transportation documentation. (Unwarranted refusal or selective acceptance of cargo is prohibited.)

L. Continuous control of shipments. When requested by either a representative of the consignor or consignee, the TSP shall monitor and trace shipments to ensure prompt completion of all required service as well as giving status and location of a shipment within 24 hours of the request.

M. Proof of delivery (copy of signed, dated delivery receipt) for any shipment that the transportation documentation issuing officer (or designee) determines is needed to verify the TSP's delivery certification on the transportation documentation.

N. Return of shipment service. In the event a TSP is required to return a shipment to the original shipping location as ordered by the agency or designated official, the TSP will assess the rate applicable to the original outbound movement or the applicable tender rate, whichever is lower. The TSP shall obtain the necessary amendment or documentation from the party ordering the additional movement.

O. All services (e.g., spotting of trailers, assisting in the loading of packages into conveyance, and reporting to the agency shipping facility at the requested time), as requested by the designated agency shipping facility representatives, for shipments tendered.

Item 4–3 Completion of Service

Service performed under this TOS is deemed complete when delivery and other destination services have been furnished. TSP service can be accomplished by either direct or interline service. When jointline rates are offered, the tender submitting TSP shall ensure that any interline TSP(s) transports the shipment at the original offered discounted rate or charge and provides all services as specified in the TOS.

Item 4–4 Attempted Delivery

(1) The TSP shall attempt to deliver a shipment three times.

(2) The TSP shall leave a notice of attempted delivery with each shipment.

(3) For purposes of TSP performance, the delivery shall be considered accomplished on the date and time of the first attempted delivery to the address on the package.

Item 4–5 Prompt Notification of Undelivered Freight

When a shipment cannot be delivered because of the consignee's inability or refusal to receive or accept the shipment, TSPs shall (except for shipments originated by GSA) notify the applicable agency shipping facility traffic manager/contact point and request additional handling or forwarding instructions from the consignor. For GSA originated shipments, carriers shall request additional handling or forwarding instructions from either the GSA National Customer Service Center (6FR) (NCSC), 1500 East Bannister Road, Kansas City, MO 64131–3088 (1–800–488–3111) (FAX 816–926–6952) or the consignor.

Item 4–6 Rules and Accessorial Charges

Shipments transported under this TOS shall be subject to the rules and accessorial charges published in the applicable GSA National Small Package Rules Tender No. 11. No TSP independent actions (TSPs' rules or accessorial tariffs) or bureau published tariffs deviating from the GSA National Small Package Rules Tender No. 11 are acceptable.

Item 4–7 Special Services Ordered by the Consignor

Only special or accessorial services annotated on the transportation documentation by the consignor or provided for by an amendment to the transportation documentation are authorized and will be paid by the agency.

Item 4–8 Department of Transportation (DOT) Emergency Response Guidebook

Each TSP that is subject to this TOS that picks up or transports a hazardous material shipment shall maintain emergency response information as specified in Title 49 of the Code of Federal Regulations (49 CFR) Section 172.602 in the same manner as prescribed for shipping papers. The TSP shall have in its possession a copy of the current Department of Transportation (DOT) Emergency Response Guidebook when picking up, transporting, or delivering a shipment of hazardous material. This information must be immediately accessible to a transport vehicle operator or crew in the event of an incident involving a hazardous material.

Item 4–9 Tracing Shipments

Requests by the Government to have a shipment traced shall be made through either the TSP's centralized tracing system, if such a system is available, or its origin terminal. Upon request, the TSP shall trace the shipment through its entire system (including any interlining TSPs), and provide the requester (or third party as directed) a reply through the same communication media as the request, or through the media directed in the request. When a TSP offers the Government direct access to their mechanized tracing system and the requester elects to use it, the TSP will, when required by the requester, trace the shipment through any interlining system, and provide a reply as above.

Section 5—Performance Requirements

Item 5–1 Transit Time

A. All agencies as identified in Item 1–2.A. and the General Services Administration (GSA) Distribution Centers, and direct deliveries from the National Industries For The Blind (NIB), and the National Industries For The Severely Handicapped (NISH).

B. Delivery Time:

Up to 150 mi. 1 day
151 to 500 mi. 2 days
501 to 1500 mi. 4 days
1501 to 2100 mi. 5 days
2101 mi. & over 6 days

C. Method of Measuring Transit Time.

(1) Start of Transit Time.

Transit time begins the next business day after the shipment is signed for by the TSP and ends at the time the shipment is delivered (or made available for delivery) to the receiving activity (destination). In instances where a shipment is signed for by the TSP on a Saturday, Sunday, or holiday

the transit time will not begin until the NEXT BUSINESS DAY.

(2) Computation of Transit Time.

(i) Transit time for small package shipments is measured in business days, excluding Saturday, Sunday, and holidays as set forth in ITEM 30 Definition Of Terms, (2) Legal Holidays in the GSA National Small Package Rules Tender No. 11 herein.

(ii) Unless the agency or customer requests and authorizes delivery on Saturdays, Sundays, or holidays (as set forth in ITEM 30 Definition Of Terms, (2) Legal Holidays in the GSA National Small Package Rules Tender No. 11 herein), TSPs shall not be required to deliver shipments on these days. TSPs shall not be penalized if they refuse to voluntarily make Saturday, Sunday, or holiday delivery.

Item 5–2 Pickup

A. General

TSP pickup service shall include arriving on time for pickup.

B. Ordering Equipment

When ordering equipment or requesting a pickup date, TSPs will receive advance notice. Unless an abnormal amount or type of equipment is requested, TSPs will be notified in the afternoon prior to the day the equipment is needed. However, in some circumstances, TSPs may be required to perform same day pickup service. TSPs will not be penalized if they are unable to provide this ''special'' same day pickup service.

C. Method of Measurement

Pickup service will be measured using agency shipping facility dispatcher records indicating the requested time and date of pickup and TSP sign-in registers indicating TSP date and time of arrival. Unless a TSP requested and received, from the agency shipping facility ordering official, permission to delay the pickup date or time, measurement of efficient pickup service will be based only on the agency shipping facility dispatch records.

Item 5–3 Loss or Damage

A. General

Loss or damage claims attributable to the TSP's performance must be acknowledged and settled within 120 days.

B. Method of Measurement

In all instances, loss or damage claim settlements will be applied to the origin TSP performance of service using reports, records, and history files compiled by the agency. These reports, records, and history files will include for each participating TSP, the number of shipments it handled as well as the number of claims settled against it.

C. Aggregation of Claims

A participating agency may aggregate claims to be filed against an individual TSP into a single filing. Such an aggregate filing will be construed as an individual filing of each claim and the participating agency will indicate on the aggregate filing the individual claimed amount, together with supporting documentation, for each included claim. The TSP against which an aggregate filing is made shall settle each claim as if it were filed independently. In order for a participating agency to take advantage of this Item 5–3.C., the participating agency must notify the TSP in writing of its intent to utilize the provisions of this Item 5–3.C.

Item 5–4 Unusual Incidents

Except for shipments originated with GSA, TSPs shall attempt to provide a report in writing to the transportation documentation issuing officer any event of major significance which produces substantial loss, damage, or delay to a shipment(s) such as theft or seizure of cargo, strikes, embargoes, fires, or other similar incidents, not later than the first working day after such incident.

For shipments originated by GSA, TSPs shall attempt to report the required information not later than the first working day after such incident to the consignor and the GSA National Customer Service Center (6FR) (NCSC), 1500 East Bannister Road, Kansas City, MO 64131–3088 (1–800–488–3111) (FAX 816–926–6952).

The initial written report shall include the following information and be followed up by a detailed written assessment of the loss or damage, and delays encountered and final disposition of the property:

A. Type of incident;

B. Location of incident;

C. Description of any hazardous cargo;

D. TSP's tracking number and Agency unique number;

E. Shipping documentation office;

F. Origin;

G. Destination;

H. Date shipment received by carrier;

I. If applicable, required delivery date;

J. Date and time of incident;

K. Estimated amount of loss and extent of damage;

L. Current status of shipment(s), including new estimated time of arrival (ETA); and

M. Location of shipment(s), if applicable.

Item 5–5 All Others

This category includes the evaluation of all other services that TSPs may be requested to provide, such as the ability to provide accessorial and special services as required, documented customer complaint(s), adherence in observing Federal, State, local, and agency shipping facility regulations, and unwarranted refusal of shipments. (Selective acceptance of shipments is prohibited.)

Item 5–6 Other Elements

All other service elements requiring TSP response and action due to a deficiency in performance must be responded to by the TSP within 10 days of receipt of an agency notice of such a deficiency. The TSP response must include a plan to correct the deficiency. The elements of service described herein generally refer to specific operational factors affecting the timely, efficient and cost-effective movement of agency freight. There are, however, other elements which will be considered in determining the overall performance of a TSP and the ability and fitness of a TSP to provide service to agencies. These elements are of such importance that one violation will render subject TSP to possible placement in temporary nonuse status.

These elements include, but are not limited to:

A. Willful violations of tenders or tariffs;

B. Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or detention;

C. Failure to maintain proper insurance coverage;

D. Operating without legal authority; and

E. Failure to have in its possession a current copy of the DOT Emergency Response Guidebook when picking up or transporting a shipment of hazardous material.

Item 5–7 Request for a Waiver of Requirements of the SPTOS or Application of the Terms and Conditions Set Forth for Use of a (BL) for the Government

A. When Granted and by Whom

The transportation documentation issuing officer, the agency shipping facility Traffic Manager or the agency servicing office representative, for an individual shipment, may waive one or more of the requirements in this TOS or of the BL in whole or in part because of the incompatibility of such requirements with the prevailing circumstances. An affected TSP may

submit the waiver request verbally to the transportation documentation issuing officer; however, the request must be confirmed in writing by the TSP to the transportation documentation issuing officer within one day of the initial request.

B. Confirmation of Waiver

If the transportation documentation issuing officer or designee determines that a waiver is justified, he/she will issue a waiver in writing, by amending the transportation documentation and distributing copies of the amendment, including a copy to the TSP, within 48 hours after receiving the TSP's request.

Item 5–8 Astray Package(s)

In the event that small packages are separated from the TSP's freight bill or transportation documentation, the following procedures will apply:

A. When the TSP is able to determine the consignee, either from the markings on the package or from the shipping documentation affixed to or contained within the package, the TSP will promptly deliver the package to the consignee.

B. When the consignee cannot be determined from the markings on the package or shipping documents, but the TSP is able to determine that the property belongs to a specific Government agency, then the TSP will contact the nearest installation of that agency for disposition instructions.

For GSA originated shipments, the TSP shall contact the GSA National Customer Service Center (6FR) (NCSC), 1500 East Bannister Road, Kansas City, MO 64131–3088 (1–800–488–3111) (FAX 816–926–6952) for disposition instructions.

C. When specific agency ownership cannot be determined for astray packages which are identifiable Government property, the TSP will contact the nearest Government installation for disposition instructions.

Section 6—Service Performance Standards

Item 6–1 TSP Performance Reviews

A. Documenting TSP Performance

TSP performance data will be obtained from a variety of sources, including, but not limited to the following:

(1) Complaints (both written and oral) submitted by an agency transportation officer, transportation documentation issuing officer, agency official, agency shipping facility operating personnel, or consignee;

(2) Reports obtained or formulated from TSP pickup records, history files, finance payment records, and agency discrepancy computer runs; and

(3) Serious incident reports.

Item 6–2 TSP Evaluation

A. TSP performance of all shipments tendered shall be evaluated monthly using the service standards established in this ITEM herein. Four categories will be analyzed.

A TSP will be issued a warning letter and may be placed in a temporary nonuse status based on deficiencies in any individual category.

B. Service Standard Table:

Ranking	Categories			
	1 Transit time	2 Pickup	3 Loss and damage	4 All others
Excellent	100–98%	100–99%	100–99%	100–99%
Very Good	97–96%	98–97%	98–97%	98–97%
Satisfactory	95–94%	96–94%	96–95%	96–95%
Unsatisfactory	Below 94%	Below 94%	Below 95%	Below 95%

C. If transportation costs are equal, maximum use will be made of TSPs whose ranking for all categories are excellent.

D. TSP performance that is determined to be ''unsatisfactory'' for one or more categories will result in the issuance of a warning letter by the respective agency servicing officer or his or her designee. The TSP will be advised that its service for one or more categories is ''unsatisfactory'' and that if service for that category(ies) fails to improve, the TSP will be subject to placement in temporary nonuse status.

E. TSP performance that is determined to be ''unsatisfactory'' for one or more of the categories will result in notification by the agency servicing officer or designee that action is being initiated to place it in a temporary nonuse status in accordance with the nonuse procedures set forth in Section 8—Temporary Nonuse, Debarment, And Suspension.

Section 7—Inspection

Item 7–1 General

Authorized representatives of the shipping agency shall have the right to inspect TSP facilities (local TSPs equipment, terminals, stations, or warehouses) and to inspect the performance of services (loading, pickup, delivery, and any other services performed or being performed by the TSP) in connection with any shipment handled under the provisions of this TOS.

A. An authorized representative of the shipping agency shall include personnel of the agency shipping facility.

B. Representatives may inspect the performance of services at the agency shipping facility, at the TSP terminal facilities, or at consignee receiving facilities during regular office hours or at any time work is being performed.

Item 7–2 Corrective Action

When authorized representatives of the Shipping Office determine that facilities, equipment, or services do not meet the terms, conditions or specifications prescribed by this TOS, the TSP or its agent shall cooperate fully to promptly correct the deficiency by taking appropriate action at no additional cost to the Government.

Item 7–3 Facilities

The TSP must furnish Government representatives with free access and reasonable facilities and assistance to accomplish their inspection.

Section 8—Temporary Nonuse, Debarment, and Suspension

Item 8–1 Basis and Time Period

TSPs may be placed in temporary nonuse by an agency shipping facility manager or tender servicing office for a period not exceeding 90 days if the terms or conditions of this TOS are not met or for any cause(s) listed in Title 41 of the Code of Federal Regulations (41 CFR) 41 CFR 102–117.290(a), or for debarment status for cause(s) set forth in 41 CFR 102–117.290(c), or for

suspension status for cause(s) set forth in 41 CFR 102–117.290(b).

When there is a sufficient basis to initiate temporary nonuse action against a TSP, the TSP will be notified by certified mail, return receipt requested, of the following:

A. The effective dates of the proposed temporary nonuse;

B. The extent or scope of the proposed temporary nonuse, including the specific transportation facilities to which the period of exclusion will be applicable;

C. The facts relied on to support the specified cause(s) for temporary nonuse;

D. Upon receipt of the initiating officer's notice of proposed temporary nonuse, the TSP will be given a period of 7 calendar days during which it may submit in person, in writing, or through a representative, rebuttal information and arguments opposing the temporary nonuse;

E. The initiating officer has a period of 5 working days to evaluate a TSP's rebuttal information, any opposing arguments and render a decision;

F. The availability of an appeal of the initiating officer's decision to a reviewing official, provided the request for review is received within 5 work days of receipt of the transportation officer's decision;

G. The corrective action required by the TSP to be removed from temporary nonuse; and

H. TSP failure to correct the cause(s) for temporary nonuse will result in an additional nonuse period of 30 calendar days during which the case will be referred to the agency's debarring official for appropriate action.

Sections 9 Through 14 Reserved

Section 15—Forms TSP Certification Statement

TSP certification of eligibility for the award of contracts for transportation.

A. By submitting this rate tender, the TSP certifies that:

(1) Neither the TSP, nor any of its subsidiaries, officers, directors, principal owners, or principal employees is currently suspended, debarred, (or in receipt of a notice of proposed debarment from any Federal agency as a result of a civil judgment or criminal conviction or for any cause from GSA), or has been placed in temporary nonuse status by GSA for the routes covered by this tender as of the date that this rate tender is offered.

(2) The TSP is not a corporation, partnership, sole proprietorship or any other business entity which has been formed or organized following the suspension or debarment of, a subsidiary, officer, director, principal owner, or principal employee thereof (or from such an entity formed after receipt of a notice of proposed debarment).

B. The following definitions are applicable to this certification:

(1) A subsidiary is a business entity whose management decisions are influenced by the TSP through legal or equitable ownership of a controlling interest in the firm's stock, assets, or otherwise.

(2) A principal owner is an individual or company which owns a controlling interest in the TSP's stock, or an individual who can control, or substantially influence, the TSP's management, through the ownership interest of family members or close associates.

(3) A principal employee is a person(s) acting in a managerial or supervisory capacity (including consultants and business advisors) who is able to direct, or substantially influence, the TSP's performance of its obligations under its contracts for transportation with the Federal Government.

C. The knowledge of the person who executes this certification is not required to exceed the knowledge which that person can reasonably be expected to possess, following inquiry, regarding the suspended or debarred status of the parties defined in (B), above.

D. The TSP has a continuing obligation to inform the GSA office to which this rate tender is submitted of any change in circumstances which results in its ineligibility for the receipt of contracts for transportation.

E. An erroneous certification of eligibility or failure to notify the GSA transportation zone office receiving this tender of a change in eligibility, may result in a recommendation for administrative action against the TSP. Additionally, false statements to an agency of the Federal Government are subject to criminal prosecution pursuant to 18 USC 1001, as well as possible civil penalties.

Company name _____
Signature and Title of Authorized Official
Date _____
TSP Contact _____
Name _____
Title _____
Address _____
City/State _____
Telephone No. ( ) _____

General Services Administration

Basic Transportation Trading Partner Agreement

Applicability: Check the box below which represents the activity of your firm under this Trading Partner Agreement:

☐ Freight Common TSP (All paragraphs, except Paragraph 4 and 5 of this agreement will apply and are binding).

☐ Small Package TSP (All paragraphs, except Paragraphs 3 and 4 of this agreement will apply and are binding).

☐ Household Goods Common TSP (All paragraphs, except Paragraphs 3 and 5 of this agreement will apply and are binding).

☐ Freight Freight Forwarder (All paragraphs, except Paragraph 4 and 5 of this agreement will apply and are binding).

☐ Household Goods Freight Forwarder (All paragraphs, except Paragraphs 3 and 5 of this agreement will apply and are binding).

☐ Freight Broker (All paragraphs, except Paragraphs 4 and 5 of this agreement will apply and are binding).

☐ Freight Shipper Agent/Intermodal Marketing Company (All paragraphs, except Paragraphs 4 and 5 of this agreement will apply and are binding).

☐ Rate Filing Service Provider (All paragraphs of this agreement will apply and are binding).

1. Introduction

This agreement prescribes the general procedures and polices to be followed when Electronic Commerce (EC) is used for transmitting and receiving requests for offers, rate tenders, or other business information in lieu of creating one or more paper documents normally associated with conducting business with the General Services Administration.

The General Services Administration (GSA or the agency) will transmit and receive using the File Transfer Protocol (FTP) of the Internet network (I–FTP) such transaction sets (documents) as it chooses and as established by the governing tender of service or the request for offers. These transaction sets will be transmitted to those firms, organizations, agencies, or other entities (trading partners) recognized by GSA that agree to accept such documents and to be bound by the terms and conditions contained in those documents, this agreement, and any applicable tender of service.

2. Purpose

This agreement is to ensure that all EC obligations are legally binding on all trading partners. Further, the use of any electronic equivalent of a standard business document referenced in Paragraphs 3 and 4 will be deemed an acceptable business practice and that no

trading partner will challenge the admissibility of the electronic information in evidence, except in circumstances in which an analogous paper document could be challenged.

3. Freight Reference

This agreement, in addition to the terms and conditions stated in Paragraph 6, is subject to the terms and conditions of the following documents:

- GSA Freight Traffic Management Program Standard Tender of Service
- Optional Form 280
- GSA Freight Traffic Management Program Request for Offers

4. Household Goods Reference

This agreement, in addition to the terms and conditions stated in Paragraph 6, is subject to the terms and conditions of the following documents:

- GSA Centralized Household Goods Traffic Management Program Tender of Service
- Optional Form 280
- GSA Centralized Household Goods Traffic Management Program Request for Offers

5. Small Package Reference

This agreement, in addition to the terms and conditions stated in Paragraph 6, is subject to the terms and conditions of the following documents:

- GSA Small Package Traffic Management Program Small Package Tender of Service
- Optional Form 280
- GSA Small Package Traffic Management Program Request for Offers

6. Terms and Conditions

(A) GSA will place electronic documents in a publicly accessible directory on GSA's FTP server (KCFTP.GSA.GOV/PUB) and when warranted in the directory of a confirmed trading partner (trading partner/<SCAC>), either directory hereinafter referred to as directory. It will receive documents from confirmed trading partners in each confirmed trading partner's directory via I–FTP. Receipt by the trading partner is considered to occur when the document is placed in either the public directory or the trading partner's directory, as the case may be.

(B) GSA will bear the costs of maintaining the GSA FTP server and the costs of placing documents issued by GSA in the appropriate directory on the GSA FTP server, and the costs of managing documents put on the GSA FTP server by its trading partners. The agency's trading partners are responsible for all costs associated with getting documents from or putting documents on the GSA FTP server.

(C) When the transmissions are submissions of rate tenders, the submitting firm must have first met all applicable approval requirements set out in the applicable, governing Tender of Service.

(D) GSA will be responsible for the accuracy of documents issued by it and placed in the GSA FTP server directory. GSA will not be responsible for errors occurring in documents put on the GSA FTP server, nor will GSA be responsible for errors occurring in documents gotten from the GSA FTP server.

(E) GSA will not be responsible for any damages incurred by a trading partner as a result of missing or delayed transmissions when the problem is not with or caused by GSA or the agency's FTP server.

(F) Any document placed in a directory maintained on the GSA FTP server is to be considered a valid and authentic document backed by the same guarantees of legitimacy as are found in a paper transaction. Likewise, any document from a trading partner put into a directory on the GSA FTP server will be considered a valid and authentic document backed by the same guarantees of legitimacy as are found in a paper transaction.

(G) In the event a TSP uses a broker, shipper agent/Intermodal Marketing Company, or filing service to file its rates with GSA, documents submitted on behalf of the TSP shall be accepted as though submitted by the TSP and in accordance with the terms and conditions of the trading partner agreement between the TSP and GSA. The use of a broker, shipper agent/Intermodal Marketing Company, or filing service does not relieve the TSP of any of its rights or obligations under the terms of this agreement, including the maintenance of a valid trading partner agreement with GSA.

7. Force Majeure

None of the parties in this agreement will be liable for failure to properly conduct EC in the event of war, accident, riot, fire, flood, epidemic, power outage, labor dispute, act of God, act of public enemy, malfunction or inappropriate design of hardware or software, or any other cause beyond such party's control. If standard business cannot be conducted by EC, GSA will, at its discretion, return to a paper based system.

8. Effective Date

The effective date of this agreement will be the latest of the date(s) shown on the signature page of this document.

9. Agreement Review

This agreement will be effective on a continuing basis, except as provided in Paragraph 10, below; provided, however, that GSA may from time to time make such changes to the agreement as are necessary, and the trading partner may request review of the agreement at any time.

10. Termination

(A) In the event that GSA terminates a firm's participation in the GSA Freight Traffic Management Program (including the Small Package Tender of Service) and/or the GSA Centralized Household Goods Traffic Management Program, this agreement shall be considered terminated as of the date notice is given to a firm of its participation termination.

(B) In the event that a firm terminates its participation in the GSA Freight Traffic Management Program (including the Small Package Tender of Service) and/or the GSA Centralized Household Goods Traffic Management Program, this agreement shall be considered terminated as of the date notice of such termination is received by the GSA.

(C) Except as provided above, this agreement may be terminated by either GSA or its trading partner, effective 30 days after receipt of written notice by either party. Termination will have no effect on transactions occurring prior to the effective date of termination.

11. Whole Agreement

This agreement and all addenda constitute the entire agreement between the parties. No changes in terms and conditions of this agreement shall be effective unless approved and signed by both parties. At the inception of this agreement, Addendum/Addenda (is) (are) not applicable. As the parties develop and implement additional EC capabilities, addenda may be incorporated into this agreement. Each addendum will be signed and dated by both parties. The latest date contained on the signature page will be the effective date of the addenda. The addendum will be appended to this agreement.

_____

Name and Signature

_____

Title

_____

Firm

_____

Mailing Address

_____

City, State, Zip

_____

Telephone

_____

_____
Fax

_____
Internet E-mail

_____
Electronic Commerce Contact

_____
Telephone

_____
Fax

_____
Internet E-mail

_____
Date

Representing the General Services Administration

Ed Hodges
Name and Signature

Manager, GSA Freight Program Management Office (FPMO)
Title

Federal Supply Service(6FBD–X)
Firm

1500 East Bannister Road, Room 1076
Street Address

Kansas City, MO 64131
City, State, Zip

816–823–3646
Telephone

816–823–3656
Fax

carey.deforest@gsa.gov
Internet E-mail

Carey DeForest
Electronic Commerce Contact

816–823–3646
Telephone

816–823–3656
Fax

carey.deforest@gsa.gov
Internet E-mail

_____
Date

Trading Partner Agreement Number: _____
(to be completed by gsa)

General Services Administration

Small Package Tender of Service No. 10

Letter of Intent—Carrier Agreement To Abide by the Terms and Conditions of the General Services Administration Small Package Tender of Service (SPTOS) General Small Package Traffic Management Program

Please accept our request to participate in the General Services Administration (GSA) Small Package Tender of Service (SPTOS) General Small Package Traffic Management Program. Only one letter of intent should be submitted to each participating Government agency office with the first tender filing, regardless of the number of tenders submitted.

I certify that I have read and will comply with all the provisions contained in the GSA Small Package Tender of Service (SPTOS) GSA General Small Package Tender of Service No. 10, the GSA National Small Package Rules Tender No. 11, and the GSA Small Package Baseline Rate Publication No. 12, effective November 1, 2002. I further certify that the undersigned company has the operating authority and insurance as required by ITEM 1–5 and SECTION 2, of the GSA GENERAL SMALL PACKAGE TENDER OF SERVICE NO. 10.

Company Name _____
Signature and Title of Authorized Official Date _____
TSP CONTACT _____
NAME _____
TITLE _____
ADDRESS _____
AREA CODE: (__) _____
Telephone No. _____

Sections 16 Through 20 Reserved

Part 2

General Services Administration

National Small Package Rules Tender No. 11

[GSA No. 11]

Providing Rules And Baseline Charges for Accessorial Services for Governing Publications, See ITEM 10

This tender applies on both Intrastate and Interstate traffic
General Services Administration
Federal Supply Service
Freight Program Management Office (6FBD-X)
1500 E. Bannister Rd.
Kansas City, Missouri 64131

Table of Contents

Section 1—General Tender Application

Item 5 Purpose, Explanation, and Application

Section 1. Purpose

The purpose of this General Services Administration (GSA) National Small Package Rules Tender No. 11 (GSA No. 11) is to articulate the transportation service needs of the participating Government agencies listed in Item 1–2 of the General Services Administration (GSA) General Small Package Tender of Service No. 10 (GSA SPTOS No. 10) herein, for the movement of routine ground small package traffic moving via commercial carriers and to assist in GSA's effort in implementing the standardization necessary to achieve a fully automated system for rating and routing Government small package shipments.

Section 2. Explanation

The baseline rates and charges, rules, and other provisions contained in this tender have been constructed by GSA and are above some commercial levels, and for the same provisions below other commercial levels.

Section 3. Application

Where reference is made to the GSA National Small Package Rules Tender No. 11 (GSA No. 11) in a TSP's tender or rate agreement, the rules and accessorial charges contained in this publication will govern the small package services of the TSP's tender, and will apply from, to, or between those points which are specified in the individual tender. This is not in any way to be construed as a setting of rates, rules or charges by GSA. TSP' Tenders cannot be made subject to any other publication for application of the rates or charges therein. If any TSP published rates, rules or terminal services tariff is shown in a tender, the tender will be rejected and returned to the carrier.

The publications listed in item 10 governing publications herein, form part of the rules publication and will not need to be listed in block 16 of the individual tenders.

Item 10 Governing Publications

This tender is governed, except as otherwise provided herein, by the following described tariffs or specifications, by supplements or loose-leaf page amendments thereto, or by successive issues or reissues thereof:

Title	Kind of tariff	Tariff number
National Motor Freight Traffic Association Inc., Agent	Directory Of Standard Multi-Modal Carrier And Tariff Agents Codes (SCAC and STAC) .	101–K.
ALK Associates	Automated Electronic Mileages based on 5 digit Zip codes .	Version 15.

Item 20 Revising Tender Provisions and Method of Canceling Original or Revised Pages

This TOS will be revised by the Freight Program Management Office (6FBD–X), Kansas City, MO through publication of the changes on GSA's WorldWide Web Page (*http://www.kc.gsa.gov/fsstt*), the issuance of page revisions (original or revised), or the reissuance of the document on an ''asneeded'' basis.

A. TOS Page Revisions: Reserved

B. Reissuing the SPTOS: Reserved

Item 30 Definition of Terms

(1) Accessorial Services

Other services in addition to the basic cost to transport the shipment.

(2) Business Hours and Days

(a) Business Hours: The term ''Business Hours'' is defined as the customer or agency's normal business hours.

(b) Business Days: The term ''Business Days'' is defined as Monday through Friday, except legal holidays (as shown in Item 30 Definition of Terms, (3) Legal Holidays herein).

(3) Legal Holidays

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday (Presidents' Day)
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day
and any other day designated as a holiday by Federal statute or Executive Order.

(4) Transportation Service Provider (TSP)

A TSP is any party, person, agent or carrier that provides freight transportation and related services to an agency. For a freight shipment this would include packers, truckers and storers.

(5) Conus

''CONUS'' is defined as all points within the contiguous United States, including the District of Columbia (DC), (excluding Alaska, Hawaii and Puerto Rico).

(6) Desktop Delivery

Delivery to the desk/work station of the consignee or responsible individual at the destination address.

(7) Desktop Pick-up

Pick-up at the desk/work station of the consignor or responsible individual at the origin address.

(8) Dimensional Weight

When the charges for a shipment are computed on the basis of volume rather than weight it is referred to as a dimensional or DIM weight shipment. Dimensional weight is calculated by multiplying the length × width × height of each piece in the shipment in inches and dividing by 194 [i.e., (L × W × H) ÷ 194].

(9) Girth

The circumference of a package measured at the widest point of the package.

(10) Length

The longest side of a package.

(11) Length and Girth Combined

The measurement of a package obtained by adding the length of the package to the girth of the package.

(12) On-Time Delivery

On-time delivery includes delivery of the shipment intact, without loss or damage in the prescribed time. Partial deliveries, damaged shipments, and shipments not reported will be construed as late deliveries.

(13) Package

Package is defined as any container and its contents, and includes any article which may be handled loose if the handling can be accomplished in a reasonably safe manner. Individual packages can weigh up to 150 pounds, with no single dimension greater than 108 inches or a total of 130 inches in combined length and girth.

(14) Shipment

A single piece or multiple pieces tendered to a TSP by one consignor at one place at one time for delivery to one consignee at one place on one shipping document.

(15) Hundredweight Service

Packages addressed to a single consignee at one location with a total aggregate weight of 200 pounds or more for each shipment. Charges are calculated by multiplying the number of Hundredweight Units by the Rate Per Hundredweight.

(16) Subject to Note and See Note

(a) Subject to Note: The term ''Subject to Note'', when used in the title of an item in Section 2 herein, means that the note indicated applies to the entire item.

(b) See Note: The term ''See Note'', when used in the title of an item in Section 2 herein, means that the referenced note applies only where indicated, not to the entire item.

Item 35 Disposition of Fractions

A. Fractions of a cent resulting from the application of a TSP's independently-established percentages of the baseline rates in the GSA National Small Package Rules Tender No. 11 will be disposed of as follows:

1. Fractions of less than one-half of one cent will be omitted; and

2. Fractions of one-half of one cent or greater will be increased to the next whole cent.

B. Fractions of a cent resulting from the application of a TSP's independently-established rates will be disposed of as follows:

1. Fractions of less than one-half of one cent will be omitted; and

2. Fractions of one-half of one cent or greater will be increased to the next whole cent.

Item 40 Services Not Otherwise Specified

When a TSP performs services that are required for normal movement of small package shipments and such services are not identified in the GSA National Small Package Rules Tender No. 11 (GSA No. 11), the charges for these services will be negotiated between the responsible agency office and the TSP.

Section 2—General Rules and Specific Pickup/Delivery Charges

Item 100 Additional Handling Charge

1. In addition to the other rates and charges named in this Rules Tender, a charge of $5.00 for additional handling will be assessed on each shipment of:

• Any package exceeding 60 inches but not exceeding 108 inches in length.
• Any article not fully encased in an outside shipping container, any article that is encased in an outside shipping container made of metal or wood, and any drum or pail less than five gallons not fully encased in a shipping container made of corrugated cardboard.

2. In addition to the other rates and charges named in this Rules Tender, a $15.00 surcharge for additional handling will be assessed on each shipment of:
• Any package measuring more than 108 inches in length.
• Any package measuring more than 130 inches in length and girth combined.
• Any package weighing more than 150 pounds.

Item 110 Additional Insured Value

Additional insured value at a rate of $0.35 per $100 in excess of TSP liability coverage of $100 per package.

Item 130 Bill of Lading—Commercial

TSP will furnish commercial bill of lading sets required by the Government without any additional charge. The bill of lading sets can consist of any number of copies. When preparing shipments for tender, each package must contain a barcode label and address label. This can take the form of (1) a combined barcode/address label produced by an automated device, supplied software or other third-party parcel-processing equipment, or (2) a preprinted bar code label and an address label created by the shipper.

Item 150 Each Address Correction

If the TSP is unable to deliver a package because the Shipper-provided address is incorrect or a P.O. Box, the TSP will make every reasonable effort to secure the consignee's correct address, but takes no responsibility for its inability to complete the delivery under such circumstances. If the consignee's correct address can be secured, the TSP will make another attempt to deliver the package and notify the Shipper of the address correction. A charge of $5.00 will be assessed.

Item 200 Each Acknowledgement of Delivery

Shippers may request consignee acknowledgement of delivery by using a TSP-provided label. The Shipper will prepare this self-addressed form and attach it to thepackage at the time it is tendered for delivery. The TSP will obtain the consignee's signature acknowledging receipt of the package and mail the consignee-signed label to the Shipper. An additional charge of $2.00 will be assessed for each package bearing such label.

Item 210 Each Recall of a Prior Delivery

1. Shippers may request the recall of packages previously delivered either by:

a. Preparing a TSP-provided Call Tag Pickup List, or

b. Calling TSP customer service number and giving the locations of any packages to be recalled, or

c. Via electronic data transmission using the transmission means and data format specified by the carrier.

2. A charge of $5.00 will be assessed for this Call Tag service in addition to applicable transportation charges.

Item 220 C.O.D. Services (Collect on Delivery)

For each C.O.D. package, a charge of $6.00 will be assessed in addition to the applicable transportation charges.

Item 230 Hazardous Material Surcharge

For each package bearing a Hazardous Materials label, a charge of $17.00 per package will be assessed in addition to the applicable transportation charges.

Item 250 Payment of Charges

All rates, charges, or other amounts are stated as U.S. currency and all rates, charges, or other amounts are payable in lawful money of the U.S.

Item 270 Pickup or Delivery Service at Private Residences

Packages picked-up and/or delivered to private residences will be assessed a charge of $2.50 per package in addition to the applicable transportation charges.

Item 290 Pickup and Delivery Service—Saturday

The TSP will provide Saturday pickup and delivery service to those areas of CONUS where this service is performed for its commercial customers. This service will only be performed when specifically requested and mutually agreed. A charge of $10.00 will be assessed for this service in addition to the applicable transportation charges.

Item 300 Property of Unusual Value or Unsafe to Transport

TSPs are not required to accept articles of unusual value or freight that is unsafe to transport that may cause damage to other goods or to their equipment without adequate consideration or compensation.

Section 3—Fuel Related General Rate Adjustment

ITEM 1000 Fuel Related General Rate Adjustment (FRGRA)

TSPs participating in this Small Package Tender of Service (SPTOS), supplements thereto and reissues thereof will be entitled to or will be required to provide a Fuel Related General Rate Adjustment to the standard transportation charges in accordance with the following:

A. SPTOS Notice

The General Services Administration (GSA) Freight Program Management Office (FPMO), Kansas City, MO shall issue a SPTOS Notice setting forth the terms and conditions of the applicable Fuel Related General Rate Adjustment.

B. Applicability

The Fuel Related General Rate Adjustment is applicable to all GSA-negotiated tenders and tenders negotiated by Federal customers participating in the SPTOS. The FRGRA may not be waived or altered by any organization other than the FPMO, Kansas City, MO.

C. Setting Baseline

The diesel fuel price ranges and corresponding percent surcharge levels have been formulated based on discussions and research with the motor carrier industry as of November 2000. The levels indicated in this policy have been determined to be current industry standard practice. This policy and its entitlements will be reviewed on an as-needed basis.

D. Availability of SPTOS Notice

1. Reserved.

2. Reserved.

3. Distribution of: The SPTOS Notice will only be published on GSA's Traffic Management WorldWide Web Site at the following address: www.kc.gsa.gov/fsstt/

E. Shipment Application

Application of the Fuel-Related General Rate Adjustment will become effective on Wednesday following the National Average diesel fuel price posting by the Department of Energy, Energy Information Administration (EIA) on every Monday or the first working day after Monday if the Monday falls on a Federal Holiday.

Part 3

General Services Administration

Baseline Rate Publication No. 12

[GSA No. 12]

Containing Baseline Rates for the Movement of Civilian Agency Small Package Shipments

This tender applies on both Intrastate and Interstate traffic
General Services Administration
Federal Supply Service
Freight Program Management Office (6FBD–X)
1500 E. Bannister Rd.
Kansas City, Missouri 64131

Table of Contents

Section A—General Application and Instructions

Section B—Table of Baseline Rates

Section C—Table of Baseline Rates for Hundredweight Service

Section A—General Application and Instructions

Item 1 Purpose and Application

Purpose

This General Services Administration (GSA) Baseline Rate Publication No. 12 (GSA No. 12) is designed to afford carriers a simple method of expressing and filing Freight-All-Kinds (FAK) rate tender(s) for the civilian agencies of the U.S. Government. Its purpose is to provide the standardization necessary to achieve a fully automated system for rating and routing traffic, without requiring substantive changes in the manner in which rates for this traffic have traditionally been stated.

Application

The baseline rates contained in this publication shall serve as a basis for carriers to submit actual rates for small package shipments from, to, or between all points in CONUS.

Governing Rules

Rates offered to a civilian agency using this publication will be subject to the rules, accessorial services, and accessorial charges contained in General Services Administration (GSA) National Small Package Rules Tender No. 11 (GSA No. 11) and supplements or reissues thereto.

GSA Baseline Rates

The rates shown in this publication were adopted from United Parcel Service (UPS) Ground Commercial rate tables. This is not in any way to be construed as the setting of rates or charges by GSA. Carriers must independently establish their own rates only by utilizing a percentage above, below, or equal to the level of baseline rates shown in Section B, Item 100 Table of Baseline Rates and Section B, Item 101 Table of Baseline Rates for Hundredweight Service of this publication.

Application of General Rate Increases

The baseline rates contained in this publication will be adjusted on an as-needed basis.

Item 10 Revising Publication Provisions and Method of Canceling Original or Revised Pages

This SPTOS will be revised by the Freight Program Management Office (6FBD–X), Kansas City, MO through publication of the changes on GSA's WorldWide Web Page (http://www.kc.gsa.gov/fsstt), the issuance of page revisions (original or revised), or the reissuance of the document on an ''as-needed'' basis.

A. TOS Page Revisions: Reserved

B. Reissuing the SPTOS: Reserved

Item 20 Disposition of Fractions

Fractions of a cent resulting from the application of a TSP's independently-established percentage(s) of the baseline rates shown in SECTION B of this publication, shall be disposed of as follows:

A. Fractions of less than one-half of one cent shall be omitted; and

B. Fractions of one-half of one cent or greater shall be increased to the next whole cent.

Item 30 Mileage to Zone Conversion

Converting mileages to zones is as follows:

0 to 150 miles—ZONE 2

151 to 300 miles—ZONE 3

301 to 600 miles—ZONE 4

601 to 1000 miles—ZONE 5

1001 to 1400 miles—ZONE 6

1401 to 1800 miles—ZONE 7

1801 miles & over—ZONE 8

(Actual mileages as they relate to zones may vary)

Section B—Table of Baseline Rates

ITEM 100.—TABLE OF BASELINE RATES AND MINIMUM CHARGE

Weight not to exceed (in pounds)	ZONES						
	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6	ZONE 7	ZONE 8
1	$3.11	$3.22	$3.45	$3.51	$3.70	$3.74	$3.85
2	3.18	3.38	3.72	3.83	4.12	4.22	4.48
3	3.27	3.54	3.93	4.09	4.39	4.54	4.96
4	3.39	3.69	4.14	4.36	4.66	4.80	5.28
5	3.53	3.83	4.33	4.57	4.87	5.07	5.60
6	3.68	3.96	4.48	4.78	5.08	5.34	5.87
7	3.83	4.08	4.59	4.94	5.29	5.55	6.13
8	3.97	4.21	4.70	5.05	5.45	5.81	6.56
9	4.10	4.34	4.80	5.16	5.61	6.13	6.98
10	4.24	4.45	4.91	5.32	5.83	6.56	7.46
11	4.38	4.58	5.02	5.47	6.09	7.04	7.99
12	4.52	4.72	5.12	5.63	6.36	7.52	8.58
13	4.65	4.87	5.22	5.74	6.67	7.99	9.17
14	4.76	5.02	5.32	5.85	7.05	8.47	9.74
15	4.87	5.18	5.41	6.01	7.42	8.95	10.33
16	4.96	5.35	5.57	6.22	7.80	9.42	10.92
17	5.05	5.53	5.73	6.48	8.20	9.91	11.51
18	5.14	5.72	5.94	6.80	8.59	10.38	12.08
19	5.25	5.91	6.16	7.12	8.98	10.87	12.67

ITEM 100.—TABLE OF BASELINE RATES AND MINIMUM CHARGE—Continued

Weight not to exceed (in pounds)	ZONES						
	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6	ZONE 7	ZONE 8
20	5.37	6.10	6.37	7.44	9.37	11.29	13.26
21	5.50	6.29	6.59	7.76	9.76	11.71	13.84
22	5.63	6.48	6.81	8.08	10.17	12.13	14.42
23	5.77	6.67	7.04	8.34	10.56	12.62	15.01
24	5.91	6.86	7.26	8.61	10.95	13.09	15.59
25	6.05	7.02	7.49	8.88	11.34	13.58	16.18
26	6.19	7.19	7.70	9.14	11.73	14.00	16.71
27	6.32	7.34	7.94	9.41	12.12	14.42	17.24
28	6.46	7.51	8.18	9.69	12.53	14.85	17.83
29	6.60	7.67	8.41	9.98	12.92	15.33	18.41
30	6.74	7.86	8.63	10.27	13.31	15.81	18.99
31	6.88	8.03	8.87	10.56	13.70	16.28	19.58
32	7.01	8.22	9.10	10.86	14.09	16.76	20.17
33	7.16	8.39	9.32	11.16	14.48	17.24	20.75
34	7.28	8.58	9.56	11.44	14.86	17.72	21.32
35	7.41	8.76	9.78	11.74	15.24	18.20	21.90
36	7.54	8.94	10.00	12.03	15.62	18.67	22.47
37	7.66	9.12	10.24	12.32	15.99	19.16	23.02
38	7.79	9.30	10.47	12.61	16.35	19.63	23.58
39	7.91	9.49	10.69	12.90	16.70	20.11	24.13
40	8.02	9.66	10.92	13.18	17.04	20.59	24.67
41	8.14	9.85	11.13	13.46	17.38	21.06	25.22
42	8.26	10.02	11.36	13.75	17.72	21.55	25.74
43	8.37	10.21	11.58	14.04	18.05	22.02	26.28
44	8.49	10.38	11.78	14.33	18.37	22.51	26.81
45	8.58	10.57	11.99	14.62	18.67	22.93	27.34
46	8.66	10.73	12.20	14.90	18.97	23.35	27.87
47	8.75	10.90	12.38	15.18	19.26	23.77	28.40
48	8.84	11.04	12.58	15.44	19.54	24.21	28.88
49	8.92	11.19	12.75	15.70	19.81	24.63	29.30
50	9.00	11.31	12.94	15.95	20.05	25.00	29.68
51	9.09	11.42	13.10	16.18	20.30	25.37	30.05
52	9.18	11.54	13.28	16.39	20.55	25.69	30.42
53	9.26	11.64	13.43	16.60	20.80	25.96	30.74
54	9.34	11.74	13.60	16.82	21.03	26.17	31.00
55	9.42	11.86	13.74	17.03	21.28	26.33	31.27
56	9.52	11.96	13.90	17.24	21.53	26.49	31.49
57	9.60	12.06	14.03	17.45	21.75	26.65	31.69
58	9.68	12.17	14.17	17.61	21.98	26.81	31.91
59	9.76	12.28	14.30	17.77	22.20	26.97	32.13
60	9.86	12.37	14.42	17.93	22.39	27.13	32.33
61	9.94	12.46	14.54	18.04	22.59	27.29	32.55
62	10.02	12.57	14.66	18.15	22.76	27.45	32.77
63	10.10	12.66	14.77	18.25	22.94	27.61	32.97
64	10.20	12.75	14.88	18.36	23.09	27.76	33.19
65	10.28	12.85	14.99	18.47	23.25	27.92	33.39
66	10.36	12.95	15.08	18.58	23.38	28.08	33.61
67	10.43	13.04	15.18	18.71	23.52	28.24	33.83
68	10.52	13.13	15.28	18.85	23.63	28.40	34.03
69	10.59	13.24	15.37	18.99	23.73	28.56	34.25
70	10.65	13.33	15.47	19.16	23.85	28.72	34.47
71	15.33	17.26	19.19	21.28	25.70	30.05	35.53
72	19.36	21.20	22.91	23.94	27.56	31.64	36.59
73	22.76	24.49	26.09	26.60	29.42	33.24	37.38
74	25.10	26.94	28.49	29.25	31.28	34.57	38.18
75	26.38	28.21	30.08	30.85	32.88	35.63	38.71
76	27.66	29.27	30.88	31.91	34.21	36.43	39.24
77	28.72	30.23	31.57	32.70	35.27	36.96	39.67
78	29.68	31.14	32.21	33.51	36.06	37.44	40.10
79	30.42	32.03	32.80	34.03	36.60	37.92	40.52
80	31.06	32.94	33.32	34.47	37.02	38.34	40.94
81	31.64	33.41	33.81	34.89	37.45	38.77	41.37
82	32.18	33.89	34.27	35.31	37.87	39.19	41.80
83	32.65	34.34	34.72	35.73	38.30	39.62	42.22
84	33.07	34.79	35.18	36.16	38.72	40.04	42.64
85	33.51	35.23	35.61	36.59	39.15	40.47	43.08
86	33.93	35.65	36.03	37.01	39.57	40.89	43.50
87	34.35	36.07	36.47	37.44	40.00	41.31	43.92
88	34.78	36.50	36.91	37.86	40.43	41.75	44.34
89	35.21	36.93	37.35	38.29	40.85	42.17	44.78

ITEM 100.—TABLE OF BASELINE RATES AND MINIMUM CHARGE—Continued

Weight not to exceed (in pounds)	ZONES						
	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6	ZONE 7	ZONE 8
90	35.63	37.35	37.79	38.71	41.27	42.59	45.20
91	36.05	37.78	38.21	39.14	41.70	43.01	45.62
92	36.48	38.20	38.63	39.56	42.13	43.45	46.04
93	36.91	38.63	39.03	39.99	42.55	43.87	46.48
94	37.33	39.05	39.42	40.42	42.97	44.29	46.90
95	37.76	39.48	39.80	40.84	43.41	44.71	47.32
96	38.17	39.85	40.18	41.26	43.83	45.15	47.75
97	38.59	40.22	40.56	41.69	44.25	45.57	48.17
98	39.00	40.59	40.94	42.12	44.67	45.99	48.60
99	39.42	40.96	41.33	42.54	45.11	46.42	49.02
100	39.83	41.34	41.71	42.96	45.53	46.85	49.45
101	40.20	41.71	42.10	43.32	45.92	47.26	49.86
102	40.57	42.09	42.48	43.68	46.31	47.67	50.28
103	40.94	42.46	42.86	44.04	46.70	48.09	50.69
104	41.31	42.83	43.24	44.42	47.10	48.50	51.11
105	41.69	43.20	43.62	44.78	47.50	48.92	51.52
106	42.06	43.57	44.00	45.14	47.89	49.33	51.93
107	42.44	43.94	44.38	45.50	48.28	49.75	52.35
108	42.81	44.31	44.78	45.86	48.67	50.16	52.77
109	43.18	44.68	45.16	46.22	49.07	50.57	53.18
110	43.55	45.05	45.54	46.58	49.46	50.99	53.59
111	43.91	45.43	45.92	46.94	49.85	51.41	54.01
112	44.27	45.81	46.30	47.30	50.25	51.82	54.43
113	44.63	46.18	46.68	47.66	50.64	52.23	54.84
114	44.99	46.55	47.07	48.02	51.03	52.65	55.25
115	45.35	46.92	47.45	48.38	51.43	53.07	55.66
116	45.71	47.29	47.84	48.75	51.82	53.48	56.09
117	46.08	47.66	48.22	49.11	52.21	53.89	56.50
118	46.44	48.03	48.60	49.47	52.60	54.30	56.91
119	46.80	48.41	48.98	49.83	53.00	54.73	57.32
120	47.17	48.78	49.36	50.19	53.40	55.14	57.74
121	47.53	49.15	49.75	50.55	53.79	55.55	58.16
122	47.89	49.52	50.13	50.91	54.18	55.96	58.57
123	48.25	49.90	50.51	51.28	54.57	56.38	58.98
124	48.61	50.27	50.89	51.64	54.96	56.80	59.40
125	48.97	50.64	51.28	52.00	55.35	57.21	59.81
126	49.33	51.01	51.66	52.36	55.76	57.62	60.23
127	49.69	51.39	52.04	52.73	56.15	58.03	60.64
128	50.06	51.76	52.43	53.09	56.54	58.45	61.06
129	50.42	52.13	52.81	53.45	56.93	58.87	61.47
130	50.78	52.50	53.19	53.81	57.32	59.28	61.88
131	51.14	52.87	53.57	54.17	57.72	59.69	62.30
132	51.50	53.24	53.95	54.53	58.11	60.11	62.72
133	51.86	53.61	54.33	54.89	58.51	60.53	63.13
134	52.22	53.98	54.73	55.25	58.90	60.94	63.54
135	52.58	54.36	55.11	55.61	59.29	61.35	63.96
136	52.94	54.74	55.49	55.97	59.68	61.77	64.38
137	53.30	55.11	55.87	56.33	60.08	62.18	64.79
138	53.67	55.48	56.25	56.69	60.47	62.60	65.20
139	54.03	55.85	56.63	57.06	60.87	63.01	65.61
140	54.40	56.22	57.01	57.42	61.26	63.43	66.04
141	54.76	56.59	57.40	57.79	61.65	63.84	66.45
142	55.12	56.96	57.79	58.15	62.05	64.25	66.86
143	55.48	57.33	58.17	58.51	62.44	64.67	67.27
144	55.84	57.71	58.55	58.87	62.83	65.09	67.69
145	56.20	58.08	58.93	59.23	63.22	65.50	68.11
146	56.56	58.45	59.31	59.59	63.62	65.91	68.52
147	56.92	58.83	59.69	59.95	64.01	66.32	68.93
148	57.28	59.20	60.08	60.31	64.41	66.75	69.35
149	57.64	59.57	60.46	60.67	64.80	67.16	69.76
150	58.00	59.94	60.84	61.04	65.19	67.57	70.18

SECTION C.—TABLE OF BASELINE RATES FOR HUNDREDWEIGHT SERVICE.

ITEM 101.—TABLE OF BASELINE HUNDREDWEIGHT (CWT) RATES AND MINIMUM CHARGE.

	Zones						
Ground	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
	$17.30	$23.00	$28.70	$34.60	$40.50	$46.40	$52.30

Rates apply for shipments meeting these conditions:

Packages addressed to a single consignee at one location.

Total aggregate weight of 200 pounds or more for each shipment.

To calculate charges:

1. Divide the billing aggregate weight by 100 to determine the number of Hundredweight Units.

2. Refer to Zone Chart to determine the zone (Item 30 Mileage to Zone Conversion).

3. Locate the Rate Per Hundredweight for that zone on the chart above.

4. Multiply the number of Hundredweight Units by the Rate Per Hundredweight to calculate the shipping charge.

5. A minimum charge for a Hundredweight Shipment will be based on an average weight of 15 pounds per package or $57.50 per shipment, whichever is greater. When a minimum applies, rates for single packages may be more economical.

Example: Three 75lb packages being shipped to Zone 3. The total weight of the three packages = 225. 225 divided by 100 = 2.25. 2.25 × Zone 3 rate of $23.00 = $51.75. This is less than the minimum charge of $57.50, so the minimum charge applies.

[FR Doc. 02–7738 Filed 3–29–02; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on April 25–26, 2002

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its third meeting to discuss its agenda and future activities.

DATES: The meeting will take place April 25, 2002, from 8:30 am to 5:00 pm and April 26, 2002, from 8:30 am to 1 pm.

ADDRESSES: The Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

PUBLIC COMMENTS: The meeting agenda will be posted in the near future at *http://bioethics.gov.* Written statements may be submitted by members of the public for the Council's records. Please submit statements to Ms. Diane Gianelli (tel. 202/296–4669 or e-mail *info@bioethics.gov*). Persons wishing to comment in person may do so during the hour set aside for this purpose beginning at noon on Friday, April 26. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit our website at *http://bioethics.gov.*

Dated: March 22, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–7725 Filed 3–29–02; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the World Health Organization International Programme on Chemical Safety; Notice to Accept and Consider a Single Source Application; Availability of Funds for Fiscal Year 2002; RFA-FDA-CFSAN-02-2

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) is announcing its intent to accept and consider a single source application for the award of a cooperative agreement to the World Health Organization (WHO) to support the International Programme on Chemical Safety (IPCS). FDA anticipates providing $140,000 (direct and indirect costs) in fiscal year 2002 in support of this project. Subject to the availability of Federal funds and successful performance, two additional years of support up to $140,000 per year (direct and indirect costs) will be available.

The cooperative agreement assures FDA's participation in important international standard setting activities for food ingredients, contaminants, and veterinary drug residues which provides the public with greater assurance of the quality and safety of food sold in the United States.

DATES: Submit applications by May 1, 2002.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Rosemary Springer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182. If an application is hand-carried or commercially delivered, it should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, FAX 301–827–7101. Application forms can also be found at http://www.nih.gov/grants/phs398/forms_toc.html. Do not send the application to the Center for Scientific Review, National Institutes of Health (NIH). An application not received by FDA in time for orderly processing will be returned to the applicant without consideration. FDA can not receive an application electronically.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Rosemary Springer (see **ADDRESSES**), e-mail: rspringe@oc.fda.gov.

Regarding the programmatic aspects: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3083, e-mail: Mitchell. Cheeseman @CFSAN. fda.gov.

I. Introduction

FDA is announcing its intention to accept and consider a single source application from the WHO to support the International Programme on Chemical Safety. FDA's authority to enter into grants and cooperative agreements is detailed under section 301 of the Public Health Service Act (42

U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

II. Background

Under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), premarket approval is required for food additives intended for direct addition to food. FDA grants approval for the use of such food additives by issuance of a regulation prescribing the conditions under which the additive may be safely used, including any specifications regarding identity or purity that the additive must meet.

New animal drugs also require premarket approval under section 512 of the act (21 U.S.C 360b). As with food additives, FDA establishes appropriate limitations and specifications for the use of animal drugs.

Since the early 1980s, FDA has provided support for the WHO International Programme on Chemical Safety.

IPCS is a cooperative venture of three United Nations agencies: WHO, International Labor Organization (ILO), and the United Nations Environmental Programme (UNEP). WHO is the executing agency and manages the Central Unit in Geneva.

The IPCS organizational setting provides an umbrella that allows for timely collaboration in undertaking multinational cooperative activities, which is an important step in serving the world community.

The various programs under the International Programme on Chemical Safety significantly contribute in the development of international standards. An important program under IPCS is the Food and Agriculture Organization/WHO Joint Expert Committee on Food Additives (JECFA), which is the scientific advisory body to the Codex Alimentarius Commission for food additives, contaminants, and residues of veterinary drugs in food. Relevant standards, guidelines, and recommendations for food additives, contaminants, and veterinary drug residues established by the Codex Alimentarius Commission are specifically recognized by the World Trade Organization (WTO) as necessary to protect human health, and are presumed to be consistent with the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT). GATT requires that countries consider Codex standards when establishing measures to ensure food safety.

Since its inception in 1962, FDA has participated in the standard-setting activities of the Codex Alimentarius Commission, including developing standards for food additives, contaminants, and veterinary drug residues. The result of this interaction has been to maintain the high safety standard for foods entering the United States from abroad and to facilitate trade between the United States and the 164 other countries that participate in the development of, and recognize, Codex standards. It is important that FDA continues to participate in such standard development in order to maintain input into the development of appropriate scientific standards for the protection of the safety of food ingredients and to share information on the development of such standards around the world.

FDA's participation in international harmonization and international standard setting activities enhances the Agency's ability to achieve international standards that are favorable; ensures that the safety of the U.S. food supply is not compromised by inadequate international standards; and promotes the safe use of food additives in foods in international trade and thereby enhances the safe use of food additives in imported food. Participation in international standard setting activities also reduces the likelihood of challenges involving food additives being brought before WTO either by the U.S. Government or against the U.S. Government.

III. Objectives

The following activities to be supported by this cooperative agreement are:

1. Schedule, plan, and conduct appropriate work groups and committee meetings, which have emphasis on food additives and contaminants, and the evaluation of residues in veterinary drugs in food.

2. Identify advisers and prepare working papers summarizing the data on substances under consideration.

3. Prepare written working papers and technical documents for JECFA, for the Codex Committee on Food Additives and Contaminants, and for the Codex Committee on Residues of Veterinary Drugs in Food.

IV. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will participate as head of the U.S. Delegation in the Sessions of the Codex Committee on Food Additives and Contaminants (CCFAC). This includes participation in all ad hoc working groups associated with CCFAC. This participation includes, but is not limited to, serving as chair for the CCFAC ad hoc Working Group on the General Standard for Food Additives (GSFA), and the CCFAC ad hoc Working Group on Specifications, and participating in the CCFAC's ad hoc Working Group on Contaminants and Toxins.

2. FDA will participate in the Codex Committee on Residues of Veterinary Drugs in Food (CCRVDF). Current participation includes, but is not limited to, chair of CCRVDF and head of the U. S. Delegation to CCRVDF.

3. FDA will provide official comments to the Codex Secretariat on discussion documents, position papers, draft Codex standards, and other documents associated with CCFAC and CCRVDF that are circulated for comment. FDA will ensure that these comments are consistent with current agency policy on the use of food additives and the presence of contaminants in food (CCFAC), and on the presence of veterinary drug residues in food (CCRVDF).

4. FDA will work closely with the Codex Secretariat to provide, as needed, in accordance with charges given to the U.S. Delegation by CCFAC or CCRVDF, expert assistance in the timely development of Codex documents, which may include, but are not limited to, technical documents (e.g., associated with Meeting Reports of CCFAC and/or CCRVDF), databases, and draft Codex Standards (e.g., GSFA).

5. FDA will provide expert advice to FAO/WHO JECFA. This advice may include, but is not limited to, the areas of food additive specification development, estimation of intake of food additives and contaminants, risk assessment, and safety assessment of food additives, contaminants, and veterinary drug residues in food.

V. Availability of Funds

It is anticipated that FDA will fund this cooperative agreement at a level of

approximately $140,000 for the first year. An additional 2 years of support will be available, depending upon fiscal year appropriations, and successful performance.

VI. Reasons for Single-Source Selection

Competition is limited to WHO/IPCS because it is the parent organization of JECFA, which provides scientific advice to the Codex Alimentarius Commission. The international food standards established by the Codex Alimentarius Commission are recognized by WTO as necessary to protect public health and presumed to be consistent with the Sanitary and Phytosanitary Agreement of GATT. These programs under IPCS are the only such programs in existence and make IPCS unique as a participant in international standard setting for food ingredients, contaminants, and veterinary drug residues. Awarding this cooperative agreement will ensure that the risk assessments provided by JECFA to the Codex Alimentarius Commission are science-based, ensure that food sold in the United States is safe, and enhance the safe use of food additives in imported food.

VII. Submission Requirements

The original and two copies of the completed grant application form PHS 398 (rev. 5/01) with copies of the appendices for each of the copies, should be submitted to Rosemary Springer (see **ADDRESSES**). The outside of the mailing package should be labeled ''Response to RFA-FDA-CFSAN-02-2''. The application will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before May 1, 2002. Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the Public Health Service (PHS) to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

VIII. Reporting Requirements

An annual financial status report (FSR) (SF–269) is required. The original and two copies of the report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file FSR in a timely fashion will be grounds for suspension or termination of the grant.

An annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

A final program progress report, FSR (SF–269), and invention statement must be submitted within 90 days after the expiration of the project period as noted on the notice of grant award.

IX. Review Procedures and Evaluation Criteria

A. Review Procedures

The application submitted by WHO/IPCS will first be reviewed by grants management and program staff for responsiveness. The requested budget must not exceed $140,000 (direct and indirect costs). The application will be considered nonresponsive if it is not in compliance with this document. If an application is found to be nonresponsive, it will be returned to the applicant without further consideration.

The application submitted by IPCS will undergo noncompetitive dual peer review. The application will be reviewed for scientific and technical merit by an ad hoc panel of experts based upon the applicable evaluation criteria. If the application is recommended for approval, it will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence.

B. Review Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The application clearly demonstrates an understanding of the purpose and objectives of the cooperative agreement regarding the safety of food ingredients, contaminants, and veterinary drug residues.

2. The application clearly describes the steps and a proposed schedule for planning, implementing, and accomplishing the activities to be carried out under the cooperative agreement. The application presents a clear plan and schedule of steps to accomplish the goals of the cooperative agreement.

3. The application establishes the applicant's ability to perform the responsibilities under the cooperative agreement including the availability of appropriate staff and sufficient funding.

4. The application specifies the manner in which interaction with FDA will be maintained throughout the lifetime of the project.

5. The application specifies how IPCS will monitor progress of the work under the cooperative agreement and how progress will be reported to FDA.

6. The application shall include a detailed budget that shows: (1) Anticipated costs for personnel, travel, communications and postage, equipment, and supplies; and (2) the sources of funds to meet those needs.

X. Mechanism of Support

Support for this project will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant programs of PHS, including provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and PHS's grants policy statement. The regulations issued under Executive Order 12372 do not apply. The length of support will be 1 year with the possibility of an additional 2 years of noncompetitive support. Continuation beyond the first year will be based upon satisfactory performance during the preceding year and the availability of Federal fiscal year appropriations. The NIH modular grant program does not apply to this FDA program.

XI. Legend

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc. by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: March 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7819 Filed 3–27–02; 2:54 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2002, from 8 a.m. to 5 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons E, F, and G, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an intrapartum fetal monitor. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the April 22, 2002, meeting will be posted on April 19, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 11, 2002. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–7731 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Meeting of the Nonprescription Drugs Advisory Committee With Consultation From the Pulmonary and Allergy Drugs Advisory Committee and the Dermatologic and Ophthalmologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Nonprescription Drugs Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2002, from 8 a.m. to 5 p.m. and on April 23, 2002, from 9 a.m. to 12 noon.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 22, 2002, the committee will consider the safety and efficacy of new drug applications (NDA): NDA 19–658, CLARITIN Tablet; NDA 20–704, CLARITIN RediTab; and NDA 20–641, CLARITIN Syrup. These three CLARITIN products (loratadine, Schering-Plough Corp.) are immediate release formulations of the products that are proposed for over-the-counter (OTC) use for the relief of symptoms associated with allergic rhinitis and chronic idiopathic urticaria (CIU). The primary purpose of the meeting is to discuss CIU as an OTC indication. The background material for this meeting will be posted under the Nonprescription Drugs Advisory Committee (NDAC) Docket site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to NDAC.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 12, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on April 22, 2002, and the meeting will be closed to the public between approximately 9 a.m. and 12 noon on April 23, 2002. Time allotted for each presentation may be limited. Priority for presentations will be given to those who demonstrate that they plan to address CIU as an OTC indication. Those desiring to make formal oral presentations should notify the contact person before April 12, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Closed Committee Deliberations: On April 23, 2002, from approximately 9 a.m. to 12 noon, the meeting will be closed to provide an annual update and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–7730 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0266]

Draft Guidance on Current Good Manufacturing Practice for Positron Emission Tomography Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''PET Drug Products—Current Good Manufacturing Practice (CGMP).'' We are announcing the availability of preliminary draft proposed regulations elsewhere in this issue of the **Federal Register**. We are making the draft guidance available so that producers of positron emission tomography (PET) drugs will better understand FDA's thinking concerning CGMP compliance if the preliminary draft proposed regulations were to become final after notice and comment rulemaking.

DATES: A public meeting on the draft guidance will be held on May 21, 2002.

Submit written or electronic comments on the draft guidance by June 5, 2002.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Brenda Uratani, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0098.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act of 1997 (Modernization Act) (Public Law 105–115) into law. Section 121(c)(1)(A) of the Modernization Act directs us to establish appropriate approval procedures and CGMP requirements for PET drugs. Section 121(c)(1)(B) states that, in adopting such requirements, we must take due account of any relevant differences between not-for-profit institutions that compound PET drugs for their patients and commercial manufacturers of the drugs. Section 121(c)(1)(B) also directs us to consult with patient advocacy groups, professional associations, manufacturers, and physicians and scientists who make or use PET drugs as we develop PET drug CGMP requirements and approval procedures.

We presented our initial tentative approach to PET drug CGMP requirements and responded to numerous questions and comments about that approach at a public meeting on February 19, 1999. In the **Federal Register** of September 22, 1999 (64 FR 51274), we published a notice of availability of preliminary draft regulations on CGMP for PET drug products. Those preliminary draft regulations were discussed at a subsequent public meeting on September 28, 1999.

After considering the comments on the preliminary draft regulations, we have decided to make several revisions to those regulations. Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a preliminary draft proposed rule on CGMP for PET drug products. We are making this draft guidance available now so that PET drug producers will better understand FDA's thinking concerning compliance with the preliminary draft proposed CGMP regulations if they were to become final after notice and comment rulemaking. We invite comments on whether the guidance would be a useful accompaniment to the proposed rule. The preliminary draft proposed rule and the draft guidance will be discussed at a public meeting to be held on May 21, 2002, from 9 a.m. to 4:30 p.m., at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted to http://www.fda.gov/dockets/ecomments. The draft guidance and the comments submitted to the docket may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/ohrms/dockets/default.htm, or http://www.fda.gov/cder/fdama under ''Section 121—PET (Positron Emission Tomography).''

Dated: March 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7729 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Collection; Comment Request

AGENCY: Indian Health Service.

ACTION: Request for public comment: 30-day proposed information collection; Hoz'ho'nii: An intervention to increase breast and cervical cancer screening among Navajo women.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (66 FR 66912) on December 27, 2001 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: Hoz'ho'nii: An Intervention To Increase Breast and Cervical Cancer Screening Among Navajo Women. *Type of Information Collection Request:* New. *Form Number:* None. *Need and Use of the Information Collection:* The information is needed to evaluate a culturally appropriate educational outreach program designed to increase breast and cervical cancer screening among Navajo women ages 20 and older. The purpose is to identify barriers that may prevent Navajo women from participating in breast and cervical cancer screening by comparing changes

in knowledge, attitudes, and behaviors of three study groups; educational outreach only, education outreach plus chapter-based clinic, and a control group. Results will be used to assess the impact of the impact of the educational outreach program, improve breast and cervical cancer screening, and to guide the IHS and Tribal health programs in the delivery of culturally appropriate intervention to reduce mortality rates from breast and cervical cancer among Navajo women. *Affected Public:* Individuals. *Type of Respondents:* Individuals. The table below provides the estimated burden response for this information collection:

ESTIMATED BURDEN RESPONSE TABLE

Data collection instrument	Estimated No. of respondents	Responses per respondent	Average burden hour per response	Total annual burden hrs
KAB Pretest	450	1	0.42 hr (25 minutes)	188.0
KAB Post test	450	1	0.42 hr (25 minutes)	188.0
Interviews	30	1	0.25 hr (15 minutes)	8.0
Total	930	1		384.0

[1] For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collection; and (f) was to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection plan(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443–5938, or send via facsimile to (301) 443–2613, or send your e-mail requests, comments, and return address to: *lhodahkwen@hqe.ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: March 3, 2002.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 02–7763 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–16

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Management of Hepatitis C: 2002

Notice is hereby given of the National Institutes of Health (NIH) Consensus Development Conference on ''Management of Hepatitis C: 2002'' to be held June 10–12, 2002, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8 a.m. on June 10 and 11, and at 9 a.m. on June 12 and will be open to the public.

The hepatitis C virus (HCV) is the leading cause of liver disease in the United States and certainly the most common cause of cirrhosis and hepatocellular carcinoma; it is also the most common reason for liver transplantation. Almost 4 million people in this country are believed to be infected with this virus. A Consensus Development Conference on hepatitis C was held at the National Institutes of Health in March 1997. This led to an important, widely distributed NIH Consensus Statement that, for several years, was broadly accepted as the standard of care.

In the five years since that time, there has been a dramatic increase in knowledge of the condition, indicating the need to re-examine the approaches to management and treatment. This conference is convened with the aim of reviewing the most recent developments regarding management, treatment options, and the widening spectrum of potential candidates for treatment.

During the first day-and-a-half of the conference, experts will present the latest hepatitis C research findings to an independent, non-Federal panel. After weighing all of the scientific evidence, the panel will draft a statement, addressing the following key questions:

- What is the natural history of hepatitis C?
- What is the most appropriate approach to diagnose and monitor patients?
- What is the most effective therapy for hepatitis C?
- Which patients with hepatitis C should be treated?
- What recommendations can be made to patients to prevent transmission of hepatitis C?
- What are the most important areas for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow, to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research. Cosponsors of the meeting are: Centers for Disease Control and Prevention (CDC), the U.S. Food and Drug Administration (FDA), the U.S. Department of Veterans Affairs (VA), the National Institute of Child Health and Human Development (NICHD), the National Cancer Institute (NCI), the National Center for Complementary and Alternative Medicine (NCCAM), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute of Allergy and Infectious Diseases (NIAID), and the National

Heart, Lung, and Blood Institute (NHLBI).

Advance information about the conference and conference registration materials may be obtained from AIR Prospect Center of Silver Spring, Maryland, by calling 301–592–3320 or by sending e-mail to <*hepatitisc@prospectassoc.com*>. AIR Prospect Center's address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437. A conference agenda and registration information are also available on the NIH Consensus Program Web site at <*http://consensus.nih.gov*>.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. Conference attendees may want to leave extra bags or personal materials at their hotel to minimize the time needed for inspection. For more information about the new security measures at NIH, please visit the Web site at <*http://www.nih.gov/about/visitorssecurity.htm*>.

Dated: March 25, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7814 Filed 3–29–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference on Symptom Management in Cancer: Pain, Depression, and Fatigue

Notice is hereby given of the National Institutes of Health (NIH) State-of-the-Science Conference on ''Symptom Management in Cancer: Pain, Depression, and Fatigue'' to be held July 15–17, 2002, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8 a.m. on July 15 and 16, and at 9 a.m. on July 17 and will be open to the public.

While research is producing increasingly hopeful insights into the causes and cures of cancer, efforts to manage the side effects of the disease and its treatments have not kept pace. Evidence suggests that pain, for example, is frequently under-treated in the oncology setting.

In the past three decades, scientific discoveries have transformed cancer from a usually fatal disorder to a curable illness for some and a chronic disease for many more. With this shift has come a growing optimism about the future, but also a growing appreciation of the human costs of cancer care. As patients live longer with cancer, concern is growing about both the health-related quality of life of those diagnosed with cancer and the quality of care they receive. The challenge that faces us is how to increase awareness about the importance of recognizing and actively addressing cancer-related distress when it occurs. Specifically, we need to be able to identify who is at risk for cancer-related pain, depression, and/or fatigue; what treatments work best to address these symptoms when they occur; and how best to deliver interventions across the continuum of care.

This two-and-a-half-day conference will examine the current state of knowledge regarding the management of pain, depression and fatigue in individuals with cancer and identify directions for future research.

During the first day-and-a-half of the conference, experts will present the latest research findings on cancer symptom management to an independent non-Federal panel. After weighing all of the scientific evidence, the panel will draft a statement, addressing the following key questions:

- What is the occurrence of pain, depression, and fatigue, alone and in combination, in people with cancer?
- What are the methods used for clinical assessment of these symptoms throughout the course of cancer, and what is the evidence for their reliability and validity in cancer patients?
- What are the treatments for cancer-related pain, depression, and fatigue, and what is the evidence for their effectiveness?
- What are the impediments to effective symptom management in people diagnosed with cancer, and what are optimal strategies to overcome these impediments?
- What are the directions for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow, to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Cancer Institute and the NIH Office of Medical Applications of Research. Co-sponsors of the meeting are: the U.S. Food and Drug Administration (FDA), the National Institute on Aging (NIA), the National Institute of Dental and Craniofacial Research (NIDCR), the National Institute of Mental Health (NIMH), the National Institute of Nursing Research (NINR), the National Institute of Neurological Disorders and Stroke (NINDS), and the National Center for Complementary and Alternative Medicine (NCCAM).

Advance information about the conference and conference registration materials may be obtained from AIR Prospect Center of Silver Spring, Maryland, by calling 301–592–3320 or by sending e-mail to < *cancersymptoms@prospectassoc.com*>. AIR Prospect Center's address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437. A conference agenda and registration information are also available on the NIH Consensus Program Web site at <*http://consensus.nih.gov*>.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. Conference attendees may want to leave extra bags or personal materials at their hotel to minimize the time needed for inspection. For more information about the new security measures at NIH, please visit the Web site at <*http://www.nih.gov/about/visitorssecurity.htm*>.

Dated: March 25, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7815 Filed 3–29–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of a currently approved information collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs has submitted to the Office of Management and Budget a request for renewal of a currently approved information collection titled The Indian Service Population and Labor Force Estimates, OMB Control No. 1076–0147. You are invited to send comments on this collection to the Office of Management and Budget at the address listed in the **ADDRESSES** section.

DATES: Submit comments on or before May 1, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of

Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Room 10102, 725 17th Street NW, Washington, DC 20503.

Send a copy of your comments to Mr. Harry Rainbolt, Budget Officer, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rainbolt, (202) 208–3463.

SUPPLEMENTARY INFORMATION: A 60-day notice requesting public comments was published in the **Federal Register** on October 19, 2001 (66 FR 53248). No comments were received.

I. Abstract

The information is mandated by Congress through Public Law 102–477, Indian Employment, Training and Related Services Demonstration Act of 1992, Section 17(a). The Act requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population, by gender, income level, age, service area, and availability for work. The information is used by the U.S. Congress, other Federal Agencies, State and local governments and private sectors for the purpose of developing programs, planning, and to award financial assistance to American Indians.

II. Request for Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Please note that 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. All comments will be available for public inspection at 1849 C Street NW, Room 4660 during the hours of 8:00 a.m. to 4:00 p.m. EST, except weekends and Federal holidays. If you wish your name and address withheld from the public view, you must state so prominently at the beginning of your comments. We will honor your request to the extent of law.

III. Data.

Title: Department of the Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Estimate.

OMB Control Number: 1076–0147.

Affected Entities: American Indians and Alaska Natives, members and non-members, who are living on or near the tribe's defined service area and who are eligible for Bureau of Indian Affairs services.

Frequency of Response: Biennially.

Estimated Number of Biennial Responses: 561.

Estimated Time per Response: ½ hour.

Estimated Total Annual Burden Hours: 140 (biennially: 280).

Dated: March 11, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7741 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Fund Availability (NOFA)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of extension of application deadlines.

SUMMARY: The Bureau of Indian Affairs (BIA) published a notice in the **Federal Register** of February 4, 2002, announcing the availability of $1.5 million for funding to tribal courts (including Courts of Indian Offenses) and qualified tribal applicants that assume responsibility over Supervised IIM Accounts under 25 CFR part 115. This notice extends the application deadline to May 10, 2002.

DATES: The application deadline is extended from March 6, 2002 to May 10, 2002.

ADDRESSES: Send applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS Room 4660–MIB, 1849 C Street, NW., Washington, DC 20240; Fax No. (202) 208–5113.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 208–4401.

SUPPLEMENTARY INFORMATION: As published in the **Federal Register** of February 4, 2002 (67 FR 5130), the deadline for submitting application forms under this NOFA was March 6, 2002. Because of several requests from tribal courts that 30 days to complete their applications does not provide enough time to collect required data from the BIA and to have the proper documentation acted on by the tribal government, we are extending the application deadline to May 10, 2002.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: March 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7740 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Off-Track Wagering Compact between the Quapaw Tribe and the State of Oklahoma, which was executed on October 13, 2001.

DATES: This action is effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7742 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of information collection (1010–0017).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns form MMS–128, Semiannual Well Test Report.

DATES: Submit written comments by May 31, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the form.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–128, Semiannual Well Test Report.

OMB Control Number: 1010–0017.

Abstract: The Outer Continental Shelf (OCS) Lands Act (Act), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice pertains to a form used to collect information required under 30 CFR 250, subpart K, on production rates. Section 250.1102(b) requires respondents to submit form MMS–128. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2). Regional Supervisors use information submitted on form MMS–128 to evaluate the results of well tests to find out if reservoirs are being depleted in a way that will lead to the greatest ultimate recovery of hydrocarbons. We designed the form to present current well data on a semiannual basis to allow the updating of permissible producing rates and to provide the basis for estimates of currently remaining recoverable gas reserves. We are proposing no changes to the data elements on form MMS–128. However, we are reducing the number of copies respondents submit to require only an original and ''one'' copy.

Frequency: Semiannual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the burden to be 1½ hours per form for an estimated annual burden of 2,490 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens associated with the subject form.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burdens.

Agencies must estimate both the ''hour'' and ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. We have identified no non-hour cost burdens for this form. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 28, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7801 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0050).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart J, Pipelines and Pipeline Rights-of-Way.

DATES: Submit written comments by May 31, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

OMB Control Number: 1010–0050, incorporating 1010–0134.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1334(e) authorizes the Secretary to grant rights-of-way through the submerged lands of the OCS for pipelines ''for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, * * * including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial. * * *''

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery and MMS regulations specify filing fees for applications.

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart J and related Notices to Lessees and Operators. OMB approved the information collection requirements in current subpart J regulations under control numbers 1010–0050 and 1010–0134. The first is the primary collection for subpart J. The latter was approved in connection with a final rule amending § 250.1000(c) to clarify regulatory issues involving the 1996 Memorandum of Understanding between DOI and the Department of Transportation (DOT). Our submission will consolidate these two subpart J collections under 1010–0050. Responses are mandatory or are required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

The lessees and transmission companies design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, MMS needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. MMS field offices use the information collected under subpart J to review pipeline designs prior to approving an application for a right-of-way or a pipeline permitted under a lease to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. They review proposed routes of a right-of-way to ensure that the right-of-way, if granted, would not conflict with any State requirements or unduly interfere with other OCS activities. MMS field offices review plans for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). They review notification of relinquishment of a right-of-way grant and requests to abandon pipelines to ensure that all legal obligations are met and pipelines are properly abandoned. MMS inspectors monitor the records on pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Information is also necessary to determine the point at which DOI or DOT has regulatory responsibility for a pipeline and to be informed of the responsible operator if not the same as the right-of-way holder.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees and 106 holders of pipeline rights-of way.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved ''hour'' burden for the two subpart J information collections is a combined total of 79,086 hours. The following chart details the individual paperwork components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of business. We consider these to be usual and customary and took that into account in our estimates.

Citation 30 CFR 250 subpart J	Reporting and recordkeeping requirement	Burden per requirement (hrs)
1000(b), 1007(a)	Submit application to install new lease term pipeline (P/L), including exceptions/departures	140
1000(b), (d); 1007(a); 1009(a)(1), (b)(1); 1010; 1011.	Apply for P/L right-of-way (ROW) grant and installation of new ROW P/L, including exceptions/departures .	140
1000(b); 1007(b); 1010; 1012(b)(2), (c) .	Submit application to modify lease-term or ROW P/L, including exceptions/departures; notify operators of deviation .	40

Citation 30 CFR 250 subpart J	Reporting and recordkeeping requirement	Burden per requirement (hrs)
1000(b); 1006(a); 1007(c) .	Apply to abandon lease-term P/L, including exceptions/departures	8
1000(b); 1006(a); 1007(c); 1009(c)(9); 1014.	Apply to abandon ROW P/L and relinquish P/L ROW grant, including exceptions/departures	8
1000(c)(2)	Identify in writing P/L operator on ROW if different from ROW grant holder	¼
1000(c)(4)	Petition to MMS for exceptions to general operations transfer point description	5
1000(c)(8)	Request MMS recognize valves landward of last production facility but still located on OCS as point where MMS regulatory authority begins .	½
1000(c)(12)	Petition to MMS to continue to operate under DOT regs upstream of last valve on last production facility .	40
1000(c)(13)	Transportation P/L operators petition to DOT and MMS to continue to operate under MMS regs	40
1004(c)	Place sign on safety equipment identified as ineffective and removed from service. See footnote[1]	
1005(a)	Inspect P/L routes for indication of leakage[1], record results, maintain records 2 years[2]	20
1008(a), (c), (d), (e), (f), (h) .	Notify MMS and submit report on P/L or P/L safety equipment repair, removal from service, analysis results, or potential measurements .	16
1008(b)	Submit P/L construction report	16
1008(g)	Submit plan of corrective action and report of remedial action	16
1009(b)	Submit surety bond on form MMS–2030	¼
1009(c)(4)	Notify MMS of any archaeological resource discovery	4
1009(c)(8)	Make available to MMS design, construcion, operation, maintenance, and repair records on ROW area and improvements[2] .	10
1010(a)	Apply to convert lease-term P/L to ROW grant P/L; notify operators of deviation, including various exceptions/departures .	12
1011(d)	Request opportunity to eliminate conflict when application has been rejected	1
1013	Apply for assignment of a ROW grant	12
1000–1014	General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations .	2

[1] These activities are usual and customary practices for prudent operators.
[2] Retaining these records is usual and customary business practice; required burden is minimal.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The currently approved non-hour cost burden for collection 1010–0050 is $332,000; there was no non-hour cost burden under 1010–0134. Section 250.1010(a) specifies that an applicant must pay a non-refundable filing fee when applying for a pipeline right-of-way grant to install a new pipeline ($2,350) or to convert an existing lease-term pipeline into a right-of-way pipeline ($300). Under § 250.1013(b) an applicant must pay a non-refundable filing fee ($60) when applying for approval of an assignment of a right-of-way grant.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information collected; and (d) minimize the burden on respondents, including automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Except as noted above for application filing fees required in §§ 250.1010(a) and 250.1013(b), we have identified no other non-hour cost burdens. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to 1 provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from

individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 12, 2002.

William S. Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–7802 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee of the Minerals Management Advisory Board; Announcement of Plenary Session

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Advisory Board OCS Scientific Committee will meet at the Holiday Inn and Suites in Alexandria, Virginia.

DATES: Tuesday, April 23, and Wednesday April 24, 2002, from 8:30 a.m. to 5:00 p.m.; Thursday, April 25, from 8:30 to noon.

ADDRESSES: The Holiday Inn and Suites, 625 First Street, Alexandria, Virginia 22314, telephone (703) 548–6300.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. LaBelle or Ms. Julie Reynolds at the address or phone numbers listed below.

SUPPLEMENTARY INFORMATION: The OCS Scientific Committee is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS OCS Environmental Studies Program as it relates to information needed for informed OCS decisionmaking.

The Committee will meet in plenary session on Tuesday, April 23. Presentations will be made by the Director, MMS, the Associate Director for Offshore Minerals Management, and a representative from the OCS Policy Committee. After these presentations, the rest of the day will be filled by presentations from the MMS regional studies chiefs on their research priorities and needs in the context of regional decisionmaking.

On Wednesday, April 24, the Committee will meet in discipline subcommittee breakout sessions to review the specific research plans of the regions for Fiscal Year 2003 and 2004.

On Thursday, April 25, the Committee will meet in plenary session to discuss subcommittee reports and to conduct Committee business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from MMS by calling Ms. Julie Reynolds at (703) 787–1211. Other inquiries concerning the OCS Scientific Committee meeting should be addressed to Mr. Robert LaBelle, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: February 21, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 02–7800 Filed 3–29–02; 8:45 am]

BILLING CODE 4043–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Padre Island National Seashore, Corpus Christi, TX

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Plan of Operations, Environmental Assessment, and Floodplains and Wetlands Statement of Findings for a 30-day public review at Padre Island National Seashore, Kleberg and Kenedy Counties, Texas.

SUMMARY: The National Park Service (NPS), in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands has received from BNP Petroleum Corporation a Plan of Operations for drilling and production of the Lemon/Lemon Seed Unit Wells, No. 1–1000S and No. 1–1008S from a surface location 12.5 miles south along the Gulf beach, from the end of Park Road 22, within Padre Island National Seashore. Additionally, the NPS has prepared an Environmental Assessment and Floodplains and Wetlands Statement of Findings for the site of the proposed well.

DATES: The above documents are available for public review and comment for a period of 30 days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations, Environmental Assessment, and Floodplain and Wetlands Statement of Findings are available for public review and comment in the Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300.

FOR FURTHER INFORMATION CONTACT: Arlene Wimer, Environmental Protection Specialist, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173 x 224, e-mail at *Arlene_Wimer@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days; mail them to the post office address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours.

Dated: March 4, 2002.

R. Everhart,

Acting Regional Director, Intermountain Region.

[FR Doc. 02–7816 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 16, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed

comments should be submitted by April 16, 2002.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

CALIFORNIA

Orange County

Fullerton Odd Fellows Temple, 112 E. Commonwealth Ave., Fullerton, 02000383

Santa Clara County

Free, Arthur Monroe, House, 66 S. 14th St., San Jose, 02000384

COLORADO

Jefferson County

Deaton Sculpted House, 24501 Ski Hill Dr., Golden, 02000385

HAWAII

Hawaii County

Waiakea Mission Station—Hilo Station, 211 Haili St., Hilo, 02000387

Honolulu County

Boettcher Estate, 248 North Kalaheo, Kailua, 02000388

Hawaii Shingon Mission, 915 Sheridan St., Honolulu, 02000386

KANSAS

Butler County

Butler County Courthouse (County Courthouses of Kansas MPS), 205 W. Central Ave., El Dorado, 02000390

Cheyenne County

Cheyenne County Courthouse (County Courthouses of Kansas MPS), 212 E. Washington St., St. Francis, 02000391

Comanche County

Comanche County Courthouse (County Courthouses of Kansas MPS), 201 S. New York Ave., Coldwater, 02000395

Grant County

Grant County Courthouse District (County Courthouses of Kansas MPS), 108 S. Glenn St., Ulysses, 02000396

Jewell County

Jewell County Courthouse (County Courthouses of Kansas MPS), 307 N. Commercial St., Mankato, 02000397

Leavenworth County

Leavenworth County Courthouse (County Courthouses of Kansas MPS), 300 Walnut St., Leavenworth, 02000394

Leavenworth Downtown Historic District, Roughly Cherokee St., Delaware St., S. Fifth St., and Shawnee St., Leavenworth, 02000389

Leavenworth Historic Industrial District, Roughly Third St. Choctaw St., Second St. and Cherokee St., Leavenworth, 02000406

Osborne County

Osborne County Courthouse (County Courthouses of Kansas MPS), 423 W. Main St., Osborne, 02000392

Republic County

Republic County Courthouse (County Courthouses of Kansas MPS), Bounded by ''M'' St., Eighteenth St., ''N'' St., and Nineteenth St., Belleville, 02000393

Rice County

Rice County Courthouse (County Courthouses of Kansas MPS), 101 W. Commercial St., Lyons, 02000401

Rooks County

Rooks County Courthouse (County Courthouses of Kansas MPS), 115 N. Walnut St., Stockton, 02000400

Wabaunsee County

Wabaunsee County Courthouse (County Courthouses of Kansas MPS), 215 Kansas Ave., Alma, 02000399

Wyandotte County

Wyandotte County Courthouse (County Courthouses of Kansas MPS), 710 N. 7th St., Kansas City, 02000398

MISSISSIPPI

Tishomingo County

Brinkley, R.C., House (Iuka MPS), 605 E. Eastport St., Iuka, 02000407

MISSOURI

Macon County

Gardner and Tinsley Filling Station, Old US 36, near jct. with MO 149, New Cambria, 02000408

NEBRASKA

Lancaster County

Calhoun, James D., House, 1130 Plum St., Lincoln, 02000411

Federal Trust Building, 134 S. 13th St., Lincoln, 02000409

Yost, John H. and Christina, House, 1900 S. 25th St., Lincoln, 02000410

RHODE ISLAND

Providence County

Norwood Avenue Historic District, Roughly along Norwood Ave. bet. Roger Williams to Broad St., Cranston, 02000412

TEXAS

Hidalgo County

Cine El Rey (County Courthouses of Kansas MPS), 311 S. 17th St., McAllen, 02000402

Kerr County

Woolls Building, 318 San Antonio, Center Point, 02000403

Lampasas County

Lampasas Colored School, 514 College St., Lampasas, 02000404

Tarrant County

Near Southeast Historic District, Roughly bounded by New York Ave., E. Terrell Ave., former I&GN Railway, Verbena St., and N side of E. Terrell Ave, Fort Worth, 02000405

VERMONT

Rutland County

Gifford Woods State Park (Historic Park Landscapes in National and State Parks MPS) VT 100, Killington, 02000414

Washington County

Jones Brothers Granite Shed, 720 N. Main St., VT 302, Barre, 02000413

WISCONSIN

Fond Du Lac County

Linden Street Historic District, 253–295 and 274–304 Linden St., Fond du Lac, 02000418

Wallace—Jagdfield Octagon House, 171 Forest Ave., Fond du Lac, 02000416

Marinette County

Kena Road School, N2155 US 141, Pound, 02000415

Milwaukee County

Lindsay—Brostrom Building, 133 W. Oregon St., Milwaukee, 02000417

A request for *move* has been made for the following resources:

MISSOURI

Callaway County

Pitcher Store, 8513 Pitcher Rd., Fulton vicinity, 01000235

Richland Christian Church, 5301 Callaway Cty. Rd. 220, Kingdom City vicinity, 01000122

Macon County

Gardner and Tinsley Filling Station, US 36, near jct. with MO 149, New Cambria vicinity, 02000408

[FR Doc. 02–7817 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 9, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW, Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed

comments should be submitted by April 16, 2002.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

CALIFORNIA

San Francisco County

Fairmont Hotel, 950 Mason St., San Francisco, 02000373
San Francisco Fire Department Engine Co. Number 2, 460 Bush St., San Francisco, 02000371

Tehama County

State Theatre, 333 Oak St., Red Bluff, 02000372

IOWA

Dallas County

Adel Bridge, (Highway Bridges of Iowa MPS) River St., Adel, 02000374

Lee County

Weber, Alois and Annie, House, 802 Orleans Ave., Keokuk, 02000375

MASSACHUSETTS

Berkshire County

Housatonic Congregational Church, 1089 Main St., Great Barrington, 02000377

Essex County

Amesbury Friends Meeting House, 120 Friend St., Amesbury, 02000376

Middlesex County

Groton Leatherboard Company, 6 W. Main St., Groton, 02000378

MISSOURI

Greene County

Oberman, D.M., Manufacturing Co. Building, 600 N. Boonville Ave., Springfield, 02000379

PENNSYLVANIA

Chester County

Barclay House, 535 and 539 N. Church St., West Chester, 02000380

WISCONSIN

Fond du Lac County

Kendall—Blankenburg House, 14 Sixth St., Fond du Lac, 02000381
Tallmadge, Montgomery and Nancy, House, 225 Sheboygan St., Fond du Lac, 02000382
A request for a *move* has been made for the following resource

SOUTH CAROLINA

Horry County

Quattlebaum, C.P., Office (Conway MRA) 903 Third Ave, Conway, 86002235.

[FR Doc. 02–7818 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–008]

Sunshine Act Meeting

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: April 8, 2002 at 2:00 p.m.

Place: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters to be Considered:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–990 (Preliminary)(Non-Malleable Cast Iron Pipe Fittings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before April 8, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before April 15, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 27, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7904 Filed 3–28–02; 12:46 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; annual survey of jails.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection requires for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the **Federal Register** on January 4, 2002, Volume 67, page 609, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 1, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information collection:

(1) *Type of information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Annual Survey of Jails.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms:* CJ–5, CJ–5A, CJ–5B. Correction Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* County and City jail authorities and Tribal authorities. The ''Annual Survey of Jails'' (ASJ) is the only collection effort that provides an ability to maintain important jail statistics in years between jail censuses.

The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographic and supervision status of jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 946 respondents at 1.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Total annual burden hours are 1,183.

If additional information is required, please contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 26, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–7755 Filed 3–29–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review, new collection, data collection from grantees to reduce violent crimes against women on campus program.

The Department of Justice, Office of Justice Programs, Violence Against Women office, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 4, 2002 Volume 67, page 608, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 1, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Data Collection from Grants to Reduce Violent Crimes Against Women on Campus Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number. The component is the Violence Against Women Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Institutions of Higher Education. The Grants to Reduce Violent Crimes Against Women on Campus Program was authorized through Section 826 of the Higher Education Amendments of 1998 to make funds available to institutions of higher education to combat domestic violence, dating violence, sexual assault and stalking crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 45 respondents will complete a 1-hour data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 45 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 26, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–7756 Filed 3–29–02; 8:45 am]

BILLING CODE 4410–18–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of voluntary negotiation period, precontroversy discovery schedule, and request for Notices of Intent to Participate.

SUMMARY: The Copyright Office of the Library of Congress is announcing a voluntary negotiation period for the 17 U.S.C. 118 noncommercial educational broadcasting compulsory license, along with a precontroversy discovery schedule, a request for Notices of Intent to Participate, and the initiation date should arbitration proceedings be necessary.

DATES: Notices of Intent to Participate are due on or before April 25, 2002.

ADDRESSES: If sent by mail, an original and five copies of Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of Notices of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), P.O.

Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five year intervals. The last adjustment of the terms and rates for the section 118 license occurred in 1997, thus, making 2002 a window year for the adjustment of these terms and rates.

Section 118(b) provides that copyright owners and public broadcasting entities may voluntarily negotiate licensing agreements at any time, and that such licensing agreements will be ''given effect in lieu of any determination by the Librarian of Congress; Provided, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.'' 17 U.S.C. 118(b)(2).

Those parties not subject to a negotiated license must follow the terms and rates adopted through arbitration proceedings conducted under chapter 8 of the Copyright Act. Section 118(b)(3) provides:

> In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the **Federal Register** a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress. . . .

In order to commence the adjustment process described in section 118, the Copyright Office of the Library of Congress is publishing today's notice. With respect to private licenses, we note that the statute provides that they may be negotiated at any time and must be submitted to the Copyright Office in order to be effective. However, in keeping with tradition, we believe that it is appropriate and efficient to designate a negotiation period, prior to copyright arbitration royalty panel (CARP) proceedings, in order to encourage private agreements and, possibly, avoid the need for a CARP. Consequently, we are announcing a voluntary negotiation period commencing today and running to May 15, 2002. Any agreements entered into during this period should be deposited with the Copyright Office in accordance with the regulations established in 37 CFR 201.9. Of course, license agreements may still be negotiated and deposited prior to, and after, the designated negotiation period.

The Library notes that while many of the terms and rates of the section 118 license typically have been subject to private negotiation, certain terms and rates have not. These terms and rates affect the works of unknown copyright owners and owners not affiliated with one or more of the performing rights societies and/or artists organizations. *See, e.g.* 37 CFR 253.5(c)(4) and 253.6(c)(4). The Library recognizes that it is difficult, if not impossible, for noncommercial educational broadcasting entities to identify these copyright owners in order to negotiate terms and rates of licenses. Consequently, in these limited circumstances where negotiated licenses are not practicable, the Library is willing to accept proposals for terms and rates from noncommercial educational broadcasting entities and subject them to the public notice and comment provisions of § 251.63(b) of the Library's rules. The Librarian will adopt the proposed rates and terms, unless a copyright owner, with a significant interest in the proposal and an intent to participate fully in a CARP proceeding, files comment opposing the proposed terms and rates.

For all other terms and rates for the section 118 license, in the absence of negotiated licenses, the Librarian of Congress will convene a CARP. The proceeding will be conducted according to the following schedule.

Notices of Intent to Participate

Any party wishing to appear before the CARP, and to present evidence, in this proceeding must file a Notice of Intent to Participate by April 25, 2002. Failure to file a timely Notice of Intent to Participate will preclude a party from participating in this proceeding.

Precontroversy Discovery Schedule

The Library of Congress is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the establishment of rates and terms for the section 118 compulsory license. In addition, the Library is announcing the date on which arbitration proceedings will be initiated before a CARP, thereby commencing the 180-day arbitration period. Once a CARP has been convened, the scheduling of the arbitration period is within the discretion of the CARP and will be announced at that time.

A. Commencement of the Proceeding

A rate adjustment proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of § 251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

Both of these phases to a rate adjustment proceeding require significant amounts of work, not just for the parties, but for the Librarian, the Copyright Office, and the arbitrators as well. The rates and terms proceeding for section 118 is not the only CARP proceeding likely to take place during 2002. Other proceedings will include distribution of cable, satellite, and digital audio royalties, as well as rate adjustment proceedings for the digital performance license (section 114) and the mechanical license (section 115). It would be extremely difficult for the Office to conduct the precontroversy discovery phase of more than one of these proceedings simultaneously, therefore, the Library must conduct them sequentially.

Because of the number of CARP proceedings to be conducted in 2002, and the attending workload, selection of a date to initiate a section 118 rate setting proceeding is not dependent on the schedules of one or more of the participating parties, but must be weighed against the interests of all involved. The parties affected by section 118 are most likely aware that 2002 is a window year for the adjustment of terms and rates, and as described above, are being given a formal negotiation period to reach agreements. Because of the other proceedings which must be scheduled, the attending workload, and the need to manage the interests of all involved, the Library is announcing the precontroversy discovery schedule and arbitration period in this proceeding without seeking further comment from the participating parties.

B. Precontroversy Discovery Schedule and Procedures

Any party that has filed a Notice of Intent to Participate in the section 118 adjustment proceeding is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party non-privileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

Action	Deadline
Filing of Written Direct Cases	July 1, 2002.
Requests for Underlying Documents Related to Written Direct Cases	July 11, 2002.
Responses to Requests for Underlying Documents	July 17, 2002.
Completion of Document Production	July 22, 2002.
Follow-up Requests for Underlying Documents	July 29, 2002.
Responses to Follow-up Requests	August 5, 2002.
Motions Related to Document Production	August 8, 2002.
Production of Documents in Response to Follow-up Requests	August 12, 2002.
All Other Motions, Petitions, and Objections	August 14, 2002.

The precontroversy discovery period, as specified by § 251.45(b) of the rules, begins on July 1, 2002, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate must file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's case. Parties must comply with the form and content of written direct cases as prescribed in 37 CFR 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on July 1, 2002, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by July 11, 2002, and responses to those requests are due by July 17, 2002. Documents which are produced as a result of the requests must be exchanged by July 22, 2002. It is important to note that all initial document requests must be made by the July 11, 2002 deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by July 11, 2002; otherwise, the party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by July 29, 2002, and responses to those requests are due by August 5, 2002. Any documentation produced as a result of a follow-up request must be exchanged by August 12, 2002. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by July 11, 2002. If, after receiving a copy of the study the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the July 29, 2002, deadline. Again, failure to make a timely follow-up request would waive that party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by August 8, 2002. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by August 14, 2002, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, but are not limited to, objections to arbitrators appearing on the arbitrator list under 37 CFR 251.4, and petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is not required.

Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be brought to the Copyright Office at the following address no later than 5 p.m. of the filing deadline date: Office of the Register of Copyrights, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540. The form and content of all motions, petitions, objections, oppositions, and replies filed with the Office must be in compliance with §§ 251.44(b)–(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions, and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration

Initiation of the proceedings before the CARP will commence on October 7, 2002, the first day of the 180-day arbitration specified in Chapter 8 of the Copyright Act. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected.

Dated: March 27, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–7809 Filed 3–29–02; 8:45 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 97–5D]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Notification Pertaining to Notices of Intent To Enforce Restored Copyrights

AGENCY: Copyright Office, Library of Congress.

ACTION: Notification of request to retract prior filings of notices of intent to enforce restored copyrights; correction.

SUMMARY: On December 3, 2001, the Copyright Office published a public notice that the Copyright Office received a notification of a request to retract the filing of certain notices of intent to enforce restored copyrights under the Uruguay Round Agreements Act. This document makes non-substantial corrections to that notice.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Charlotte Douglass, Principal Legal Advisor to the General Counsel, or Marilyn Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington DC 20024–0400. Telephone (202) 707–8380. Fax (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office published a notice, RM 97–5C, in the **Federal Register** of December 3, 2001 (66 FR 60223), addressing the receipt of a notification from the Authors Rights Restoration Corporation retracting all of its filings in the Copyright Office of notices of intention to enforce restored copyrights under the Uruguay Round Agreements Act. This document makes non-substantial corrections to the table of titles published in that notice.

In notice RM 97–5C published on December 3, 2001 (66 FR 60223), correct the table that begins in column 1 on page 60223 to read as follows:

U.S. Copyright Owner	Film title	Translated title
Alameda Films, S.A.	El Baron del Terror	The Baron of Terror.
Alameda Films, S.A.	El Grito de la Muerte	Cry of Death.
Alameda Films, S.A.	El Hombre y El Monstruo	The Man and the Monster.
Alameda Films, S.A.	La Cabeza Viviente	The Living Head.
Cima Films, S.A. de C.V.	Dios Los Cria	Made by God.
Cima Films, S.A. de C.V.	Juan Armenta el Repatriado	Juan Armeta the Repatriated.
Cima Films, S.A. de C.V.	La Ley del Monte	The Law of the Mountain.
Cima Films, S.A. de C.V.	La Valentina	The Valentina.
Cinematografic Filmex S.A. de C.A.	Tacos Al Carbon	Tacos Al Carbon.
Cinematografic Filmex S.A. de C.A.	Diamantes, Oro y Amor	Diamonds, Gold and Love.
Cinematografica Jalisco, S.A. de C.V.	El Desconocido	The Unknown.
Cinamatograficia Sol, S.A. de C.V.	Carceria Humana	Human Hunter.
Cinematografica Sol. S.A. de C.V.	En Peligro de Muerte	In Danger of Dying.
Cinematografica Sol. S.A. de C.V.	El Ansia de Matar	The Longing of Kill, The Longing of Death, Eager to Kill.
Cinematografica Sol. S.A. de C.V.	El Hombre Violento	The Violent Man.
Cineproduccioine Internacionales, S.A. de C.V.	El Trinquetero	The Cheater.
Cineproducciiones Internacionales, S.A. de C.V	El Sargento Perez	The Sargent Perez.
Cineproducciones Internacionales, S.A. de C.V.	El Arte de Enganar	The Art of Fooling.
Cineproducciones Internacionales, S.A. de C.V.	El Deseo En Otono	The Autumn Desire.
Cinevision, S.A. de C.V.	La Gatita	The Pussy Cat.
Cumbre Films, S.A. de C.V.	Acorralado	Corraled.
Cumbre Films, S.A. de C.V.	El Cuatrero	The Cattle Thief.
Cumbre Films, S.A. de C.V.	El Diablo El Santo, y El Tonto	The Devil, the Saint, and the Idiot.
Cumbre Films, S.A. de C.V.	El Embustero	The Lying.
Cumbre Films, S.A. de C.V.	El Macho	The Macho Man.
Cumbre Films, S.A. de C.V.	Entre Compadres Tu Veas	Seen Between Godfathers.
Cumbre Films, S.A. de C.V.	Por Tu Maldito Amor	For Your Dammed Love.
Cumbre Films, S.A. de C.V.	Sinverguenza Pero Honrado	Brazen But Honest.
Cumbre Films, S.A. de C.V.	Mi Querido Viejo	My Dear Old Man.
Cumbre Films, S.A. de C.V.	Matar O Morir	To Kill Or To Die.
Cumbre Films, S.A. de C.V.	El Sinverguenza	The Scoundrel.
Diana Films Internacionales, S.A. de C.V.	Cartas Marcadas	Marked Cards.
Diana Films Internacionales, S.A. de C.V.	Duro Pero Seguro	Hard But Sure.
Diana Films Internacionales, S.A. de C.V.	La Presidenta Municipal	The Town President.
Filmadora Mexicana, S.A. de C.V.	Medianoche	Middle Night.
Filmadora Mexicana, S.A. de C.V.	La Esquina de Mi Barrio	My Neighborhood Corner.
Filmadora Mexicana, S.A. de C.V.	Duena y Senora	Owner and Lady.
Filmadora Mexicana, S.A. de C.V.	La Casa Chica	The Other House.
Gazcon Films, S.A. de C.V.	Dos de Abajo	Two From Below.
Gazcon Films, S.A. de C.V.	Perro Callerjero I	Wild Dog I.
Grupo Galindo, S.A. de C.V.	El Rey dc Los Albures	The King of Double Meaning.
Grupo Galindo, S.A. de C.V.	Amaneci en Tus Brazos	I Woke Up In Your Arms.
Grupo Galindo, S.A. de C.V.	Carabina 30–30	30–30 Carbine.
F. Mier, S.A.	Vivo O Muerto	Dead or Alive.
F. Mier, S.A.	La Hermana Blanca	The White Sister.
F. Mier, S.A.	El Nino Perdido	The Lost Boy.
Oro Films, S.A. de C.V.	El Martir de Calvario	The Martyr Of The Calvary.
Oro Films, S.A. de C.V.	El Hombre Sin Rostro	The Man Without A Face.
Oro Films, S.A. de C.V.	El Aviso y Inoportuno	The Unexpected Announcement.
Oro Films, S.A. de C.V.	Vivillo Desde Chiquillo	Smart Since Childhood.
Oro Films, S.A. de C.V.	Casa De Vecindad	House Of The Neighborhood.

U.S. Copyright Owner	Film title	Translated title
Peliculas y Video Internacioinale, S.A. de C.V.	Ay Amor Como Me Has Puesto	Oh Love, What Has Become of Me.
Peliculas y Videos Internacionale, S.A. de C.V.	El Cielo y la Tierra	The Sky and the Earth.
Peliculas y Videos Internacionale, S.A. de C.V.	El Tesoro del Rey Salomon	The Treasury Of King Solomon.
Peliculas y Videos Internacionale, S.A. de C.V.	Esposa O Amante	Wife Or Lover.
Peliculas y Videos Internacionale, S.A. de C.V.	Lagrimas de Amor	Tears Of Love.
Procinema, S.A. de C.V.	Un Par a Todo Dar	A Great Pair.
Producciones EGA, S.A. de C.V.	El Bronco	The Bronco.
Producciones Galubi, S.A. de C.V.	La Golfa Del Barrio	The Woman.
Producciones Galubi, S.A. de C.V.	El Hijo del Palenque	Palenque's Son.
Producciones Galubi, S.A. de C.V.	Santos vs. Los Asesinos De Ortros Mundos	Santo Verus the Assassins from Other Worlds.
Producciones Galubi, S.A. de C.V.	El Agentc Viajero	The Traveling Agent.
Producciones Matouk, S.A. de C.V.	Las Aventuras de Juliancito	The Adventures of Juliancito.
Producciones Matouk, S.A. de C.V.	Chico Ramos	Young Ramos.
Producciones Matouk, S.A. de C.V.	Primera Comunion	First Communion.
Producciones Rosas Priego, S.A. de C.V.	Quinceanera	She's Fifteen.
Producciones Rosas Priego, S.A. de C.V.	Azahares Rojos	Red Blossom.
Producciones Rosas Priego, S.A. de C.V.	Crucifijo de Piedra	The Stone Cross.
Producciones Rosas Priego, S.A. de C.V.	El Aguila Negra	The Black Eagle.
Producciones Torrente, S.A. de C.V.	Narcoterror	Narcoterror.
Producciones Torrente, S.A. de C.V.	Pandilla de Criminales	Gang of Criminals.
Producciones Torrenta, S.A. de C.V.	Ladrones de Tumbas	Thieves Of The Tombs.
Producciones Virgo, S.A. de C.V.	Andante	Walker.
Producciones Virgo, S.A. de C.V.	El Sexo Sentido	The Sex Sense.
Producciones Virgo, S.A. de C.V.	No Hay Cruces en el Mar	There Are No Crosses In The Sea.
Produciones, Vigo, S.A. de C.V.	El Sexo Me da Risa	Sex Makes Me Laugh.
Secine, S.A. de C.V.	El Gallo de Oro	The Golden Rooster.
Video Universal, S.A. de C.V.	Thaimi, La Hija del Pescador	Thaima, Daughter of the Fisherman.
Video Universal, S.A. de C.V.	La Tortola del Ajusco	The Turtledove Of Ajusco.
Video Universal, S.A. de C.V.	El Fantastico Mundo del los Hippies	The Fantastic World of the Hippies.
Video Universal, S.A. de C.V.	El Reino de los Gangsters	Reign of the Gangsters.

Dated: March 27, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 02–7808 Filed 3–29–02; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–044)]

Notice of Prospective Patent and Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent and copyright license.

SUMMARY: NASA hereby gives notice that American Remote Vision Company of Titusville, Florida has applied for an exclusive license to practice the invention described and claimed in U.S. Patent 5,970,798 entitled ''Ultrasonic Bolt Gage.'' This technology is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: March 25, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–7788 Filed 3–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–046)]

Notice of Prospective Patent and Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Circuit Avenue Netrepreneurs of Philadelphia, PA, has applied for an exclusive license to practice the invention described and claimed in KSC–12301 entitled ''Advanced Self-Healing, Self-Calibrating Data Acquisition System.'' This technology is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, at John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before April 16, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: March 25, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–7790 Filed 3–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–045)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Triton Systems, Inc. of 200 Turnpike Road, Chelmsford, MA 01824 has applied for an exclusive license to

practice the invention described in NASA Case Number LAR–16176–1 entitled ''Space Environmentally Durable Polyimides and Copolyimides'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by (15) days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patrick F. Roughen, Jr., Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199. Telephone (757) 864–9340; Fax (757) 864–9190.

Dated: March 25, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–7789 Filed 3–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, May 8, 2002 from 9 a.m. to 12 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP Program Update

—Report on TSP Working Group Activities

—Review/Renewal of TSP OC Charter

Anyone interested in attending or presenting additional information to the Committee, please contact Deborah Bea, Office of Priority Telecommunications, (703) 607–4933.

Peter M. Fonash,

Certifying Officer, National Communications System.

[FR Doc. 02–7743 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: 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:* 10 CFR part 52, ''Early Site Permits (EP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants''.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion and every 10 to 20 years for applications for renewal.

5. *Who will be required or asked to report:* Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. *An estimate of the number of responses:* 10.

7. *The estimated number of annual respondents:* 5 (3 applications for early site permits, 1 combined license application, and 1 design certification application).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 211,820.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, duplicate plant licenses, standard design approvals, and pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of these approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information form the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/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 listed below by May 1, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0151), 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 26th day of March, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7798 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–02384–CivP, ASLBP No. 02–797–01–CivP, EA 99–290]

Atomic Safety and Licensing Board; Before Administrative Judges: Charles Bechhoefer, Chairman, G. Paul Bollwerk, III, Dr. Richard F. Cole; In the Matter of Earthline Technologies (Previously RMI Environmental Services), Ashtabula, OH, License No. SMB–00602; Order Imposing Civil Monetary Penalty

March 26, 2002.

Notice of Hearing

This proceeding involves a proposed civil penalty of $17,600 sought to be imposed by the NRC Staff on Earthline Technologies, previously RMI Environmental Services, Ashtabula, OH (Earthline or Licensee) for an alleged violation of NRC's employee protection regulations, based upon the asserted discrimination by an Earthline management official against an employee for engaging in protected activities (i.e., contacting the NRC concerning safety matters. In response to an Order Imposing Civil Monetary Penalty, dated January 15, 2002 and published at 67 FR 3917 (Jan. 28, 2002), Earthline on February 6, 2002 filed a timely request for an enforcement hearing. On March 6, 2002, an Atomic Safety and Licensing Board, consisting of G. Paul Bollwerk, III, Dr. Richard F. Cole, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 67 FR 11,147 (March 12, 2002).

Notice is hereby given that, by Memorandum and Order dated March 26, 2002, the Atomic Safety and Licensing Board has granted the request for a hearing submitted by Earthline. This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subparts B and G. Parties to this proceeding are Earthline and the NRC Staff. The issues to be considered, as set forth in the Order Imposing Civil Monetary Penalty, are (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, served on the Licensee by letter dated September 24, 2001; and (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Documents related to this proceeding issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room O–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Documents issued subsequent to November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

As set forth at 10 CFR 2.205(g) and 2.203, the Commission urges the parties in proceedings such as this one to attempt to settle or compromise the matters at issue. Except to the extent an early settlement or other circumstance renders them unnecessary, the Licensing Board may, during the course of this proceeding, conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which are in any event to be transcribed), members of the public are invited to attend such sessions.

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on March 26, 2002.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 02–7796 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Plant, Units 2 and 3; Exemption

1.0 Background

The Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License Nos. DPR–52 and DPR–68 which authorize operation of the Browns Ferry Plant, Units 2 and 3 (BFN 2 and 3), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a three boiling-water reactors located in Limestone County in the State of Alabama.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, 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, appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on . . . the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Further, appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Code. In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references are to the ASME Code denote the 1995 Edition of the ASME Code, including the 1996 Addenda.

In order to address the provisions of amendments to the BFN 2 and 3 Technical Specifications (TS) P–T limit curves, TVA requested in its submittal dated August 17, 2001, as supplemented December 14, 2001, and February 6, 2002, that the staff exempt the BFN 2 and 3 from the application of the specific requirements of appendix G to 10 CFR part 50, and substitute use of ASME Code Case N–640. ASME Code Case N–640 permits the use of an alternate reference fracture toughness curve for RPV materials for use in determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the BFN 2 and 3 TS amendments that were contained in the same submittals. The proposed BFN 2 and 3 TS amendments will establish revised P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 17.2 effective full-power years (EFPY) of operation for BFN 2 and through 13.1 EFPY of operation for BFN 3.

ASME Code Case N–640

The licensee has proposed an exemption to allow the use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, appendix G, to establish P–T limits for the BFN 2 and 3 RPVs.

The proposed TS amendments to revise the P–T limits for BFN 2 and 3 rely in part on the requested exemption and the application of ASME Code Case N–640. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure

A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the BFN 2 and 3 P–T limits.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than the use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from the more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, the P–T limit curves based on the K_{IC} fracture toughness curve will enhance overall plant safety by minimizing challenges to operators since requirements for maintaining a high vessel temperature during pressure testing would be lessened. Personnel safety would also be enhanced because of the corresponding lower temperatures which would exist inside containment as leakage walkdown inspections are conducted.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff has determined that this increased knowledge permits relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the NRC regulations to ensure an acceptable margin of safety.

The NRC staff has reviewed the exemption request submitted by TVA and has concluded that the application of the technical provisions of the ASME Code Case N–640 provides sufficient margin in the development of RPV P–T limit curves for BFN 2 and 3 such that the underlying purpose of the NRC regulations continues to be met to ensure an acceptable margin of safety.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The staff has determined that an exemption would be required to approve the use of Code Case N–640. The staff examined the licensee's rationale to support the exemption request and concurred that the use of the Code Case would meet the underlying purpose of the regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G, appendix G of the Code, and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the Code Case as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determinations that the staff has reached for other licensees under similar conditions based on the same considerations.

The staff has examined the licensee's rationale to support the exemption request and concludes that the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for the BFN 2 and 3 RPVs such that the underlying purpose of 10 CFR part 50, appendix G, continues to be met to ensure an acceptable margin of safety.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 50, appendix G, for Browns Ferry Plant, Units 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 11721).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of March, 2002.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–7797 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 134th meeting on April 16–18, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, April 16, 2002

A. *12:30—12:40 P.M.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *12:40—3:30 P.M.: High-Level Waste Risk Insights Initiative* (Open)—The Committee will hear a presentation by the NRC staff on the preliminary results of its risk insights initiative.

C. *3:45—4:45 P.M.: Amendment to 10 CFR part 63* (Open)—The NRC staff will provide a briefing on its final rulemaking amendment to Part 63 on the probability for ''Unlikely Events'' at the proposed Yucca Mountain high-level waste repository site.

D. *4:45—6:00 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics.

- High-Level Waste Risk Insights Initiative
- Amendment to 10 CFR part 63 ''Unlikely Events''—Final Rule
- Update on Igneous Activity including Performance Assessment Analyses
- HLW Performance Assessment Sensitivity Studies

Wednesday, April 17, 2002

E. *8:30—8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The

ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35—10:00 A.M.: Final Radionuclide Transport Research Plan* (Open)—Representatives from the Office of Nuclear Regulatory Research will brief the Committee on its final research plan on Radionuclide Transport in the Environment.

G. *10:15—12:00 Noon: ACNW 2002 Action Plan* (Open)—The Committee will discuss a draft of its 2002 Action Plan.

H. *1:00—2:45 P.M.: Site Recommendation—License Application: Path Forward* (Open)—The Committee will hear a presentation from the DOE on its proposed plans to move forward from the submission of the Yucca Mountain Site Recommendation.

I. 3:00—4:30 P.M.: Yucca Mountain Review Plan, Revision 2 (Open)—The Committee will discuss its template to conduct an audit of the Yucca Mountain Review Plan, Revision 2.

J. *4:30—6:00 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- High-Level Waste Risk Insights Initiative
- Amendment to 10 CFR part 63 ''Unlikely Events''—Final Rule
- Update on Igneous Activity including Performance Assessment Analyses
- HLW Performance Assessment Sensitivity Studies
- Final Research Plan on Radionuclide Transport in the Environment

Thursday, April 18, 2002

K. *8:30—8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

L. *8:35—11:45 A.M.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

M. *11:45—12:00 Noon: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 A.M. and 4:00 P.M. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 26, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–7794 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on April 16, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 16, 2002–8:30 a.m.–10:30 p.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: March 26, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–7795 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes to Close March 26, 2002, Meeting

By telephone vote on March 26, 2002, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, vie teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: 1. Strategic Planning.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, William T. Johnstone, at (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–7934 Filed 3–28–02; 2:30 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 12:00 p.m., Monday, April 8, 2002; 8:30 a.m., Tuesday, April 9, 2002.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: April 8—12:00 p.m. (Closed); April 9—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, April 8—12:00 p.m. (Closed)

1. Financial Performance.
2. Confirm.
3. Postal Rate Commission Opinion and Recommended Decision in Docket No. R2001–1, Omnibus Rate Case.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, April 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 4–5, 2002.
2. Remarks of the Postmaster General and CEO.
3. Fiscal Year 2001 Comprehensive Statement on Postal Operations.
4. Quarterly Report on Financial Results.
5. Quarterly Report on Service Performance.
6. Alternate Dispute Resolution.
7. Capital Investment.

a. Postal Automated Redirection System (PARS), Phase 1.

8. Tentative Agenda for the May 6–7, 2002, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–7935 Filed 3–28–02; 2:30 pm]

BILLING CODE 7710–12–M

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 15g–2; SEC File No. 270–381; OMB Control No. 3235–0434

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.

The ''Penny Stock Disclosure Rules'' (Rule 15g–2, 17 CFR 240.15g–2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a ''penny stock''. As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in ''penny stocks'' before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission. The Commission estimates that there are approximately 270 broker-dealers subject to Rule 15g–2, and that each one of these firms will process an average of three new customers for ''penny stocks'' per week. Thus each respondent will process approximately 156 risk disclosure documents per year. The staff calculates that (a) the copying and mailing of the risk disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign, and return the risk disclosure document. Thus, the total ongoing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 270 respondents, the annual burden is 421,200 minutes (1,560 minutes per each of the 270 respondents), or 7,020 hours. In addition, broker-dealers will incur a recordkeeping burden of approximately two minutes per response. Thus each respondent will incur a recordkeeping burden of 312 (156×2) minutes per year, and respondents as a group will incur an aggregate annual recordkeeping burden of 1,404 hours ($270 \times 312/60$). Accordingly, the aggregate annual hour burden associated with Rule 15g–2 is 8,424 hours (7,020 + 1,404).

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of

Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7753 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions

Regulation D and Form D; OMB Control No. 3235–0076; SEC File No. 270–72

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form D sets forth rules governing the limited offer and sale of securities without Securities Act registration. Those relying on Regulation D must file Form D. The purpose of the Form D notice is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the form allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D and Section 4(6) as capital-raising devices for all businesses. Form D information is required to obtain or retain benefits under Regulation D. Approximately 13,518 issuers file Form D and it takes approximately 16 hours to prepare. It is estimated that 90% of the 216,288 burden hours (194,659 hours) is prepared by the company. Finally, persons who respond to the collection of information contained in Form D are not required to respond unless the collection of information displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7751 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Rule 15c2–11; SEC File No. 270–196; OMB Control No. 3235–0202

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

The Commission adopted Rule 15c2–11 [1] (Rule 15c2–11 or Rule) in 1971 under the Securities Exchange Act of 1934 [2] (Exchange Act) to regulate the initiation or resumption of quotations in a quotation medium by a broker-dealer for over-the-counter (OTC) securities. The Rule was designed primarily to prevent certain manipulative and fraudulent trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by shell companies or other companies having outstanding but infrequently traded securities. Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer.

In February 1998, the Commission proposed amendments to strengthen the Rule's focus on abuses associated with microcap securities.[3] In response to comments on the proposal, the Commission reproposed amendments to Rule 15c2–11 to tailor its provisions to cover those kinds of quotations and securities that we believe are more likely to be the subject of microcap abuses.[4]

Under these reproposed amendments, the Rule will no longer apply to securities of larger issuers or those securities that have a substantial trading price or value of average daily trading volume. In addition, the Rule will only cover priced quotations, except in the case of the first quotation for a covered OTC security. The Commission has also proposed several revisions that require broker-dealers to obtain more information about non-reporting issuers, ease the Rule's recordkeeping requirements when broker-dealers can electronically access information about reporting issuers, and promote greater access to issuer information by customers and other broker-dealers. Because these proposed refinements will significantly revise the Rule's scope, we are publishing them to give interested persons an opportunity to provide us with their comments and views.

The information required to be reviewed is submitted by the respondents to the National Association of Securities Dealers Regulation (''NASDR'') on Form 211 for review and approval. Based on information provided by the NASDR and the Pink Sheets LLC, it is estimated that as of January 4, 2002, there were approximately 1,876 covered OTC securities quoted exclusively in the OTC Bulletin Board, 3,942 quoted exclusively in the Pink Sheets, and 1,889 dually quoted on both for a total of 7,707 covered OTC securities.[5] However, we believe that approximately 10% (771) of these securities would not be subject to the Rule, based on the exceptions that are included in this reproposing Release and therefore approximately 6,936 securities would be subject to the Rule.[6]

According to NASDR estimates, we also believe that approximately 1,271 new applications from broker-dealers to initiate or resume publication of covered OTC securities in the OTC Bulletin Board and/or the Pink Sheets or

[1] 17 CFR 240.15c2–11.

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Exchange Act Release No. 39670 (February 17, 1998) (Proposing Release).

[4] Securities Exchange Act Release No. 41110 (March 2, 1999) (Reproposing Release).

[5] Although there may be covered OTC securities quoted in other quotation mediums, the empirical data to include them in these estimations is not readily available.

[6] Because the reproposal excludes debt securities, there is no need to include the debt securities quoted in the Yellow Sheets in these burden estimates.

other quotation mediums were approved by the NASDR for the 2001 calendar year. We estimate that 75% of the covered OTC securities were issued by reporting issuers, while the other 25% were issued by non-reporting issuers. We also estimate that broker-dealers publish priced quotations for approximately 90% of the covered OTC securities quoted in the OTC Bulletin Board and publish priced quotes for about 43% of the covered OTC securities quoted in the Pink Sheets. According to NASDR and Pink Sheets estimates, we believe that, on average, there are approximately 4.3 broker-dealers publishing priced quotations for each covered OTC security, and that at any given time there are approximately 400 broker-dealers that submit priced quotations for covered OTC securities. Finally, the Reproposed Rule's transition provision would not subject the broker-dealers quoting the securities of the estimated 6,936 potentially covered securities currently quoted to the Rule until the annual review requirement is triggered. Therefore, only those new applications that are submitted after the reproposals become effective would be subject to the initial review requirement.

Because the reproposed amendments would require the first broker-dealer publishing a quotation (priced or unpriced) for a particular security to collect issuer information, we believe that during the first year after the reproposed amendments are effective, broker-dealers that are publishing the first quotations (whether priced or unpriced) for covered OTC securities in the aggregate would have to conduct approximately 1,143 initial reviews of issuer information. This estimate is based on the assumption that the NASDR will, in the first year after the reproposals become effective, approve approximately 10% fewer Form 211 filings than the 1,271 approved in 2001. We believe that it will take a broker-dealer about 4 hours to collect, review, record, retain, and supply to the NASDR the information pertaining to a reporting issuer, and about 8 hours to collect, review, record, retain, and supply to the NASDR the information pertaining to a non-reporting issuer.

We therefore estimate that broker-dealers who are the first to publish the first quote for a covered OTC security of a reporting issuer will require 3,813 hours ($1{,}271 \times 75\% \times 4$) to collect, review, record, retain, and supply to the NASDR the information required by the Rule as reproposed. We estimate that after the reproposals have become effective the broker-dealers who are the first to publish the first quote for a covered OTC security of a non-reporting issuer (priced or unpriced) will require 2,542 hours ($1{,}271 \times 25\% \times 8$) to collect, review, record, retain, and supply to the NASDR the information required by the Rule. We therefore estimate the total annual burden hours for the first broker-dealers to be 6,355 hours (3,813 + 2,542).

The Rule also would require an annual review for broker-dealers publishing priced quotations for covered OTC securities. We have estimated that each issuer is quoted by about 4.3 broker-dealers. We are assuming that of the universe of approximately 6,936 potentially affected covered OTC securities, broker-dealers would publish priced quotations for approximately 90% of the OTC Bulletin Board securities or 3,049 securities ($(3{,}765 \times 90\%) \times 90\%$) and for 43% of the Pink Sheet securities or 1525 securities ($(3{,}942 \times 90\%) \times 43\%$). [7] Therefore, we estimate that priced quotations will be published for approximately 4,574 (3,049 + 1,525) covered OTC securities. Given that about 75% of OTC stocks are issued by reporting issuers and the other 25% by non-reporting issuers, and that it would take a broker-dealer 4 and 8 hours, respectively, to meet the requirements of the reproposed Rule for these issuers, we estimate the burden hours as follows: for reporting issuers we estimate approximately 58,996 hours ($3{,}430 \times 4.3 \times 4$), and for non-reporting issuers we estimate approximately 39,319 hours ($1{,}143 \times 4.3 \times 8$). Therefore, we estimate the total annual paperwork burden hours for all broker-dealers to be 104,670 hours (6,355 + 58,996 + 39,319).

Regarding the burden on issuers to provide broker-dealers with the required information, we believe that the 2,202 issuers of covered OTC securities (based on our estimate that 75% of the 6,936 potentially covered OTC securities are reporting issuers) will not bear any additional hourly burdens under the reproposed amendments because these issuers already report the required information to the Commission through mandated periodic filings. Further, reporting issuer information is widely available to broker-dealers through a variety of media. However, non-reporting issuer information is not widely available. Consequently, these issuers must provide the information required by the reproposed amendments to requesting broker-dealers before quotations in their securities can be published. We believe that the 1,734 issuers of non-reporting covered OTC securities (based on an estimate that 25% of the 6,936 potentially covered OTC securities are non-reporting) will spend an average of 9 hours each to collect, prepare, and supply the information required by the proposal to the first broker-dealer that requests this information. Thereafter, we estimate that it will take an average of 1 hour for an issuer to provide the same information to the remaining 3.3 broker-dealers that request the information. Accordingly, we estimate that 1,734 non-reporting issuers annually will incur 15,606 hours ($1{,}734 \times 9 \times 1$) to comply with the first broker-dealer's request for information, and 5,722 hours ($1{,}734 \times 1 \times 3.3$) to comply with the subsequent 3.3 broker-dealer requests for an annual total of 21,328 burden hours (15,606 + 5,722). On average, therefore, each non-reporting issuer would spend approximately 12.3 burden hours (21,328/1,734) per year to comply with these requests.

We estimate the collection of information will require approximately 125,998 burden hours annually (104,670 + 21,328) from approximately 2,134 respondents (400 broker-dealers and 1,734 issuers).

Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer. The broker-dealer is required to retain the information for three years, the first two years in an easily accessible place. The broker-dealer must also make the information reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer. The collection of information that is submitted to the NASDR for review and approval is currently not available to the public from the NASDR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology,

[7] Some securities have priced quotations published in both of these quotation systems. To avoid double counting, such securities are counted as OTC Bulletin Board securities.

Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 31, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7752 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27511]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 26, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 16, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 16, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pepco Holdings Inc., *et al.* (70–9913)

Pepco Holdings, Inc. (''PHI''), a Delaware corporation and its parent company, Potomac Electric Power Company (''Pepco''), a public utility company; POM Holdings, Inc. (''POM''), a holding company subsidiary of Pepco; Pepco Energy Services, a service company subsidiary of Pepco; Pepco's direct and indirect nonutility subsidiaries (''Pepco Nonutilities''), all located at 1900 Pennsylvania Avenue NW, Washington, DC 20068; and Conectiv, a Delaware corporation and a registered public utility holding company, Conectiv Resource Partners, Inc. (''CRP''), a service company subsidiary of Conectiv and Conectiv's direct and indirect nonutility subsidiaries (''Conectiv Nonutilities'') located at 800 King Street, Wilmington, Delaware 19801, (collectively, ''Applicants''), have filed a joint application-declaration (''Application'') under sections 5, 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act, and rules 42, 43, 45, 46, 52, 53, 54, 80–88, 90 and 91.

I. Introduction

Applicants request authority for transactions associated with the acquisition of Conectiv and Pepco by PHI (''Transaction''). Applicants propose that upon the satisfaction of certain conditions, including receipt of all necessary regulatory approvals, Pepco and Conectiv will become subsidiaries of PHI. PHI was incorporated under the laws of Delaware on February 9, 2001, as a direct, wholly owned subsidiary of Pepco to become the parent company of Pepco and Conectiv. After consummation of the Transaction, PHI will register as a public utility holding company under section 5 of the Act and maintain its headquarters in Washington, DC.

II. Summary of Requests

Applicants request authorization in the Merger Application for PHI to form two wholly owned subsidiaries that will merge with and into Pepco and Conectiv (''Mergers''). Pepco stockholders will receive one share of PHI's common stock for each share of Pepco common stock held prior to the Mergers. Conectiv common stockholders and Class A common stockholders will receive either cash or PHI common stock, subject to proration, in order that the aggregate consideration paid to all Conectiv stockholders will be fifty percent cash and fifty percent stock. As a result of the Transaction, all of the outstanding shares of common stock of PHI will be held by the former stockholders of Conectiv and Pepco and each share of each other class of capital stock of Conectiv and Pepco shall be unaffected and remain outstanding.

Upon completion of the Merger, PHI will own, directly or indirectly, all of the issued and outstanding common stock of six public utility subsidiary companies: Pepco, Atlantic City Electric Company (''ACE''), Delmarva Power & Light Company (''Delmarva''), Conectiv Delmarva Generation, Inc. (''CDG''), Conectiv Pennsylvania Generation, Inc. (''CPGI'') and Conectiv Atlantic Generation, LLC (''CAG''). PHI also will hold, directly or indirectly, all of the nonutility subsidiaries and investments currently owned by Pepco and Conectiv (''PHI Nonutilities'').

In addition, Applicants request: (i) To retain the nonutility businesses and subsidiaries of Pepco and Conectiv; (ii) to retain Conectiv's gas operations (''Conectiv Gas System''); (iii) following a transition period, to either (a) extend the role of CRP as a system service company to provide services to all associate companies in the PHI system or (b) form a new system service company as a direct subsidiary of PHI; (iv) to deviate from the ''at cost'' standards of the Act with respect to services provided to certain subsidiaries; (v) to reorganize PHI's direct and indirect, wholly owned, nonutility subsidiaries without the need to seek further Commission authorization, (vi) to enter into a tax allocation agreement and (vii) to engage in energy-related activities outside of the United States.

III. Parties to the Transaction

A. Pepco

Pepco is a public utility company within the meaning of the Act. Pepco transmits and distributes electric energy to 1.9 million people in Washington DC and major portions of Prince George's and Montgomery counties in suburban Maryland. Pepco is regulated as a public utility in Washington DC, Maryland, and, to a limited extent, in Pennsylvania and Virginia where it owns transmission lines and other jurisdictional assets.

Pepco's transmission facilities are interconnected with those of other transmission owners that are members of PJM, an Independent System Operator (''ISO'') approved by the Federal Energy Regulatory Commission (''FERC''). PJM administers all transmission service within the PJM region. Pepco has an investment in the Keystone-Conemaugh 500kV system (''EHV'') that traverses most of Pennsylvania.

Pepco is also engaged in the sale of electricity, natural gas and telecommunications in markets throughout the mid-Atlantic region through its wholly owned nonutility subsidiary, POM. In May 1999, Pepco reorganized its nonutility subsidiaries into two major operating groups to compete for market share in deregulated markets. As part of the reorganization, POM was created as the parent company of its two wholly owned subsidiaries,

Potomac Capital Investment Corporation (''PCI'') and Pepco Energy Services, Inc. (''Energy Services'').

Potomac Electric Power Company Trust I (''Trust''), a Delaware statutory business trust, and Edison Capital Reserves Corporation (''Edison''), a Delaware investment holding company, are also wholly owned subsidiaries of Pepco.[1]

For its utility operations, Pepco reported total assets of $5,010.0 million, utility operating revenues of $1,723.5 million (excluding $29.3 million gain on divestiture of generation assets during the year) and net income of $194.2 million for the year ended December 31, 2001. PCI reported total assets of $1,298.8 million, operating revenues of $112.2 million and net loss of $(36.1) million for the year ended December 31, 2001. Energy Services reported total assets of $211.8 million, operating revenues of $643.9 million and net income of $10.3 million for the year ended December 31, 2001.

B. Conectiv

Conectiv is a registered holding company under the Act and a Delaware corporation.[2] Conectiv owns all of the outstanding common stock of Delmarva, a Delaware and Virginia corporation, and of ACE, a New Jersey corporation. Delmarva and ACE are Conectiv's largest public utility subsidiaries and deliver electricity to customers under the trade name Conectiv Power Delivery. Delmarva provides electric service in Delaware, Maryland, and Virginia and natural gas service in northern Delaware. Delmarva's regulated electric service area has a population of approximately 1.2 million and covers an area of about 6,000 square miles on the Delmarva Peninsula. Delmarva delivers natural gas through its gas transmission and distribution systems to approximately 110,800 customers in a service territory that covers about 275 square miles in northern Delaware and has a population of approximately 500,000. ACE provides regulated electric service in an area in the southern one-third of New Jersey, which covers approximately 2,700 square miles and has a population of approximately 900,000. Delmarva and ACE deliver electricity within their service areas to approximately 973,600 customers through their respective transmission and distribution systems and also supply electricity to most of their electricity delivery customers.

ACE is subject to regulation as a public utility in New Jersey and Delmarva is subject to regulation as a public utility in Delaware, Maryland, and Virginia. Pennsylvania has jurisdiction over both ACE and Delmarva to a limited extent.

Conectiv formed Conectiv Energy Holding Company (''CEH'') in 2000. CEH and its subsidiaries are engaged in electricity production and sales, energy trading, and marketing. CEH owns 100 percent of the stock of ACE REIT, Inc. (''ACE REIT''), CESI, CPGI and CDG. ACE REIT owns 100 percent of the interests in CAG, a generation company. CDG, CAG and CPGI are utilities within the meaning of the Act.

In addition, Conectiv is changing the types of electric generation plants it owns by selling the majority of its baseload plants and increasing its mid-merit generation portfolio. Based on megawatts of generating capacity, approximately twenty-five percent (739.70 MW) of the electric generating plants owned by Conectiv as of December 31, 2001 (2,963.70 MW) were under agreements for sale. Conectiv is building new mid-merit electric generating plants, which Conectiv's management expects will provide a better strategic fit with Conectiv's energy trading activities and have more profitable operating characteristics than the plants to be sold.

In addition, as of December 31, 2001, Conectiv's subsidiaries had long-term purchased power contracts which provided 3,100 MW of capacity and varying amounts of firm electricity per hour during each month of a given year. Also, Delmarva agreed to purchase back 500 MW/hr of firm electricity per hour from the buyer of its generating plants beginning upon completion of the sale and continuing through December 31, 2005.

As a member of PJM, the generation and transmission facilities of Conectiv are operated on an integrated basis with other electricity suppliers and transmission owners in Pennsylvania, New Jersey, Maryland and the District of Columbia, and are interconnected with other major utilities in the eastern half of the United States. In addition to having an investment in EHV, ACE and Delmarva each have investments in two other 500kV systems in the PJM region.

In addition, Conectiv owns interests in various nonutility companies authorized by rule 58 under the Act or Commission order.

C. PHI

PHI was incorporated under the laws of Delaware on February 9, 2001, as a direct, wholly owned subsidiary of Pepco. PHI has issued 100 shares of common stock, all of which are owned by Pepco. PHI was created to become the parent company of Pepco and Conectiv and after the consummation of the Transaction, will register as a public utility holding company under section 5 of the Act.

For the year ended December 31, 2001, Pepco and Conectiv had the following financial results individually, and on a pro forma combined basis: [3]

	Pepco ($ millions)	Conectiv ($ millions)	Pro forma combined ($ millions)
Total assets	5,285.9	6,280.7	12,289.8
Total operating revenues	2,502.9	5,790.0	8,292.9
Operating income	366.4	759.2	1,125.6
Net income	168.4	382.9	551.3

[1] Trust was established in April 1998 and exists for the exclusive purposes of (i) issuing Trust securities representing undivided beneficial interests in the assets of the Trust; (ii) investing the gross proceeds from the sale of Trust securities in junior subordinated deferrable interest debentures issued by Pepco and (iii) engaging only in other activities as necessary or incidental to the foregoing. Edison was established in 2000 and exists for the purposes of managing and investing a significant portion of the proceeds received from the divestiture of certain of Pepco's generation assets.

[2] Conectiv was formed on March 1, 1998, through a series of merger transactions and an exchange of common stock with Delmarva and Atlantic Energy, Inc. *See* HCAR No. 26832 (February 25, 1998) (''Conectiv Merger Order'').

[3] In December 2000, Pepco divested substantially all of its generation assets. This divestiture resulted in the recognition of a pre-tax gain of approximately $423.8 million ($182 million net of income taxes).

D. The Mergers

Under the merger agreement (''Merger Agreement''), PHI will form two new wholly owned subsidiaries (''Merger Sub A'' and ''Merger Sub B,'' and together, ''Merger Subs''). Merger Sub A will be a corporation organized under the laws of the District of Columbia and Virginia. Merger Sub B will be a corporation organized under the laws of Delaware. PHI will designate the officers of Merger Sub A and Merger Sub B. After the formation, the Merger Subs will become parties to the Merger Agreement. Merger Sub A will merge with and into Pepco, in accordance with the applicable provisions of the laws of Virginia and the District of Columbia (''Pepco Merger''). Pepco will be the surviving corporation and will continue its existence under the laws of the District of Columbia and Virginia. As a result of the Pepco Merger, Pepco will become a subsidiary of PHI. The parties currently intend that shortly after the consummation of the Transaction, Pepco will dividend the stock of POM to PHI so that POM will become a first tier subsidiary of PHI.

Merger Sub B will merge with and into Conectiv, in accordance with the laws of Delaware (''Conectiv Merger''). Conectiv will be the surviving corporation in the Conectiv Merger and will continue its existence under the laws of Delaware. As a result of the Conectiv Merger, Conectiv will become a subsidiary of PHI. The officers of Merger Sub A and Merger Sub B will become, respectively, the officers of Pepco and Conectiv.

By virtue of the Mergers, each share of common stock, par value $1.00 per share of Pepco (''Pepco Common Stock''), each share of common stock, par value $.01 per share, of Conectiv (''Conectiv Common Stock''), and each share of class A common stock, par value $.01 per share of Conectiv (''Conectiv Class A Stock'' and together with the Conectiv Common Stock, ''Conectiv Stock'') that are owned by Pepco, Conectiv, or any of their subsidiaries, will be canceled and no consideration will be delivered in exchange (''Canceled Stock''). Shares of Pepco Common Stock (other than the Canceled Stock and shares with respect to which the owner duly exercises the right to dissent under applicable law) will be converted into the right to receive one share of common stock, par value $.01 per share, of PHI (''PHI Common Stock'' or ''Pepco Merger Consideration'').

Shares of Conectiv Common Stock (other than the Canceled Stock and shares with respect to which the owner duly exercises the right to dissent under applicable law) will be converted into the right to receive: (a) $25 in cash (''Conectiv Common Stock Cash Consideration'') or (b) the number of validly issued, fully paid and nonassessable shares of PHI Common Stock (''Conectiv Common Stock Share Consideration'') determined by dividing $25 by the average final price [4] (''Conectiv Common Stock Exchange Ratio''). The Conectiv Common Stock Exchange Ratio may vary in accordance with the Average Final Price within minimum and maximum exchange ratios established the Merger Agreement. Shares of Conectiv Class A Stock other than Canceled Stock and shares with respect to which the owner duly exercises the right to dissent under applicable law will be converted into the right to receive (a) $21.69 in cash (''Class A Cash Consideration'' and together with the Conectiv Common Stock Cash Consideration, ''Conectiv Cash Consideration'') or (b) the number of validly issued, fully paid and nonassessable shares of PHI Common Stock (''Class A Share Consideration'' and together with the Conectiv Common Stock Share Consideration, ''Conectiv Share Consideration'') determined by dividing $21.69 by the Average Final Price (''Class A Stock Exchange Ratio''). The Class A Stock Exchange Ratio may also vary in accordance with the Average Final Price within minimum and maximum exchange ratios established in the Merger Agreement.

Each record holder of Conectiv Stock immediately prior to the consummation of the Transaction will be entitled to elect to receive shares of PHI Common Stock or cash for all or any part of that holder's shares of Conectiv Stock. As described in the Merger Agreement, this election is subject to the requirement that, in the aggregate, fifty percent of the consideration to be paid to Conectiv stockholders consists of cash and fifty percent consists of PHI common stock. Each share of common stock, without par value, of Merger Sub A that is issued and outstanding immediately prior to the consummation of the Transaction will be converted into one share of common stock, without par value, of Pepco. Each share of common stock, par value $.01 per share, of Merger Sub B that is issued and outstanding immediately prior to the consummation of the Transaction will be converted into one share of common stock, par value $.01 per share, of Conectiv.

PHI will account for the Transaction as an acquisition of Conectiv by Pepco using the purchase method of accounting for a business combination in accordance with generally accepted accounting principles (''GAAP''). Under GAAP, the assets and liabilities of Conectiv will be recorded at their fair values and, if necessary, any excess of the merger consideration over those amounts will be recorded as goodwill. The results of operations and cash flows of Conectiv will be included in PHI's financial statements prospectively as of the effective time of the transaction. Staff Accounting Bulletin No. 54 (''SAB 54''), generally requires that the premium paid in an acquisition using the purchase method of accounting be ''pushed down'' to the books of the acquired company, which in this case would be Conectiv. However, Applicants state that, under applicable exceptions to the general rule, the premium paid in the Transaction is not required to be ''pushed down'' to Conectiv. Specifically under SAB 54, application of push down accounting is not required when the acquired company will continue to have public debt after a merger. Conectiv has and will have publicly held debt in the form of medium-term notes after the Transaction.

Before completing the Transaction, the management of Pepco and PHI will evaluate various sources and methods of financing the amount necessary to fund a portion of the cash consideration to be paid (the total amount of cash consideration is approximately $1.098 billion). Applicants may use up to approximately $400 million of the proceeds that Pepco has received from the recent sale of its generation assets to fund a portion of the Conectiv Cash Consideration, and anticipate that all other funds required for the Transaction will be financed at the PHI level through external sources. Sources of financing that PHI is arranging include commercial and investment banks, institutional lenders and public securities markets. Methods of financing initially will include commercial paper and bank lines of credit, which will be refinanced following completion of the Transaction in the public and/or private markets with debt and preferred securities of various maturities and types to be determined after the closing of the Transaction. The financing for the Transaction by PHI will not be recourse to any system companies other than PHI.

[4] The average final price (''Average Final Price'') consists of a volume-weighted average of the closing trading prices of Pepco common stock during a certain period of time prior to the closing of the Transaction.

IV. Intrasystem Provision of Services

After consummation of the Transaction, and during the transition period described below, both CRP and Pepco will provide Pepco Holdings, Conectiv, Pepco and other system companies with certain system wide administrative, management and support services. All services provided to Pepco Holdings or to both Pepco or any of its current subsidiaries (''Pepco Subsidiaries'') and Conectiv or any of its current subsidiaries (''Conectiv Subsidiaries'') by either CRP or Pepco will be billed and allocated through CRP in accordance with a revised service agreement (''CRP Service Agreement'').[5] As a result, during the transition period not all services will be provided on a system-wide basis and CRP will continue to provide certain services solely to Conectiv companies, while Pepco companies will continue to provide services solely to Pepco companies. The Applicants have not yet completed their analysis of how best to accomplish the goal of centralizing the service functions in the combined company. Once this analysis is completed, Pepco Holdings will consolidate the provision of services in a first tier system service company as appropriate and subject to Commission approval.

Applicants propose to have CRP function as an interim service company through January 1, 2003 (''Transition Period''). CRP will provide services to PHI as well as both Pepco Subsidiaries and Conectiv Subsidiaries and these services will be allocated and billed in accordance with the CRP Service Agreement. In addition, Applicants propose that some Pepco employees provide services to PHI, Pepco Subsidiaries and Conectiv Subsidiaries. Pepco will bill these services to CRP at cost, determined in accordance with rules 90 and 91 under the Act, and CRP will then allocate and bill the costs to the appropriate system companies in accordance with the CRP Service Agreement. During the transition period, CRP will either be a direct or indirect subsidiary of PHI.

Applicants commit to file, within six months of the consummation of the Transaction, a revised service agreement, service company policy and procedures that address the final service company arrangements to be proposed. At this time, Applicants state that any new service company will have been formed.

Applicants request an exemption from the at-cost requirements of rules 90 and 91 for services rendered by PHI's nonutility subsidiaries to certain other PHI nonutility subsidiaries, if one or more of the following conditions apply:

(i) The purchasing nonutility subsidiary is a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation and sale of electric energy within the United States;

(ii) The purchasing nonutility subsidiary is an EWG that sells electricity at market-based rates that have been approved by the FERC or the relevant state public utility commission, provided that the purchaser is not one of PHI's regulated public utility subsidiaries;

(iii) The purchasing nonutility subsidiary is a ''qualifying facility'' (''QF'') under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to an electric utility company (other than one of PHI's regulated public utility subsidiaries) at the purchaser's ''avoided costs'' as determined under the regulations under PURPA; and

(iv) The purchasing nonutility subsidiary is an EWG or QF that sells electricity at rates based upon its cost of service, as approved by the FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not one of PHI's regulated public utility subsidiaries.

The nonutility subsidiaries described in clauses (i)–(iv) are referred to collectively below as ''Exempt Nonutility Companies.'' To the extent not exempt or otherwise authorized, Applicants request an exemption from the at-cost requirements of rules 90 and 91 for services rendered to any Exempt Nonutility Company that (a) is partially owned, provided that the ultimate purchaser of the services is not a regulated public utility subsidiary of PHI, (b) is engaged solely in the business of developing, owning, operating and/or providing services to Exempt Nonutility Companies or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

Pepco's indirect wholly owned subsidiaries W.A. Chester LLC and W.A. Chester Corporation are in the business of installing and maintaining utility cable systems. These companies currently provide services to Pepco at market rates under contracts entered into before they became part of a registered system and Applicants request that they continue to operate under these contracts for the existing term of the contracts. Upon consummation of the Transaction, Applicants commit that any new service arrangements between these companies and Pepco will be priced at cost.

Pepco entered into a lease arrangement with Edison Place, LLC (''Edison Place''), a subsidiary of Pepco, under which it will rent office space in the new headquarters building from Edison Place. This fifteen year lease was entered into before Pepco and Edison Place were part of a registered system and contains rent arrangements that Pepco believes are more favorable to it than other available options in the market. The rent arrangements were not determined in accordance with the provisions of rules 90 and 91 of the Act but were an integral part of the property sale between Pepco and Edison Place. Pepco and Edison Place request authorization to leave the existing lease in place until the expiration of its terms.

V. Nonutility Subsidiary Reorganizations

Applicants propose to restructure the PHI Nonutilities from time to time as may be necessary or appropriate in the furtherance of the PHI authorized nonutility activities. PHI requests authorization to acquire, directly or indirectly, the equity securities of one or more intermediate subsidiaries (''Intermediate Subsidiaries'') organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future nonutility subsidiaries. Intermediate Subsidiaries may also provide management, administrative, project development and operating services to future PHI Nonutilities.

Reorganizations could involve the acquisition of one or more new subsidiaries formed to acquire and hold direct or indirect interests in any or all of PHI's existing or future authorized nonutility businesses. Restructuring could also involve the transfer of existing subsidiaries, or portions of existing businesses, to PHI or among the PHI Nonutilities and/or the re-incorporation of existing PHI Nonutilities in a different jurisdiction. Following any reorganization, PHI will continue to hold, directly or indirectly, the same interest in the voting securities of any PHI Nonutility as immediately prior to the reorganization. This would enable PHI to consolidate similar businesses and to participate effectively in authorized nonutility activities,

[5] The CRP Service Agreement is filed as an exhibit to this Application.

without the need to apply for or receive additional Commission approval.

The direct or indirect newly created nonutility holding company subsidiaries referred to above might be corporations, partnerships, limited liability companies or other entities in which PHI, directly or indirectly, will have a 100 percent voting equity interest. These subsidiaries would engage only in businesses to the extent PHI is authorized to engage in those businesses by statute, rule, regulation or order. Applicants state that reorganizations will not result in PHI entering into any new, unauthorized line of business.

VI. Energy Related Activities

Applicants request authority for PHI existing and future nonutility subsidiaries to engage in certain ''energy-related'' activities outside the United States. These activities may include:

(i) The brokering and marketing of electricity, natural gas and other energy commodities (''Energy Marketing'');

(ii) Energy management services (''Energy Management Services''), including the marketing, sale, installation, operation, and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales, and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring, and evaluation of energy conservation programs; development and review of architectural, structural, and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning; electrical and power systems; alarm and warning systems; motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems; and

(iii) Engineering, consulting, and other technical support services (''Consulting Services'') with respect to energy-related businesses, as well as for individuals. Consulting Services would include technology assessments, power factor correction, and harmonics mitigation analysis; meter reading and repair; rate schedule design and analysis; environmental, engineering, risk management, and billing services (including consolidation billing and bill disaggregation tools); communications and information systems/data processing; system and strategic planning; finance; feasibility studies; and other similar services.

Applicants request that the Commission (i) authorize nonutility subsidiaries to engage in Energy Marketing activities in Canada and reserve jurisdiction over Energy Marketing activities outside of Canada pending completion of the record in this proceeding; (ii) authorize nonutility subsidiaries to provide Energy Management Services and Consulting Services anywhere outside the United States and (iii) reserve jurisdiction over other activities of nonutility subsidiaries outside the United States, pending completion of the record.

Applicants note that the Commission has previously granted or reserved jurisdiction over Conectiv Nonutilities' provision of the type of services described above through its Rule 58 Subsidiaries.[6] Applicants request that this authorization and reservation of jurisdiction be extended to the Pepco Nonutilities as well.

VII. Tax Allocation Agreement

Applicants propose to enter into an agreement for the allocation of consolidated tax among the companies within the PHI system (''Tax Allocation Agreement''). The Tax Allocation Agreement provides for the retention by PHI of payments for tax losses that it will incur in connection with financing or refinancing approximately $700 million of the cash consideration to be paid in the Transaction, rather than the allocation of these losses to its subsidiaries without payment as would otherwise be required by rule 45(c)(5).

VIII. Retention of Nonutility Subsidiaries and Additional Gas System

Applicants request that PHI be authorized to retain the Pepco Nonutilities, specifically listed in Appendix A to this notice.[7] Additionally, Applicants request that PHI be authorized to retain the Conectiv Gas System, which was found retainable in the Conectiv Merger Order.

[6] *See* HCAR No. 27464 (November 8, 2001).

[7] The Commission found the Conectiv Nonutilities to be retainable in the Conectiv Merger Order.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7769 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25500; File No. 812–12630]

Northbrook Life Insurance Company, et al.; Notice of Application

March 26, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an amended order pursuant to section 11(a) of the Investment Company Act of 1940, as amended (the ''Act'') approving the proposed offer of a new Longevity Reward Rider (''new LRR''), as set forth below.

Applicants: Northbrook Life Insurance Company (''Northbrook''), Northbrook Variable Annuity Account II (''Account II''), Allstate Life Insurance Company of New York (''Allstate New York''), Allstate Life of New York Variable Annuity Account II (''ALNY Account II'') and Morgan Stanley DW Inc. (formerly known as Dean Witter Reynolds Inc.) (''Morgan Stanley'') (collectively, the ''Applicants'').

Summary of Application: Applicants seek an order to amend an Existing Order (described below) approving the offer by the Applicants of the new LRR upon the terms and subject to the conditions described herein and in the Prior Application (described below).

Filing Date: The application was filed on September 4, 2001, amended on January 23, 2002, and amended and restated on March 19, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 22, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Charles Smith, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. Northbrook is a wholly-owned subsidiary of Allstate Life Insurance Company (''Allstate Life''). Allstate Life is an indirect subsidiary of The Allstate Corporation, a publicly-traded insurance holding company. Northbrook is Account II's depositor within the meaning of the Act.

2. Morgan Stanley is a wholly-owned subsidiary of Morgan Stanley Dean Witter & Co., a publicly-traded financial services company. Morgan Stanley is the principal underwriter of Account II. Morgan Stanley is registered as a broker-dealer under the Securities Exchange Act of 1934 (File No. 8–14172).

3. Account II is registered under the Act as a unit investment trust (File No. 811–6116). Account II funds the Morgan Stanley Dean Witter Variable Annuity II Contracts (the ''VA II Contracts'') that Northbrook and Morgan Stanley have offered and sold for a number of years.

4. The VA II Contracts, which are registered under the Securities Act of 1933 (File No. 033–35412), are deferred annuity contracts under which Contract owners may make one or more purchase payments over a period of time (called the ''accumulation phase''). During the accumulation phase, the Contract owner's purchase payments, after deduction of certain charges, earn (at the owner's election) a ''variable'' return based on the investment performance of one or more of Account II's subaccounts and/or a fixed rate of return that Northbrook declares from time to time.

5. At the end of the accumulation phase, the Contract owner elects whether to receive a ''lump sum'' payment of the VA II Contract's accumulated value, or to receive that value under one of several payment options. Payment options are available on a variable and/or fixed basis. The VA II Contracts incorporate many other features, including ''death benefit'' options, partial withdrawal rights, full surrender rights, transfer privileges and other optional rider benefits.

6. The VA II Contracts currently impose a withdrawal charge of up to 6% of any amount by which purchase payments withdrawn in any year exceed 15% of the cumulative purchase payments that had been made as of the beginning of that year (the ''annual free withdrawal amount''). The withdrawal charge associated with each purchase payment declines 1% each year until it is 0% beginning in the seventh year after the payment was made. Unused portions of the annual free withdrawal amount do not carry over to future years.

7. The VA II Contracts also impose an annual Contract maintenance charge of $ 30, a $ 25 charge applicable to certain transfers in excess of twelve during a one-year period (which is currently being waived), a daily administrative charge at an annual rate of 0.10% of the Contract's value in Account II, a mortality and expense risk charge at an annual rate of 1.25% of the Contract's value in Account II (or higher if certain optional rider benefits are selected), and a charge corresponding to any applicable state premium taxes.

8. Allstate New York is a stock life insurance company organized in New York in 1967. Like Northbrook, Allstate New York is a wholly-owned subsidiary of Allstate Life.

9. ALNY Account II funds the Allstate New York Variable Annuity II Contracts (''ALNY Contracts''). The ALNY Contracts are substantially similar to the VA II Contracts (together with the ALNY Contracts, the ''Contracts'') covered by the Existing Order, and have the same withdrawal charge schedule, base mortality and expense charge, contract maintenance charge, and administrative expense charge. However, due to limitations imposed by the New York Insurance Department, the ALNY Contracts do not offer the following income and death benefit riders that are offered by the VA II Contracts: Death Benefit Combination Option, Income Benefit Combination Option 2, Income and Death Benefit Combination Option 2 and Enhanced Earnings Death Benefit Option. Other than the optional riders, there are no material differences between the ALNY Contracts and the VA II Contracts.

10. By order dated June 8, 2000 (the ''Existing Order''),[1] the Commission approved, pursuant to Section 11 of the Act, the offer by Northbrook, Account II, and Morgan Stanley of a Longevity Reward Rider to owners of certain variable products as described in the application for the Existing Order (''Prior Application'').[2] Applicants are seeking to amend the Existing Order to approve the offer by Applicants of the new LRR. The new LLR is identical to the LRR currently offered through the VA II Contracts (''existing LRR''), with the modifications described below. Both the ALNY Contracts and the VA II Contracts are distributed exclusively by Morgan Stanley.

11. The existing LRR provides the following benefits: (a) An option whereby a deceased owner's surviving spouse may continue the Contract using the then-current death benefit value as the new Contract value, if higher, rather than the current Contract value; (b) a reduced mortality and expense risk charge (*i.e.,* at an annual rate that is .07% less than the rate that otherwise would apply); (c) a permanent waiver of the $30 annual Contract maintenance charge if the Contract's value exceeds $40,000 at any time; and (d) a reduction in the withdrawal charge that will apply to the withdrawal of any purchase payments that are made after the existing LRR is added to the Contract.

12. Contract owners who elect the existing LRR have a new three-year withdrawal charge schedule that applies to withdrawals made after the rider's issue date (the ''Rider Date''). The new schedule applies to any amount of such a subsequent withdrawal of purchase payments that exceeds the 15% annual free withdrawal amount, regardless of whether such withdrawn purchase payments were made before or after the Rider Date.

13. The withdrawal charge under the new withdrawal charge schedule begins at 3% and declines by 1% per year over three years to 0% by the end of the third year. For purchase payments made prior to the Rider Date, the three-year period runs from the Rider Date. For any purchase payment made subsequent to the Rider Date, the three-year period runs from the date of that payment.

14. The same exceptions to imposing the existing LRR withdrawal charge apply as apply to the Contract's basic withdrawal charge. Specifically, no existing LRR withdrawal charge is

[1] *Northbrook Life Insurance Company,* Investment Company Act Release No. 24493 (June 8, 2000) (File No. 812–12092).

[2] *Northbrook Life Insurance Company,* Investment Company Act Release No. 24456 (May 16, 2000) (File No. 812–12092).

imposed at the time a payment option commences, upon the death of a Contract owner or annuitant, upon amounts withdrawn to satisfy any applicable minimum distribution requirements under the Internal Revenue Code, or upon amounts withdrawn that are within the 15% annual free withdrawal amount. These are the same exceptions as would apply to the Contracts without the existing LRR.

15. Contract owners are not permitted to elect for the existing LRR to apply to part of a contract and not to the rest. Any election of the existing LRR must apply to the whole contract.

16. The new LRR is identical to the existing LRR, except that the new LRR will be available to an expanded class of eligible Contract owners. The existing LRR is available only to Contract owners whose entire Contract value is no longer subject to a withdrawal charge. By contrast, the new LRR would be available to any Contract owner if on the date of application for the new LRR (''Application Date''):

- the Contract owner's initial purchase payment is no longer subject to a withdrawal charge; and
- the Contract owner's additional purchase payments, if any, would be subject to total withdrawal charges (assuming a current surrender of the Contract) equal to an amount not greater than 0.25% of the current Contract value.

The following example illustrates the operation of the new eligibility criteria: In 1990, an individual purchases a Contract with an initial purchase payment of $150,000. On January 1, 1997, the Contract owner makes an additional purchase payment of $20,000. In 2001, the Contract owner applies to add the new LRR. At that time, the Contract value is $200,000, and the additional purchase payment is subject to the Year 4 surrender charge of 2%:

(A) Contract value = $200,000

(B) Hypothetical withdrawal charge (assuming full surrender) = $20,000 x .02 = $400

(C) Eligibility Calculation (< .25%) = (B) / (A) = 400 / 200,000 = 0.20%

Because the withdrawal charge upon surrender on the Application Date is less than .25% of the Contract value, the Contract owner is eligible to add the LRR.

17. The principal purpose of the new LRR is the same as that of the existing LRR, namely, to reward eligible Contract owners for their persistency. However, the broader eligibility criteria for the new LRR is intended to meet the demands of Contract owners for such additional flexibility. Specifically, many Contract owners have expressed the desire that additional purchase payments, especially where small compared to the initial purchase payment, should not defeat eligibility for the LRR. In addition, the new LRR, like the existing LRR, will better allow Northbrook and Allstate New York to maintain the Contracts on a competitive footing with other newer variable annuity contracts in the marketplace that offer the same or similar benefits.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission.

2. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission regardless of the basis of the exchange.

3. Standing alone, Section 11(a) by its terms applies only to exchanges of securities issued by ''open-end'' investment companies, which, under section 5(a)(1) of the Act, includes only management-type investment companies. ALNY Account II and Account II are unit investment trust-type (rather than a management-type) investment companies under section 4(2) of the Act. It would appear, therefore, that Section 11 could require Commission approval for Applicants' offer of the new LRR only if that offer falls within the ambit of Section 11(c).

4. Applicants do not concede that their offer of the new LRR to existing Contract owners necessarily constitutes an offer of securities of a registered unit investment trust in exchange for securities of any other investment company within the purview of Section 11(c). Nor do Applicants concede that, for purposes of Section 11, a Contract with the new LRR is a different security than a Contract without the new LRR. Nevertheless, Applicants request an exemption pursuant to Section 11(a) of the Act to the extent deemed necessary to permit the offer of the new LRR as described herein.

5. Applicants have considered whether they could rely on Rule 11a-2 under the Act. Applicants believe and represent that the only provision in Rule 11a-2 that could prevent such reliance would be the so-called ''tacking'' requirement in Rule 11a-2(d)(1). Applicants state that since the new LRR withdrawal charge continues for only three years, and since the new LRR is only available to a Contract owner if on the Application Date (a) the Contract owner's initial purchase payment was made at least six years prior to the date the new LRR is added to the Contract (''Rider Date''); and (b) the Contract owner's additional purchase payments, if any, would be subject to total withdrawal charges (assuming a current surrender of the Contract) equal to an amount not greater than 0.25% of the current Contract value, the tacking requirement effectively would prohibit the imposition of some or all of the new LRR's withdrawal charge with respect to purchase payments made prior to the Rider Date. For that reason, Applicants have concluded that Rule 11a-2 is unavailable to them.

6. Congress enacted Section 11 to prevent ''switching,'' *i.e.,* the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Applicants assert that the new LRR would not involve ''switching.'' Applicants maintain, to the contrary, that the purpose of the new LRR is to enable Contract owners to enhance their Contracts through the rider without having to buy a new variable annuity contract. Applicants represent that because the new LRR provides clear benefits, as described above, the new LRR's sole purpose is not to exact additional selling charges (or any other type of charge).

7. Applicants state that the new LRR would not result in any duplicative charges. Applicants represent that the limited withdrawal charge provided under the new LRR is reasonable in relation to the benefits that the rider provides and the costs that Applicants will incur in providing those benefits. Those costs will include costs of developing and administering the new LRR, the direct dollar costs of the charges that will be waived or reduced and the benefits that will be paid under the new LRR, and the costs of distributing the new LRR to Contract owners and educating them about it.

8. Applicants represent that any possible withdrawal charge under the new LRR is modest in amount. For Contract owners with additional purchase payments subject to withdrawal charges, the new LRR waives all outstanding withdrawal charges applicable under the Contract's existing withdrawal schedule and applies instead the withdrawal charge under the new withdrawal schedule,

which may result in a lower withdrawal charge. Applicants state that, if the Contract owner makes no withdrawals during the three years after the Rider Date, there is no possibility that any withdrawal charge will ever be deducted that exceeds what would have been deducted absent the new LRR. Applicants also state that even if purchase payments are withdrawn during that three-year period, the new LRR withdrawal charge will apply only if more than the 15% annual free withdrawal amount is withdrawn in any year.

9. The new LRR will be offered only to Contract owners who already have demonstrated an inclination to maintain their Contracts for substantial periods of time. Applicants believe that the income taxes that are generally payable when earnings are withdrawn from a Contract, as well as the tax penalties that may apply if those withdrawals are made prior to the owner's reaching age 59 1/2, serve as additional motivations that cause most owners to hold their Contracts for a substantial number of years (and often until retirement).

10. Applicants state that any withdrawal charge will be waived for withdrawals of any amounts necessary to meet any federal tax law minimum distribution requirements applicable to a Contract.

11. Under all these circumstances, Applicants believe that, as a practical matter, few owners that add the new LRR to their Contracts will ever actually pay any additional withdrawal charges as a result; and to the extent that the new LRR succeeds in its purpose of maintaining the Contracts on a competitive footing in the marketplace, withdrawals should be even further reduced.

12. Applicants state that except for the withdrawal charge as described above, the new LRR will not result in any increase in or imposition of any charge. Accordingly, Applicants assert that except for the potential imposition of the new LRR withdrawal charge on certain withdrawals that occur within three years after the Rider Date, every aspect of a Contract will be at least as favorable after the new LRR is added as it was before. Applicants maintain that adding the new LRR to a Contract will have no adverse tax consequences to a Contract's owner.

13. In light of these considerations, Applicants do not believe there is any public policy or purpose under Section 11 (or otherwise) that would preclude offering the new LRR on the terms and subject to the conditions stated herein.

Applicants' Conditions

1. The Offering Document will contain concise, plain English statements that: (a) the new LRR is suitable only for Contract owners who expect to hold their Contracts as long term investments; and (b) if a significant amount of the Contract's value is surrendered or withdrawn during the first three years after the Rider Date, the new LRR's benefits may be more than offset by that charge, and a Contract owner may be worse off than if he or she had rejected the new LRR.

2. The Offering Document will disclose in concise plain English the only aspect in which adding the new LRR rider could disadvantage a Contract owner (*i.e.,* through the possible imposition of the new LRR withdrawal charge).

3. A Contract owner choosing to add the new LRR will complete and sign the election form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Northbrook or Allstate New York, as appropriate. If the election form is more than two pages long, Northbrook or Allstate New York, as appropriate, will use a separate document to obtain the Contract owner's acknowledgment of the statements referred to in Condition No. 1 above.

4. Applicants will maintain and make available the following separately identifiable records, for the time periods specified below, for review by the Commission upon request: (a) Northbrook or Allstate New York, as appropriate, will maintain records showing the level of new LRR purchases and how it relates to the total number of Contract owners eligible to acquire the new LRR (at least quarterly as a percentage of the number eligible); (b)(i) Northbrook or Allstate New York, as appropriate, will maintain copies of any form of Offering Document, prospectus disclosure, election form, acknowledgment form, or offering letter, regarding the offering of the new LRR, including the dates(s) used, and (ii) Morgan Stanley will maintain copies of any other written materials or scripts for presentations used by registered representatives regarding the new LRR, including the dates used; (c) records showing information about each new LRR purchase that occurs, including (i) the following information to be maintained by Northbrook or Allstate New York, as appropriate: the name of the Contract owner; the Contract number; the election form (and separate acknowledgment form, if any, used to obtain the Contract owner's acknowledgment of the statements required in Condition No. 1 above), including the date such election or acknowledgment form was signed; the date of birth, address and telephone number of the Contract owner; the issue date of the new LRR; the amount of the Contract's value on that date; and persistency information relating to the Contract (date of any subsequent withdrawals and withdrawal charges paid); and (ii) the following information to be maintained by Morgan Stanley: the name of the Contract owner, the Contract number, the registered representative's name, CRD number, firm affiliation, branch office address and telephone number; the name of the registered representative's broker-dealer; and the amount of commissions paid to the registered representative that relates to the new LRR; and (d) each of Northbrook or Allstate New York, as appropriate, and Morgan Stanley will maintain logs showing any Contract owner complaints received by it about the new LRR, state insurance department inquiries to it about the new LRR, or litigation, arbitration or other proceedings to which it is a party regarding the new LRR.

5. Applicants will include the following information on the logs referred to in Condition No. 4(d) above: date of complaint or commencement of proceeding; name and address of the person making the complaint or commencing the proceeding; nature of the complaint or proceeding; and persons named or involved in the complaint or proceeding.

6. Applicants will retain (a) the records specified in Condition Nos. 4(a) and (d) above for six years from creation of the record; (b) the records specified in Condition No. 4(b) above for six years after the date of last use; and (c) the records specified in Condition No. 4(c) for five years from the Rider Date. The records referred to in these conditions will be prepared and retained, for the periods specified herein, by Northbrook or Allstate New York, as appropriate, and Morgan Stanley. Nevertheless, upon request of the Commission or its staff, Northbrook or Allstate New York, as appropriate, and Morgan Stanley shall coordinate the prompt assembly of such records for review at a single easily accessible location.

Conclusion

For the reasons discussed above, Applicants submit that the new LRR offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit

that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45643; File No. SR–Amex–2001–95]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the American Stock Exchange LLC Relating to Its Performance Evaluation Procedures for Option, Equity and ETF Specialists

March 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2001, 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 December 17, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On February 1, 2002, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On February 19, 2002, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 26, and adopt Commentaries .04, .05, .06, and .07 to Amex Rule 26 to for options, equity and Exchange Traded Fund (''ETF'') specialists.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Allocations Committee is responsible for allocating securities to specialists that can do a quality job with respect to the functions of a specialist. The Committee on Floor Member Performance (''Performance Committee'') reviews specialist performance and may take remedial action up to terminating a specialist's registration as such or reallocating securities when it identifies inadequate performance. The Exchange believes that these Committees protect the interests of investors, issuers and ETF sponsors by ensuring that only qualified specialists receive and retain allocations, and the institutional interests of the Exchange by ensuring that the Amex is as competitive as possible with other markets.[6]

We believe that the reallocation of a market maker's (or a specialist's) security due to poor performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.

We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

See also In re James Niehoff and Company, Administrative Proceeding File No. 3–6757, (November 30, 1986), and the other authorities cited in the Commission's *Post X–17* decision.

The Performance Committee may take remedial action on transactions that involve poor performance that are identified through Amex's surveillance or complaints. For equity securities, the Performance Committee currently reviews identified situations and ''rates'' transactions that involve inadequate

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation (''Division''), Commission (December 13, 2001) (''Amendment No. 1''). Amendment No. 1 adds specialist performance evaluation procedures for equity and ETF specialists to the proposed rule text and the purpose section of the proposal.

[4] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (January 31, 2002) (''Amendment No. 2''). Amendment No. 2 changes the proposed rule text, including the proposed Commentaries, from Rule 27 (''Allocations Committee'') to Rule 26 (''Performance Committee''). In addition, Amendment No. 2 clarifies that the Exchange will assign weightings to each criterion used to evaluate specialists, and notify specialists of any changes to the criteria or the weightings used by the Exchange.

[5] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (February 14, 2002) (''Amendment No. 3''). Amendment No. 3 clarifies the rule text to reflect the criteria that the Exchange will initially use to evaluate specialists. In addition, Amendment No. 3 clarifies that the Exchange will allocate weightings to the criteria, and notify specialists of these relative weightings before implementation. Amendment No. 3 also adds to the proposed rule text that the Exchange may change the criteria or weightings allocated to the criteria in order to enhance competitiveness relative to other markets and/or to improve market quality. Finally, Amendment No. 3 corrects typographical errors made in the proposed rule text.

[6] *See In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17,* Admin. Proc. File No. 3–7285, Securities Exchange Act Release No. 31666 (December 29, 1992), 51 SEC Dkt. 261. The Commission determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges and are not disciplinary in nature. The Commission states in the *Post X–17* case:

performance. At the end of each quarter, the Amex staff calculates a quarterly performance rating for each unit based upon the unit's rated situations. According to the Exchange, a poor rating may result in a preclusion on new allocations. The Performance Committee also conducts random reviews of option and ETF specialist order tickets and assigns performance ratings based upon these reviews.

The Allocations Committee thus receives ''Performance Ratings,'' which Allocations Committee members use in making allocations decisions. The performance ratings consist of (1) a rating (from ''1'' to ''5,'' with ''1'' being the best score) for each unit based upon a questionnaire distributed to Floor brokers on a routine basis (the Committee also receives the overall average score for each unit from the Floor Broker Questionnaire); and (2) a Performance Committee rating (from ''1'' to ''5'') based upon rated situations (for equities) and order ticket reviews (for options and ETFs).

In view of the importance of allocations and reallocation decisions to investors, issuers, ETF sponsors, and the Exchange, the Amex proposes to revise the current system for evaluating option, equity, and ETF specialists by adding a number of objective criteria to the rating scheme and implementing defined consequences for poor performance. The Exchange also proposes to codify its existing market share methodology for evaluating options specialist performance. The Exchange notes that upon implementation of the new evaluation system for equity specialists, the Performance Committee will no longer assign performance ratings for specific transactions, but may take such other action as is available to the Performance Committee and appropriate in the circumstances. The Exchange will continue order ticket reviews for options and ETFs for regulatory purposes. The Exchange may incorporate the results of these reviews into the performance evaluation rating system with the criteria that measure the number of Minor Floor Violation Disciplinary actions.

Under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange proposes that it may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange would notify specialists of any changes to the criteria, and the weightings thereof, prior to implementation. The Exchange proposes to use the following performance criteria at the commencement of the specialist evaluation systems:

Option Specialist Evaluation Criteria

- Percentage of trades executed at or better than the National Best Bid and Offer (''NBBO'')
- Percentage of orders that receive price improvement
- Percentage of time at NBBO
- Average bid/offer spread
- Liquidity enhanced trades [7]
- Average execution time
- Size of orders eligible for Auto-Ex
- Timeliness of openings relative to the underlying security
- Floor Broker Questionnaire rankings
- Average number of Performance Committee actions per option, and
- Average number of Minor Floor Violation Disciplinary Committee actions [8] per option.

Equity Specialist Evaluation Criteria

- Percentage of volume executed better than the NBBO
- Percentage of volume at the NBBO
- Percentage of time at the NBBO
- Percentage of market orders executed within sixty seconds
- Percentage of manual display of better limit orders
- Number of issues opened after 9:45
- Floor Broker Questionnaire rankings
- Average response time to ITS [9] commitments

ETF Specialist Evaluation Criteria

- Percentage of orders that receive price improvement
- Percentage of time at the NBBO
- Average bid/offer spread
- Average execution time for market and marketable limit orders
- Floor Broker Questionnaire rankings
- Average response time to ITS commitments
- Average number of Performance or Minor Floor Violation Disciplinary Committee actions per ETF

The Exchange would rate all specialists from ''1'' to ''5'' on a curve based upon their scores with respect to the criteria. ETFs would be ''tiered'' and evaluated for rating purposes in separate groups based upon trading volume to ensure that comparisons between specialists are based upon securities with similar trading characteristics. The Exchange would notify specialists of their ratings following calculation. A rating of ''1'' would represent the best possible score. Ratings of ''4'' and ''5'' would have defined remedial consequences.

A specialist unit that received a ''4'' or a ''5'' rating in any quarter would be referred to the Performance Committee for consideration of a preclusion on new allocations, or other appropriate remedial action. A specialist unit that received a ''5'' rating in any two of four consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. A specialist unit that received ratings of ''4'' or ''5'' in any three of six consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. The Exchange notes that the Performance Committee may consider any relevant information, including the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, market share, order flow statistics, level and adequacy of staffing, and other pertinent information in reviewing a specialist or unit.

In addition to the performance ratings system described above, the Exchange also proposes to codify the current program for evaluating options specialists based upon market share. Under this program, options specialists are regularly evaluated with respect to non-market maker contract volume in options that are actively traded in the United States. There may be different minimum market share criteria for (1) options that have always been multiply listed, and (2) options that were at one time exclusively awarded to only one exchange under the old ''lottery'' system.

According to the Exchange, options specialists are not evaluated on their market share in a newly listed option for the six months following listing on the Exchange. Under the program, a specialist that falls below the minimum market share criteria in one or more

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[7] The Exchange notes that liquidity enhancement is a measure of the depth of a market. The percentage of trades that receive liquidity enhancement equals the percentage of trades where an order for more than 20 contracts was executed at one price, at or between the NBBO.

[8] The Exchange represents that the term ''action'' would be defined to include any time the Committees did something other than ''no action'' the matter. For example, an admonitory letter from the Performance or Minor Floor Violation Disciplinary Committee would be considered ''action'' for the purposes of calculating specialist performance ratings.

[9] The term ''ITS'' means Intermarket Trading System.

options is referred to the Performance Committee for consideration of reallocation or other remedial action based upon poor market share in one or more options. The Exchange may change the minimum market share criteria used to evaluate specialists from time to time as warranted by market conditions. The Exchange would notify specialists of any changes to the market share criteria prior to implementation. The Exchange also would notify specialists of their market share.

The market share evaluation program for options specialists would be separate from the performance ratings system. Thus, for example, an option specialist with performance ratings that would not trigger remedial action could be referred to the Performance Committee for consideration of reallocation or other action based upon sub-standard market share in one or more options.

The Performance Committee reviews proposed transfers of specialist registrations between specialists to ensure that the institutional interests of the Exchange are protected. The Performance Committee, accordingly, will consider the performance ratings and market share of both the acquiring and transferring specialists in determining whether to approve a proposed transfer.

Under the proposed specialist evaluation procedures, performance reviews can result from (1) complaints or surveillance reviews, (2) low scores under the specialist performance ratings systems, or (3) low market share in one or more options classes. A performance review can result in a variety of possible actions, including recommendations for performance improvement, a determination not to permit a firm to seek new allocations, or a reallocation of one or more options classes from a specialist unit. The Performance Committee is not precluded from reallocating options based on a single instance of deficient performance or a single quarter or poor ratings or low market share. Conversely, the Performance Committee is not required to take such actions. Rather, the Exchange believes that the purpose of the rules and processes is to identify circumstances that warrant review by the Performance Committee. The nature of the appropriate remedial actions is necessarily a subjective matter, dependent on such matters as the options being traded, competition on other exchanges, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Performance Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [10] in general, and furthers the objectives of section 6(b) of the Act [11] in particular, in that the proposal is designed to promote just and equitable principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing, but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange notes that the Commission has expressly recognized that the procedures set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action where appropriate are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.[12]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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, 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 Exchange.

All submissions should refer to File No. SR–Amex–2001–95 and should be submitted by April 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

[FR Doc. 02–7780 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] *See* note 6, *supra.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–45642; File No. SR–CSE–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Changes in Transaction Fees and Establishing a Pilot Revenue Sharing Program for Trading in Nasdaq National Market Securities

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 25, 2002, the Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. The Commission is publishing this notice to solicit comment 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 hereby proposes to amend the Exchange's schedule of transaction fees and to establish a pilot revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is below. Additions are in italics, and deletions are in brackets.

The Cincinnati Stock Exchange, Incorporated

* * * * *

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees (No Change to Text)

(e) (*1*) (No Change to Text)

(2) Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

Number of shares traded (In a single day)	Fee per share
0–5 million	$0.001
5 million one+	0.000025

(1) [Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged $.001 per share per side ($1.00/1000 shares), with a maximum charge of $37.50 per firm per side, for Tape C Transactions.]

Tape ''C'' Transaction Credit. Members will receive a 75 percent pro rata credit on revenue generated by transactions in Tape ''C'' securities.

[(l)] (*m*) (No Change in Text)

[(m)] (*n*) (No Change in Text)

[(n)] (*o*) (No change in Text)

[(o)] (*p*) (No change to text)

[(p)] (*q*) (No change to text)

* * * * *

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 CSE 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 CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing two amendments to its Rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry. The first amendment adds subsection (2) to Rule 11.10(A)(e), (''Crosses and Meets''). Subsection (2) establishes a fee schedule for transactions in The Nasdaq Stock Market, Inc. (''Nasdaq'') National Market (''NNM'') securities.

The second change filed by the Exchange creates a pilot program as an incentive to Members to trade NNM securities on the Exchange and will be codified as Rule 11.10(A)(l) (Tape ''C'' Transaction Credit). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to members trading NNM securities. Under the program,[2] member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by member trading activity. The pilot program runs for 90 days and is set to expire June 28, 2002, if not renewed.

2. Statutory Basis

The proposed rule change is generally consistent with section 6(b)[3] of the Act. The proposed rule change also furthers the objectives of Section 6(b)(5),[4] particularly, in that the proposed rule change 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, 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. The proposal also is consistent with section 6(b)(4)[5] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE 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 in connection with the proposed rule change.

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)[6] of the Act and paragraph (e) of Rule 19b-4[7] thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

[2] Nasdaq securities will be traded on CSE pursuant to Section 12(f) of the Act, 15 U.S.C. 78*l*(f), as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq-UTP Plan'').

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

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–CSE–2002–03 and should be submitted by April 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7782 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45648; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 26, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 27, 2002, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a request that the Commission extend EMCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency through March 31, 2003.

On February 13, 1998, pursuant to sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted EMCC's application for registration as a clearing agency on a temporary basis until August 20, 1999.[5] By subsequent orders, the Commission extended EMCC's registration as a clearing agency through March 31, 2002.[6]

EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.[7] Since it began operations, EMCC has added certain sovereign debt to the list of eligible securities that may be cleared and settled at EMCC.[8] EMCC began operating on April 6, 1998, with ten dealer members.

As part of EMCC's initial temporary registration, the Commission granted EMCC temporary exemption from section 17A(b)(3)(B) of the Act because EMCC did not provide for the admission of some of the categories of members required by that section.[9] To date, EMCC's rules still only provide membership criteria for U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that it is appropriate for EMCC to limit the categories of members during its initial years of operations because to date no entity in a category not covered by EMCC's rules has expressed an interest in becoming a member.[10] Accordingly, the Commission is extending EMCC's temporary exemption from section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of credit at Euroclear used to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.[11] The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2, and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members.[12] Because not all of EMCC's members have become netting members, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(A) and (F).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[13] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–30 and should be submitted by April 22, 2002.

It is therefore ordered, pursuant to section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600–30) be and hereby is temporarily approved through March 31, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7783 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45647; File No. SR–GSCC–2001–15]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Highly Leveraged Members

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 16, 2001, the Government

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(a).

[2] Letter from Merrie Faye Witkin, Assistant Secretary, EMCC (February 27, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a)(1).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 39661 (Feb. 13, 1998), 63 FR 8711 (Feb. 20, 1998) (''Registration Order'').

[6] Securities Exchange Act Release Nos. 41733 (Aug. 12, 1999), 64 FR 44982 (Aug. 18, 1999); 43182 (Aug. 18, 2000), 65 FR 51880 (Aug. 25, 2000); and 44707 (Aug, 15, 2001), 66 FR 43941 (Aug. 21, 2001).

[7] Brady bonds are restructured bank loans that were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the principal and certain interest of these bonds is collateralized by U.S. Treasury zero coupon bonds and other high grade instruments.

[8] Securities Exchange Act Release Nos. 40363 (Aug. 25, 1998), 63 FR 46263 (Aug. 31, 1998) and 41618 (July 14, 1999), 64 FR 39181 (July 21, 1999).

[9] Registration Order at 8716.

[10] EMCC has represented to the staff that it will modify its rules to provide admission criteria for other entities that wish to become EMCC members.

[11] Registration Order at 8720.

[12] Securities Exchange Act Release Nos. 41247 (Apr. 2, 1999), 64 FR 17705 (Apr. 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

[13] 15 U.S.C. 78s(a)(1).

[14] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends GSCC Rules to require certain highly leveraged GSCC members to make and maintain with GSCC additional deposits to the clearing fund. The proposed rule change also amends the definition of ''excess capital.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 14, 2001, GSCC filed a proposed rule change with the Commission clarifying GSCC's rights with respect to its treatment of highly leveraged members.[3] GSCC stated that it was important for it to be able to monitor the ratio of each member's clearing fund requirement to that member's level of excess regulatory capital,[4] and wished to advise its members of specific actions that it would take pursuant to its rules with respect to any member that has a ratio in excess of 0.5. GSCC informed its members that it would require a highly leveraged member to provide it with comfort that it could fulfill its obligations to GSCC and that GSCC would be entitled to obtain or exchange margin information with respect to such member with other clearing organizations.

GSCC now proposes to take additional actions with respect to certain highly leveraged members. Specifically, GSCC proposes to require each highly leveraged member with a ratio of clearing fund requirement to excess regulatory capital greater than 1.0 to make and maintain with GSCC an additional deposit to the clearing fund. This deposit would be equal to twenty-five percent of the amount by which the member's ''excess capital differential,'' which is being defined as the amount by which a netting member's required clearing fund requirement exceeds the member's level of excess regulatory capital.[5] GSCC believes that this clearing fund premium is appropriate in view of the additional credit risk that such highly leveraged members pose to GSCC.[6] These rights are in addition to any other rights and remedies that GSCC possesses pursuant to its rules.

GSCC also proposes to make a minor change to the definition of ''excess capital'' to reflect the fact that some regulators (such as bank regulators) do not require the entities they regulate to maintain a minimum level of net liquid assets.[7]

GSCC believes that the proposed rules changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because they provide protection for GSCC with respect to the additional risk that highly leveraged members pose to GSCC and therefore better enable GSCC to safeguard the securities and funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rules changes have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[8] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. The Commission believes that requiring each highly leveraged GSCC member with a ratio of clearing fund requirement to excess regulatory capital greater than 1.0 to make and maintain an additional deposit to the clearing fund will give GSCC additional resources to protect itself and its members' securities and funds from the additional credit risk that highly leveraged members pose. As such, the Commission believes GSCC's proposal is consistent with its obligation to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

GSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will immediately allow GSCC to better protect itself with respect to highly leveraged members.

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

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] See Exchange Act Release No. 44995 (October 26, 2001), 66 FR 55724 (November 2, 2001) (File No. GSCC–2001–06).

[4] In this context, the term ''excess regulatory capital'' is used to include excess net capital, excess liquid capital, or excess adjusted net capital, as applicable, all of which are measures of an organization's net worth after adjusting for the liquidity of its balance sheet.

[5] GSCC Rule 1 and Rule 4, Section 3.

[6] GSCC will take the actions described in this rule filing against inter-dealer broker netting members as well if they have a ratio of clearing fund requirement to excess regulatory capital of greater than 1.0.

[7] GSCC Rule 1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–15 and should be submitted by April 22, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–GSCC–2001–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7784 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45644; File No. SR–NYSE–2001–53]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines

March 25, 2002.

I. Introduction

On December 21, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE's proxy fee schedule guidelines under its current pilot program, and to seek permanent approval of the pilot program. On January 9, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on January 16, 2002.[4] Eight comments were received on the proposed rule change, as amended.[5] The NYSE responded to the comments on March 5, 2002.[6] This order approves the proposed rule change, as amended.

II. Background

NYSE member organizations that hold securities for beneficial owners in street name[7] solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of NYSE issuers. For this service, issuers reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution, pursuant to guidelines for reimbursement of these expenses as set forth in NYSE Rules 451 and 465, and Paragraph 402.10(A) of the NYSE's *Listed Company Manual*, (collectively ''Rules'').[8]

Since the late 1960s, NYSE member firms increasingly have outsourced their proxy delivery obligations to contractors rather than handling proxy processing internally. According to the NYSE, the primary reason for this shift was that member firms believed proxy distribution was not a core broker-dealer business and that capital could be better used elsewhere. Since 1993, Automatic Data Processing, Inc. (''ADP'') has distributed close to 100 percent of all proxies sent to beneficial owners holding shares in street name.[9]

On March 14, 1997, the Commission approved an NYSE proposal that significantly revised the NYSE reimbursement guidelines set forth in the NYSE Rules and established a pilot fee structure (''Pilot Program'' or ''Pilot'').[10] Under the Pilot Program, the NYSE established guidelines for the amounts that NYSE issuers should reimburse member organizations for the distribution of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Program was designed to address many of the functional and technological changes that had occurred in the proxy distribution process since the NYSE Rules were last revised in 1986. The fee structure under the Pilot Program reduced certain fees, increased the fee for proxy fights, and created several new fees.[11] The Pilot Program was originally

[9] 15 U.S.C. 78s(b)(2).

[10] 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 Darla C. Stuckey, Corporate Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated January 7, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange made some technical and clarifying corrections to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 45263 (January 9, 2002), 67 FR 2264.

[5] *See* letters from Paul Conn, Executive Vice President, Computershare Limited, and Steven Rothbloom, President, Computershare Investor Services (US), to Secretary, Commission, dated February 6, 2002 (''Computershare Letter''); Rachel E. Kosmal, Senior Attorney, Intel Corporation, D. Craig Nordlund, Senior Vice President, General Counsel and Secretary, Agilent Technologies, Inc., and Keith Dolliver, Senior Attorney, Microsoft Corporation, to Secretary, Commission, dated February 6, 2002 (''Intel *et al.* Letter''); Keith G. Berkheimer, President, CTA, to Secretary, Commission, dated February 6, 2002 (''CTA Letter''); Carl T. Hagberg to Secretary, Commission, dated February 4, 2002 (''Hagberg Letter''); David W. Smith, American Society of Corporate Secretaries (''ASCS''), to Jonathan G. Katz, Secretary, Commission, dated February 7, 2002 (''ASCS Letter''); Peter C. Suhr, Executive Vice President, Alamo Direct, to Secretary, Commission, dated February 1, 2002 (''Alamo Direct Letter''); Elva Gonzalez, Corporate Manager, Shareowner Services, SBC Communications, to *rule-comments@sec.gov*, Commission, dated February 8, 2002 (''SBC Communications Letter''); and Sarah A.B. Teslik, Executive Director, Council of Institutional Investors (''CII''), to Secretary, Commission, dated February 7, 2002 (''CII Letter'') (collectively, ''Letters'').

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated March 4, 2002 (responding to the comment letters received regarding the proposed rule change) (''NYSE Response Letter'').

[7] The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to direct ownership, where shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company.

[8] The Commission's proxy rules, Rules 14a–13, 14b–1, and 14b–2 under the Act, impose obligations on companies and nominees to ensure that beneficial owners receive proxy materials and are given the opportunity to vote. These rules require companies to send their proxy materials to nominees, *i.e.,* broker-dealers or banks that hold securities in street name, for forwarding to beneficial owners. Under these rules, companies must pay nominees for reasonable expenses, both direct and indirect, incurred in providing proxy information to beneficial owners. The Commission's rules do not specify the fees that nominees can charge issuers for proxy distribution; rather, they state that issuers must reimburse the nominees for ''reasonable expenses'' incurred.

In adopting the direct shareholder communications rules in the early 1980s, the Commission left the determination of reasonable costs to the self-regulatory organizations (''SROs'') because they were deemed to be in the best position to make fair evaluations and allocations of costs associated with these rules. In 1997, during the initiation of the pilot on proxy fee reimbursement, *see infra* note 10, the Commission believed that ultimately market competition should determine ''reasonable expenses'' and recommended that issuers, broker-dealers, and the NYSE develop an approach that may foster competition in this area. Rather than having rates of reimbursement set by the SROs, the Commission suggested that the NYSE and other SROs explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards.

[9] ADP is the primary distributor of proxy distribution services for a large majority of broker-dealers and collects fees from issuers based on the NYSE's Pilot Program.

[10] *See* Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997) (File No. SR–NYSE–96–36) (''Original Pilot Program'').

[11] For a more detailed description of the background and history of the proxy distribution industry, proxy fees, as well as events leading to the NYSE's proposal to revise the NYSE Rules and Guideline governing reimbursement of proxy fees, *see* the Original Pilot Program, *supra* note 10.

set to expire on May 13, 1998; however, pursuant to Commission extensions of its initial approval, the Pilot Program has remained in effect since then with some slight modifications.[12]

III. Description of the Proposed Rule Change

The NYSE's current pilot fee structure, incorporated in the NYSE's Rules and guidelines pursuant to the Pilot Program,[13] is set to expire on April 1, 2002.[14] In this proposed rule change, as amended, the Exchange proposes to amend certain reimbursement fees under the Pilot Program and has requested permanent approval. The proposed amendments seek to decrease the basic mailing fees paid by large issuers by 5¢ (from 50¢ to 45¢) and to cut in half (from 50¢ to 25¢) the incentive ''suppression'' fee that large issuers [15] pay to member organizations that succeed in reducing the number of sets of material that need to be distributed, such as by sending one set of materials to a household holding multiple positions in the issuer's securities.[16]

The following sets forth the background that led to the proposed rule change, as provided by the NYSE in its filing.

A. Permanent Approval

Over the last year, the NYSE has participated on the Proxy Voting Review Committee (the ''Committee''), a private initiative that was set up to review the proxy process. It includes SROs, representatives of the securities industry, corporate issuers, and institutional investors, as well as ADP, the largest provider of proxy intermediary services. In a letter to Richard Grasso, the Chairman of the Committee stated that the purpose of the Committee was to (i) consider the appropriateness of the current pilot proxy fee schedule, and to (ii) develop a deregulated structure that would allow for broader competition.[17]

According to the NYSE, the Committee's experience gained from the Pilot Program convinced the Committee that the guidelines have been instrumental in setting at fair and reasonable levels the costs that issuers incur in having member organizations and intermediaries transmit proxy and other materials to security holders. For that reason, the Committee unanimously voted, with one abstention,[18] to recommend that the NYSE seek permanent approval of the Pilot Program guidelines, as modified by this proposed rule change. As a result, the Exchange filed this proposed rule change, which incorporates the Committee's recommendations and requests permanent approval of the Pilot Program, which is scheduled to end on April 1, 2002.

B. Guideline Changes

In addition to seeking permanent approval of the Pilot Program guidelines, the Exchange proposes the following amendments to its Rules and guidelines:

(i) Reduce the suggested rate of reimbursement for initial mailings of each set of material (*i.e.,* proxy statement, form of proxy, and annual report when mailed as a unit) from 50¢ to 40¢.

(ii) Increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees. The nominee coordination fee is currently $20 per nominee. The proposal would raise it by 10¢ per set of material required for ''Small Issuers,'' defined as issuers whose shares are held in fewer than 200,000 nominee accounts, or 5¢ per set of material required for ''Large Issuers,'' defined as issuers whose shares are held in at least 200,000 nominee accounts.

(iii) Reduce from 50¢ to 25¢ the incentive fee for initial mailings of the materials of Large Issuers. As a result, the incentive fee for Large Issuers will decrease by 25¢ and the incentive fee for Small Issuers will remain at 50¢.

The Exchange represents that the net effect of clauses (i) and (ii) is to decrease the effective mailing fee by 5¢ for Large Issuers, but not for Small Issuers. ADP projected for the Committee that the combination of that decrease and the decrease in the incentive fee for Large Issuers will decrease the total fees that issuers pay to have materials distributed to shareholders by almost $11 million.[19] The NYSE relied on this projection to support its proposal.

The NYSE Rules and guidelines currently subject Small Issuers and Large Issuers to the same rates. According to the NYSE, the Committee designed the proposed revamped fee schedule to allocate more fairly the costs of distributing proxy and other material between Large Issuers and Small Issuers. The Committee's, and ultimately the NYSE's, proposal is based on the premise that economies of scale create overall per-account cost savings for Large Issuers and that those savings justify lower fees for Large Issuers. Based on this, the Exchange believes that reducing the rates applicable to Large Issuers relative to the rates

industry, proxy fees, as well as events leading to the NYSE's proposal to revise the NYSE Rules and Guideline governing reimbursement of proxy fees, *see* the Original Pilot Program, *supra* note 10.

[12] *See* Securities Exchange Act Release Nos. 39672 (February 17, 1998), 63 FR 9275 (February 24, 1998) (notice of filing and immediate effectiveness of proposal 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) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (notice of filing and immediate effectiveness of proposal 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) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through November 1, 1999); 42086 (November 1, 1999), 64 FR 60870 (November 8, 1999) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through January 3, 2000); 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through February 15, 2000); 42433 (February 16, 2000), 65 FR 10137 (February 25, 2000) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through September 1, 2000); 43151 (August 14, 2000), 65 FR 51382 (August 23, 2000) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through October 10, 2000); 43429 (October 10, 2000), 65 FR 62781 (October 19, 2000) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through November 20, 2000); 43603 (November 21, 2000) , 65 FR 75751 (December 4, 2000) (order extending the Pilot Fee Structure through September 1, 2001, and amending the functions that an intermediary is expected to perform to recover the nominee coordination fee); and 44750 (August 29, 2001), 66 FR 46488 (September 5, 2001) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through April 1, 2002).

[13] Supplementary Material .90 to Exchange Rule 451 applies the guidelines to the transmission of proxy materials to shareholders. Supplementary Material .20 to Exchange Rule 465 applies them to the transmission of other materials to shareholders. In addition, Paragraph 402.10(A) of the NYSE's *Listed Company Manual* includes the text of Supplementary Material .90 to Exchange Rule 451 and the Exchange proposes to conform Paragraph 402.10(A) to the changes described below to Exchange Rule 451.

[14] *See* Securities Exchange Act Release No. 44750 (August 29, 2001), 66 FR 46488 (September 5, 2001) (File No. SR–NYSE–2001–22).

[15] The Exchange defines large issuers as issuers whose shares are held in at least 200,000 nominee accounts.

[16] *See* Supplementary Material .95 (''Householding'' of Reports) to Exchange Rule 451 and Supplementary Material .25 (''Householding'' of Reports) to Exchange Rule 465.

[17] *See* letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Stephen P. Norman, Chairman, Committee, dated November 28, 2001 (the ''Committee Letter''). A copy of the Committee Letter is attached as Exhibit C to the Exchange's proposed rule change.

[18] The National Association of Securities Dealers, Inc., abstained from voting.

[19] *See supra* note 17.

applicable to Small Issuers is fair, reasonable, and appropriate.[20]

According to the Exchange, the difference between Large and Small Issuers is based on the recognition that a member organization typically spends less in transmitting material to the nominee account of a Large Issuer than in transmitting material to the nominee account of a Small Issuer because economies of scale apply to many of the tasks of processing material for distribution, and of collecting voting instructions. For instance, the NYSE represents that processing search dates and record dates, logging receipt of materials, coding proxies, reporting voting results, and invoicing fees payable involve costs that are essentially fixed. As a result, the NYSE believes that the per-account cost for these tasks decreases in relation to the number of accounts in which the issuer's shares are held. Consequently, the NYSE believes that the per-account cost is therefore lower with respect to a Large Issuer than with respect to a Small Issuer.

In addition, according to the NYSE, modern data processing and mailing techniques reduce the amount of human intervention involved in the process, driving down the actual per-account cost of handling mailings in large volume. The NYSE notes that the Committee found that the actual cost incurred with respect to Large Issuers in handling mailings was lower than the reimbursable amount that results from adherence to the current NYSE guidelines. On the other hand, the Committee found the actual cost of handling mailings for Small Issuers far exceeded the fees set forth in the current NYSE guidelines.[21] The Exchange believes that these factors justify reducing the incentive fee from 50¢ to 25¢ for Large Issuers, but not reducing the 50¢ fee for Small Issuers. They also justify the 5¢ difference in the per-set-of-material per-nominee fee for Large Issuers and Small Issuers.

In applying the proposed revamped fee schedules to the NYSE Rules and guidelines, the NYSE decided to establish a line of demarcation that separates Large Issuers from Small Issuers in accordance with the Committee's recommendations. Under the NYSE's proposal, an issuer having 200,000 nominee accounts would qualify as a Large Issuer. As a result, the NYSE believes only the largest issuers, currently fewer than 200 overall, fall within that definition. The NYSE represents that beneficial owners' positions in shares of those Large Issuers account for approximately 50 percent of the number of positions that all beneficial owners maintain in the shares of all issuers. The Exchange therefore adopted the 50 percent mark as an appropriate place at which to draw the line.

The Exchange further states in its proposal that it views the fee-setting process as an ongoing matter. The Exchange represents that even if the Commission grants permanent approval to the proposed fee reductions under the guidelines, the Exchange intends to continue to meet with the Committee to evaluate and fine tune the guidelines and to consider possible approaches to broader reform of the proxy distribution system.

IV. Summary of Comments

The Commission received eight comment letters in response to the propose rule change, as amended,[22] the majority of which supported the approval of the proposed rule change.[23] In general, these commenters believed that the proposed fee reductions would give some immediate relief to large issuers. One commenter stated that the proposed fee changes were a good first step.[24] Another commenter stated that the proposed rule change should be approved immediately and enacted for the 2002 proxy season.[25] Only one commenter stated that the proposed rule change should not be approved on a permanent basis because the proposed fee reductions do not address the issue of competition in the proxy process.[26]

Several commenters, although urging approval of the current proposal, were critical of the current proxy fee structure, and also raised concerns regarding the need for competition in the proxy distribution system and the issuer's ability to choose service providers.[27] These commenters urged continuing review of the proxy fee structure. Two commenters suggested a review of fees in a deregulated proxy distribution system, stating that prices might be lower if competition and market forces (rather than regulators) determined fees.[28] In addition, one commenter, while supporting approval, noted that the guidelines have not been measured against market-based rates, which are significantly lower than those being proposed.[29] In addition, one comment letter, jointly sent by three issuers, was critical of the lack of issuer control over service providers for distribution of proxy and other materials to beneficial holders whose shares are held in street name, noting that on the registered side, issuers have the right to choose service providers at a much lower cost.[30]

Concerns were also raised by three commenters about the composition of the Committee, who noted that not all parties affected by this proposed fee reduction were represented on the Committee.[31] Some commenters stated that a more independent ''formally-sanctioned'' committee with official standing and of balanced representation, rather than a private initiative, was needed to further evaluate proxy issues.[32] Other commenters wanted to participate on any future committee formed to address other concerns regarding the proxy distribution system.[33]

In addition, two commenters addressed the 200,000 nominee accounts cut-off that distinguishes

[20] The Committee expressed its support for the proposed fee changes in the Committee Letter. *See* Exhibit C to the Exchange's proposed rule change.

[21] The Exchange notes that the Committee found that handling costs for Large Issuers are lower than for Small Issuers, due primarily to economies of scale. The NYSE represents that ADP presented information to the Committee that detailed the costs that issuers pay for registered proxy processing. The Exchange notes that the information provided by ADP indicated that the per-unit costs that Small Issuers pay are, on average, more than 10 times greater than the per-unit costs that Large Issuers pay.

[22] *See* Letters, *supra* note 5.

[23] *See* Computershare Letter; Intel *et al.* Letter; CTA Letter; Hagberg Letter; ASCS Letter; SBC Communication Letter; and CII Letter, *supra* note 5. ASCS stated that it is pleased with the proposed fee reduction to the fee sharing agreement between ADP and brokers.

[24] *See* SBC Communications Letter, *supra* note 5.

[25] *See* CTA Letter, *supra* note 5.

[26] *See* Alamo Letter, *supra* note 5.

[27] *See* Computershare Letter; Intel *et al.* Letter; CTA Letter; Hagberg Letter; ASCS Letter; and Alamo Direct Letter, *supra* note 5.

[28] *See* Computershare Letter; and ASCS Letter, *supra* note 5.

[29] *See* Hagberg Letter, *supra* note 5. The Hagberg Letter also stated the NYSE's proposal fails to address the ''indirect'' income that ADP is collecting by retaining half of the savings in postage from routine bar-coding and sorting procedures. Furthermore, the Hagberg Letter commented that the proposal failed to provide a ''sunset provision'' for incentive fees, stating that the work involved to eliminate mailings is done once and done automatically through computer programs. Hagberg had previously written a letter to the NYSE in 1996 providing suggestions for a more competitive proxy system (which is attached as Exhibit I to the Hagberg Letter).

[30] *See* Intel *et al.* Letter, *supra* note 5. The *Intel et al.* Letter also stated that the impact of the proposed fee reductions on banks and brokers, which receive a portion of the fees paid by issuers to the service provider, is appropriate.

[31] *See* CTA Letter; Hagberg Letter; and Alamo Direct Letter, *supra* note 5. The Alamo Letter stated that ADP was not a ''neutral'' party and that a third party, not ADP, should have evaluated certain pricing scenarios.

[32] *See* CTA Letter; Hagberg Letter; and ASCS Letter, *supra* note 5.

[33] *See* Computershare Letter; CTA Letter; and Alamo Direct Letter, *supra* note 5.

between large and small issuers for purposes of the proposed fee reduction, stating that the cut-off was arbitrary and without any factual economic backing.[34]

One commenter suggested an overall 10¢ reduction from the basic mailing fee rather than a 5¢ reduction for large issuers.[35] The commenter also stated that the fees should not be greater than those paid by issuers on the registered side.

Finally, one commenter, while supporting the proposal, urged the Commission to require the NYSE in its ongoing review to obtain and evaluate financial information of the proxy distribution firms and review ADP's fee sharing arrangements with brokers, which suggest the fees may be too generous.[36]

Separately, certain members of the Committee submitted letters to the NYSE endorsing the Committee's recommendations and proposed fee reductions, as well as permanent approval of the NYSE's Pilot Program.[37]

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[39] which provides 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 Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[40] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Furthermore, the Commission believes that the proposed rule change is consistent with section 6(b)(8) of the Act,[41] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.

The Commission finds that the proposed amendments to NYSE Rules and guidelines governing proxy fees and permanent approval of the amended Pilot Program for the proxy fee reimbursement guidelines should help establish a more practical and organized proxy reimbursement structure. More specifically, the Commission finds that the Committee's recommended fee reductions, as reflected in the NYSE's proposal, are reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers. The Commission notes that the NYSE's proposed fee reductions will result in a decrease in the basic mailing fee from 50¢ to 40¢, an increase in the nominee coordination fee of 10¢ for Small Issuers, as defined by the NYSE above, and 5¢ for Large Issuers, as defined by the NYSE above, and a cut from 50¢ to 25¢ in the incentive/suppression fee that Large Issuers currently pay. Thus, fees for Small Issuers under the proposed rule change are not increased and stay the same, while fees for Large Issuers are reduced overall by 5¢ for the basic mailing fee and by 25¢ for the suppression fee. The NYSE has provided information to show that the cost to service Large Issuers is cheaper than for Small Issuers because of economies of scale. The Commission notes that the differentiation between Large and Small Issuers of 200,000 accounts is based on a 50 percent cut-off, as discussed above, and believes that this is a fair place to draw the line. The Commission therefore believes, as discussed in more detail below, that these proposed fee changes are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

A. Background

As noted above, since March 1997, NYSE member organizations have charged NYSE issuers proxy reimbursement fees in accordance with a Commission-approved Pilot Program that was recently extended until April 1, 2002.[42] At the time of adoption of the Original Pilot Program, the Commission received some negative comments regarding the proposed fees, in particular the nominee coordination fee, the incentive fee, as well as the overall impact of the new fee structure on small issuers. While the Commission recognized that the fees could have a greater impact on small issuers than large to mid-sized issuers, the Commission found that the Pilot Program proxy fee structure, which included reduced mailing costs, was, on balance, positive and provided some cost savings. However, because of concerns raised about the impact and reasonableness of the fees and the difficulty in assessing cost savings that might occur as a result of the incentive fee to reduce mailings, among other things, the new proxy fee structure was approved on a pilot basis and the NYSE committed to conduct an independent audit of the pilot fee structure.

Since then, the Pilot Program has been extended numerous times.[43] Within this time, NYSE has conducted two audits of the pilot fee structure.[44] In addition, Commission staff undertook an in-depth review, interviewing numerous proxy industry participants to gather information and views on the proxy system and pilot fee structure.[45] As a result of these reviews, the Pilot has been modified twice. The first revision was a 5¢ reduction in mailing costs for initial proxies and annual reports.[46] The second revision amended the Pilot to set forth the minimum services an intermediary must perform in order to receive the nominee coordination fee.[47]

Over the course of the Pilot Program, some issuers, while indicating that they are satisfied with the level of service for the distribution of proxies, have

[34] *See* CTA Letter and Hagberg Letter, *supra* note 5. The CTA Letter further stated that it supported a multi-tiered pricing system and that the fee structure should not only apply to NYSE issuers, but to all issuers.

[35] *See* SBC Communications Letter, *supra* note 5.

[36] *See* CII Letter, *supra* note 5. The CII Letter urged the Commission to require the NYSE to study its pricing structure on a regular basis and to publicly disclose the findings of these regular reviews. *See also* Intel *et al.* Letter, *supra* note 5.

[37] *See* letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Donald D. Kittell, Executive Vice President, SIA, dated November 29, 2001; letter to James E. Buck, Senior Vice President and Secretary, NYSE, from David W. Smith, President, ASCS, dated November 29, 2001; and letter to James E. Buck, Senior Vice President and Secretary, NYSE, from Brian T. Borders, President, APTC, dated November 29, 2001. These letters are included in Exhibit D to the Exchange's proposed rule change and are briefly discussed in the NYSE's proposal. *See supra* note 4.

[38] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(4).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78f(b)(8).

[42] *See supra* note 14.

[43] *See supra* note 12.

[44] *See* Amendment No. 1, *supra* note 3. *See also* Securities Exchange Act Release No. 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999), for more detail on the two audits.

[45] *See* Securities Exchange Act release No. 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999).

[46] *See* Securities Exchange Act Release No. 39672 (February 17, 1998), 63 FR 9275 (February 24, 1998) (lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from the original Pilot fee of $.55 to $.50).

[47] *See* Securities Exchange Act Release No. 43603 (November 21, 2000) , 65 FR 75751 (December 4, 2000).

continued to raise concerns about the fees. Generally, larger issuers have objected to the proxy fee structure because they are not able to enjoy economies of scale, which could result in cost savings to them. These issuers appear to be more inclined to favor a tiered fee structure that could reduce their costs. Smaller issuers, however, could be substantially impacted by a tiered fee structure that could result in increased costs, making it difficult to pay for the proxy process.

During the course of the Pilot Program, the Commission has consistently encouraged the Exchange, issuers, and member firms to consider long-term solutions and to develop an approach that would foster competition so that market forces can determine reasonable rates of reimbursement rather than the NYSE Rules and guidelines. While the Commission today has determined to approve the Pilot Program on a permanent basis, the Commission continues to believe that ultimately market competition should determine reasonable rates and expects the NYSE to continue its ongoing review of the proxy fee process, including considering alternatives to SRO standards that would provide a more efficient, competitive, and fair process. As noted above, the NYSE has indicated its commitment to continue to meet with the Committee to consider broader reforms in this area. The Commission recognizes that the proxy distribution process raises difficult issues, and that the NYSE must balance competing concerns of the issuers who must pay for the proxy distributions and the brokers who must be assured of adequate reimbursement for making such distributions. The Commission believes that permanent approval of the current proxy fee structure will permit the NYSE and other interested parties to focus on a long-term solution that would allow market forces rather than SRO rules to set rates.

B. Specific Comments

As noted above, although the majority of commenters supported the proposal, the comment letters raised specific concerns about the proposed rule change for the pilot fee structure. The Commission believes that the NYSE has adequately responded to the comments.[48]

Commenters raised concerns, for example, over issuers' lack of control over service providers and the higher cost for distribution of proxy and other materials to beneficial holders whose shares are held in street name, compared to issuers on the registered side, which have the right to choose service providers at a lower cost.[49] The NYSE stated that, although the proposed fees will be approved on a permanent basis, it views the guideline-setting process as an ongoing matter and will continue to meet with the Committee to evaluate and fine tune the proposed fees under the guidelines. The Commission notes that, over the next year, the Committee, with the NYSE as a member, intends to consider the remaining issues, as raised by the commenters, regarding the need for more competition and to allow issuers the ability to choose among various service providers. The Committee will also consider the possibility of a deregulated proxy distribution system, which would remove the Commission from the rate-making process.

In response to concerns regarding the composition of the Committee, the NYSE stated that it did not select the members comprising the original Committee and indicated that, going forward, the Committee should be both diverse and balanced. The Commission believes that it is important that affected parties be afforded the opportunity to participate in future discussions regarding reformation of the proxy distribution system, and encourages the NYSE to ensure that the Committee has balanced representation.

Furthermore, the NYSE addressed the concerns regarding the use of 200,000 nominee accounts as a cut-off to distinguish between large and small issuers. The NYSE stated that the Committee arrived at the 200,000 figure because issuers with more than 200,000 nominee accounts accounted for approximately 50 percent of the number of positions that all beneficial owners maintain in the shares of all issuers. The NYSE further stated that, although this is an estimation, the Committee unanimously agreed with this 50 percent cut-off. While the Commission recognizes that it is difficult to draw lines, the Commission believes that the NYSE's use of 200,000 nominee accounts as a measure to distinguish between large issuers and small issuers appears reasonable and should more fairly allocate the costs associated with proxy processing and distribution among large and small issuers.

The Commission notes that the Committee, which was comprised of groups representing both large issuers and small issuers, as well as institutional shareholders, unanimously approved (with one abstention) the proposed fee reductions incorporated in the NYSE's proposal. While the Commission recognizes that some commenters voiced concerns about the composition of the Committee, the Commission believes that the NYSE's proposal is a good first step. As noted above, the NYSE has committed to establish a diversified and balanced Committee as it considers other changes. The Commission is therefore approving these changes to the NYSE Pilot Program so that they are in place by the upcoming 2002 proxy season. In addition, for the reasons stated above, the Commission is approving the Pilot Program on a permanent basis.

C. Summary

In summary, while the Commission has decided to approve the revised proxy fees under the Pilot Program on a permanent basis, the Commission stresses that permanent approval does not end the discussion of proxy fee reform. The main goal is to ensure protection of shareholder voting rights in a competitive marketplace for proxy distribution, where market forces operate freely to set competitive and reasonable rates. The Commission urges the NYSE and the Committee to identify various ways to achieve these goals. As long as the NYSE's proxy fee structure remains in place, the Commission expects the NYSE to periodically review these fees to ensure they are related to ''reasonable expenses'' of the NYSE's member brokers in accordance with the Act,[50] and propose changes where appropriate. Such monitoring of fees is essential, especially in light of technological advances such as electronic proxy delivery and voting, which should help to reduce the cost issuers will bear in the future in the proxy distribution process.

VI. Conclusion

For the foregoing reasons, the Commission finds that the NYSE's proposal to amend its Rules and guidelines for proxy fee reimbursement, as amended, is consistent with the requirements of the Act and rules and regulations thereunder. Therefore, the Commission is approving the NYSE's Pilot Program for proxy fee reimbursement, as amended by this proposed rule change, on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[51] that the proposed rule change (SR–NYSE–2001–53), as amended, is approved.

[48] *See* NYSE Response Letter, *supra* note 6.

[49] *See* Intel *et al.* Letter, *supra* note 5.

[50] *See supra* note 8.

[51] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7781 Filed 3–29–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45641; File No. SR–PCX–2001–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Increase to Two Hundred Fifty Contracts the Maximum Permissible Number of Equity and Index Option Contracts Executable Through Auto-Ex

March 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2001, the Pacific Exchange, Inc. (''PCX'' 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 PCX. The PCX filed Amendment No. 1 on December 5, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to increase to 250 contracts the maximum size of equity and index option contracts that may be designated for automatic execution.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Automatic Execution System

Rule 6.87(a)–(b)(4)—No change.

(b)(5) The [Options Floor Trading Committee (''OFTC'')] *OFTC* shall determine the size of orders that are eligible to be executed on Auto-Ex. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is [one hundred (100)] *250* contracts;

(B) Index Options: the maximum order size for execution through Auto-Ex is [one hundred (100)] *250* contracts. [for:

(i) The PSE Technology Index;

(ii) the Wilshire Small Cap Index; and

(iii) the Morgan Stanley Emerging Growth Index.]

(6)—No change.

(c)–(p)—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 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 III below. The PCX 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's automatic execution system (''Auto-Ex'') automatically executes public customer market and marketable limit orders within certain size parameters. The Exchange represents that Auto-Ex has proven to be a credible system offering prompt and efficient automatic trade executions at the disseminated, quoted prices. PCX Rule 6.87(b) currently provides that the Exchange's Options Floor Trading Committee (''OFTC'') shall determine, on an issue-by-issue basis, the size of orders that are eligible to be executed through Auto-Ex. The maximum order size for execution through Auto-Ex is currently 100 contracts for both equity and index options.[4] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to 250 contracts.

The Exchange believes that increasing the number of option contracts executable through Auto-Ex to 250 contracts will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. The Exchange believes that this increase will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. In addition, the Exchange represents that this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The Exchange represents that it further believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[5] of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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

[52] 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 Mia S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 4, 2001 (''Amendment No. 1''). In Amendment No. 1, the PCX revised the rule text of the proposed rule change to reflect current PCX Rule 6.87.

[4] *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed through Auto-Ex to 100 contracts).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–48 and should be submitted by April 22, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act. Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; 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.[7]

While increasing the maximum order size limit from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the PCX will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to Auto-Ex will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the PCX's OFTC determines to approve orders as large as 250 contracts as eligible for Auto-Ex, the OFTC or any other PCX committee or officials should disengage Auto-Ex more frequently by, for example, declaring an ''unusual market condition.'' [8] Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the PCX, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts—by making their automatic execution systems less reliable.

In addition, pursuant to section 19(b)(2) [9] of the Act, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.[10] The Commission believes that granting accelerated approval will provide the PCX with flexibility to compete for order flow with other exchanges immediately.[11]

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[12]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2001–48), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7779 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] The PCX has filed a proposed rule change (File No. SR–PCX–2001–13) with the Commission that would specify the Exchange's procedures governing the disengagement of Auto-Ex for ''unusal market conditions,'' and would require documentation of the reasons for any action to disengage Auto-Ex to operate in a manner other than the usual manner. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282) and is pending with the Commission.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 45628 (March 22, 2002) (order approving an increase to 250 contracts the maximum permissible number of equity and index option contracts executable through AUTO–EX); *see also* Securities Exchange Act Release No. 45629 (March 22, 2002) (order approving an increase to 250 contracts in the maximum guarantee size for AUTO–X orders in options overlying the QQQs).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Global Educational Programs (ECA/A/S)

[Public Notice 3967]

60-Day Notice of Proposed Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package; OMB No. 1405–0114

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Reinstatement with change of a previously approved collection for which approval has expired.

Originating Office: Office of Global Educational Programs (ECA/A/S).

Title of Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package.

Frequency: Annual.

Form Number:

Respondents: Educators desiring to participate in the Fulbright Teacher and Administrator Exchange Program.

Estimated Number of Respondents: 862.

Average Hours Per Response: 2.

Total Estimated Burden: 1724.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Rachel Waldstein, Program Officer, (ECA/A/S/X); Department of State, SA–44, Room 349; 301 Fourth St., SW; Washington, DC 20547 who may be reached on (202) 619–4556.

Dated: February 8, 2002.

David Whitten,

Executive Director, ECA–IIP, Department of State.

[FR Doc. 02–7806 Filed 3–29–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 3966]

30-Day Notice of Proposed Information Collection: Form DS–3057, Medical Clearance Update; OMB Number 1405–0131

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement without change of a current collection.

Originating Office: Office of Medical Services, M/DGHR/MED.

Title of Information Collection: Medical Clearance Update.

Frequency: Biennially.

Form Number: DS–3057.

Respondents: Foreign Service Employees and Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 3,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Kumiko Cross, FSHP, Office of Medical Services, 2401 E Street, NW., Room 201, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: January 8, 2002.

Maria C. Melchiorre,

Acting Executive Director, Office of Medical Services, Department of State.

[FR Doc. 02–7805 Filed 3–29–02; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 3968]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Initiatives in the Muslim World

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor announces an open competition for human rights and democratization initiatives in the Muslim world. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to administer these programs. Grants should begin no earlier than Summer 2002.

Program Information: The Bureau of Democracy, Human Rights and Labor (DRL) invites applicants to submit proposals that address programs and activities that foster democracy, human rights, press freedoms, women's political development and the rule of law in countries with a significant Muslim population, and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism. Innovative projects in predominantly Muslim countries will be considered, in particular, those that focus on the Middle East, including the Gulf States, and Central Asia.

U.S. national interests are best served by funding human rights and democratization initiatives in countries and regions of the world that are geo-strategically critical to the United States. Economic Support Funds (ESF) through the Human Rights and Democracy Fund (HRDF) support the implementation of innovative programs, and underscore the United States Government's continued commitment to promoting and protecting human rights and democracy in its fight against terrorism. HRDF projects must not duplicate or simply add to efforts by other entities.

Strong proposals usually have the following characteristics: an active, existing partnership between a U.S. organization and in-country organization(s); a proven track record for conducting successful program activity; a convincing plan outlining exactly how the program components will be carried out and what results will be achieved as a result of the grant; take place in-country or in a third country; and a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

Proposals should reflect a practical understanding of the current political, legal, economic and social environment that is relevant to the themes addressed in the proposal. In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the region.

Applicants are expected to identify the U.S. and in-country partner organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative projects undertaken by the organizations. Specific information about in-country partners' activities and accomplishments is required and should be included in the section on ''Institutional Capacity.''

To be eligible for a grant award under this competition, the proposed programs must address one of the following

specific themes for regional projects or single country projects:

All Countries

- Strengthening of Political and Governing Institutions (i.e. Judiciary, Parliament).
- Supporting Advocacy NGOs.
- Promoting Respect for Human Rights and Democratic Freedoms.
- Promoting Accountability, Transparency and Balance of Authority Among State Institutions.
- Supporting Independent Media.
- Integrating Women into Public Life.
- Promoting the Rule of Law.

Pakistan

- Assistance to Support a Transparent and Fair Election Process.

Budget Guidelines

The Bureau anticipates awarding grants in amounts of $250,000–$1,000,000 to support project and administrative costs required to implement these programs. Organizations with less than four years of experience in conducting similar programs may receive smaller grants. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number DRL/PHD–02–01.

FOR FURTHER INFORMATION, CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor, DRL/PHD. Please specify Sondra Govatski: 202–647–9734 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The Solicitation Package contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The RFP and Proposal Submission Instructions (PSI) may be downloaded from the Bureau's website at *http://www.state.gov/g/drl/.*

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. Eastern Standard Time (EST) on Tuesday, April 30, 2002. Faxed documents will not be accepted at any time. Documents postmarked on the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the RFP and Proposal Submission Instructions (PSI). Two complete copies of the proposal should be sent to: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ref: DRL/PHD–02–01, DRL/PHD, Room 7802, Washington, DC 20520.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for Microsoft Word. The ''Budget'' must be submitted in Microsoft Excel format.

Review Process

The Bureau will review proposals for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by DRL's Program Unit. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, expertise, clarity, and relevance to the Bureau's mission.

2. *Program planning and ability to achieve program objectives:* A detailed agenda and work plan should demonstrate substantive undertakings and administrative capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable and feasible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should promote long-term institution building or have other capacity-building results.

4. *Institution's Record/Ability/Capacity:* Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients, the demonstrated potential of new applicants, and the strength and capacity of in-country partner organizations. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative.

Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been allocated and committed through internal Department procedures and notified to Congress.

Dated: March 27, 2002.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 02–7807 Filed 3–29–02; 8:45 am]

BILLING CODE 4710–18–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–245]

WTO Consultations Regarding Japanese Measures Affecting the Importation of Apples

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on March 1, 2002, the United States requested consultations with Japan under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding measures imposed by Japan on the importation of U.S. apples to protect against the introduction of fire blight. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 30, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically to japanapples@ustr.gov or (ii) by mail to Sandy McKinzy, Attn: Japan—Measures Affecting the Importation of Apples, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, with a confirmation copy sent electronically or by fax to (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Juan A. Millán, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

The United States has requested WTO consultations with Japan regarding its quarantine restrictions on U.S. apples imported into Japan to protect against the introduction of fire blight (*Erwinia amylovora).* These restrictions include, *inter alia,* the prohibition of imported apples from orchards in which any fire blight is detected, the requirement that export orchards be inspected three times yearly for the presence of fire blight, the disqualification of any orchard from exporting to Japan should fire blight be detected within a 500 meter buffer zone surrounding such orchard, and a post-harvest treatment of exported apples with chlorine. None of these restrictions is supported by scientific evidence.

The United States contends that Japan's measures are inconsistent with the obligations of Japan under Article XI of the *General Agreement on Tariffs and Trade 1994*, Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.6, 6.1, 6.2, and 7 and Annex B of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, and Article 14 of the *Agreement on Agriculture.* Japan's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English. Commenters should send either one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to *japanapples@ustr.gov.* For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy. For any document containing business confidential information submitted by electronic transmission, the file name of the business confidential version should begin with the characters ''BC'', and the file name of the public version should begin with the characters ''P''. The ''P'' or ''BC'' should be followed by the name of the commenter. Interested persons who make submission by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself and not as separate files.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–245, Japan—Measures Affecting the Importation of Apples) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Christine Bliss,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–7736 Filed 3–29–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

environmental impact statement will be prepared for a proposed highway project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Greg Punske, Project Development Engineer, Federal Highway Administration 2520 West 400 South Suite 9a, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0182.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, the city of West Valley City, Utah, and the Federal Transit Administration (FTA) will prepare an environmental impact statement on a proposal to improve a portion of State Route 171 on 3500 South. The proposed improvement would involve the reconstruction of 3500 South between Redwood Road and 8400 West in West Valley City and Salt Lake County for a distance of 12.9 km (8.0 miles). Most of the proposed project lies within the corporate limits of West Valley City, Utah. The west most portion, from 7200 West for 8400 West, lies in the Magna area, an unincorporated area of Salt Lake County.

Improvements to the corridor are considered necessary to provide for the existing and projected travel demand as indicated in the long range plan developed by the Wasatch Front Regional Council. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; (3) transportation systems management strategies (TSM); (4) mass transit options, and (5) reconstruction of the existing roadway, including control of access. Also under consideration is the proposed construction of grade separated interchange type facilities located at several heavily used intersections in the project corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings, including scoping meetings, will be held. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on March 26, 2002.

William R. Gedris,

Structural Environmental Engineer, Salt Lake City, Utah.

[FR Doc. 02–7761 Filed 3–29–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 587]

Information Quality Guidelines

Authority: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; 114 Stat. 2763).

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of guidelines and request for comments.

SUMMARY: The Surface Transportation Board (Board) is seeking comments on its draft Information Quality Guidelines (I.Q. Guidelines). The I.Q. Guidelines contain the Board's information resource management procedures for reviewing and substantiating the quality of information before it is disseminated to the public, and the procedures by which an affected person may obtain correction of information disseminated by the Board that does not comply with the I.Q. Guidelines. The Board will consider comments in developing its final I.Q. Guidelines.

DATES: Comments are due May 1, 2002.

ADDRESSES: Send comments (an original plus 10 copies) referring to Ex Parte No. 587 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: John M. Atkisson (202) 565–1710. [TDD for hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board's draft I.Q. Guidelines are posted on its website, www.stb.dot.gov. In addition, copies of the I.Q. Guidelines may be purchased from Da-2-Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through TDD services at 800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Decided: March 27, 2002.

By the Board, John M. Atkisson, Designated Official.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7792 Filed 3–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0089.

Form Number: ATF F 5100.24.

Type of Review: Extension.

Title: Application for Basic Permit Under the Federal Alcohol Administration Act.

Description: ATF F 5400.24 will be completed by persons intending to engage in a business involving beverage alcohol operations at distilled spirits plants, bonded wineries, or wholesaling/importing businesses. The information allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a permit.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Burden Hours Per Respondent: 1 hour, 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1512–0090.

Form Number: ATF F 5100.18 (1643).

Type of Review: Extension.

Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

Description: ATF F 5100.18 is completed by permittees who change their operations which require a new permit to be issued or a notice to be received by ATF. The information allows ATF to identify the permittee, the changes to the permit or business and to determine whether the applicant qualifies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 600 hours.

OMB Number: 1512–0507.

Form Number: ATF F 5300.26.

Type of Review: Extension.

Title: Federal Firearms and Ammunition Excise Tax.

Description: This information is needed to determine how much tax is owed for firearms and ammunition. ATF uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to use this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Burden Hours Per Respondent: 7 hours.

Frequency of Response: Quarterly, Other (annual if no tax is due).

Estimated Total Reporting Burden: 27,020 hours.

OMB Number: 1512–0548.

Form Number: ATF F 6410.1.

Type of Review: Extension.

Title: Gang Resistance Education and Training Funding Application.

Description: State and Local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF, G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants funding need. The information will also be used to determine funding priorities and levels of funding, as required by law.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 800 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–7767 Filed 3–29–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 26, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 2002 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–1395.

Form Number: IRS Form 8838.

Type of Review: Extension.

Title: Consent to Extend the Time to Assess Tax Under Section 367-Gain Recognition Agreement.

Description: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 32 min.

Learning about the law or the form—2 hr., 9 min.

Preparing the form—3 hr., 15 min.

Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,220 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–7768 Filed 3–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–62–87]

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, PS–62–87 (TD 8302), Low-Income Housing Credit for Federally-assisted Buildings (sec. 1.42–2(d)).

DATES: Written comments should be received on or before May 31, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Low-Income Housing Credit for Federally-assisted Buildings.

OMB Number: 1545–1005.

Regulation Project Number: PS–62–87.

Abstract: The regulation provides state and local housing credit agencies and owners of qualified low-income buildings with guidance regarding compliance with the waiver requirement of section 42(d)(6) of the Internal Revenue Code. The regulation requires documentary evidence of financial distress leading to a potential claim against a Federal mortgage insurance fund in order to get a written waiver from the IRS for the acquirer of the qualified low-income building to properly claim the low-income housing credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 3,000.

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: March 22, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7803 Filed 3–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Advisory Committee for Electronic Tax Administration

AGENCY: Internal Revenue Service (IRS).

ACTION: Request for nominations.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Director (Electronic Tax Administration) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of Treasury, and Congress. Members will be limited to serving one two-year term on the ETAAC to ensure that new perspectives and ideas are generated by the members. All travel expenses within government guidelines will be reimbursed.

DATES: Written nominations must be received on or before May 1, 2002.

ADDRESSES: Nominations should be sent to Robin Marusin, W:E, Room 7331 IR, 1111 Constitution Ave., NW., Washington, DC 20224. Application forms can be obtained from Robin Marusin, who can be reached on (202) 622–8184.

FOR FURTHER INFORMATION CONTACT: Robin Marusin, 202–622–8184.

SUPPLEMENTARY INFORMATION: The ETAAC will provide continued input into the development and implementation of the IRS strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements.

This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue.

The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administrations issues and will provide input into the development and implementation of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 02–7804 Filed 3–29–02; 8:45 am]

BILLING CODE 4830–01–P

Notices

Federal Register
Vol. 67, No. 62
Monday, April 1, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children: Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempted from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112 June 24, 1983).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced-price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced-price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2002 was published by the Department of Health and Human Services (DHHS) at 67 FR 6931, February 14, 2002. The guidelines published by DHHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced-price school meals or identical to State or local guidelines for free or reduced-price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced-price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced-price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2002, through June 30, 2003. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under Title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 2002. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2002. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies. The text of the table showing income eligibility guidelines appears as an appendix at the end of this notice.

Authority: 42 U.S.C. 1786

Dated: March 16, 2002.

Ruthie Jackson,

Acting Administrator.

Appendix to Notice—Income Eligibility Guidelines

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2002 to June 30, 2003)

Household Size	Federal Poverty Guidelines- 100%					Reduced Price Meals - 185%				
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly	Annual	Monthly	Twice-Monthly	Bi-Weekly	Weekly
48 Contiguous States, D.C., Guam and Territories										
1	8,860	739	370	341	171	16,391	1,366	683	631	316
2	11,940	995	498	460	230	22,089	1,841	921	850	425
3	15,020	1,252	626	578	289	27,787	2,316	1,158	1,069	535
4	18,100	1,509	755	697	349	33,485	2,791	1,396	1,288	644
5	21,180	1,765	883	815	408	39,183	3,266	1,633	1,508	754
6	24,260	2,022	1,011	934	467	44,881	3,741	1,871	1,727	864
7	27,340	2,279	1,140	1,052	526	50,579	4,215	2,108	1,946	973
8	30,420	2,535	1,268	1,170	585	56,277	4,690	2,345	2,165	1,083
Each Add'l Member Add	+3,080	+257	+129	+119	+60	+5,698	+475	+238	+220	+110
Alaska										
1	11,080	924	462	427	214	20,498	1,709	855	789	395
2	14,930	1,245	623	575	288	27,621	2,302	1,151	1,063	532
3	18,780	1,565	783	723	362	34,743	2,896	1,448	1,337	669
4	22,630	1,886	943	871	436	41,866	3,489	1,745	1,611	806
5	26,480	2,207	1,104	1,019	510	48,988	4,083	2,042	1,885	943
6	30,330	2,528	1,264	1,167	584	56,111	4,676	2,338	2,159	1,080
7	34,180	2,849	1,425	1,315	658	63,233	5,270	2,635	2,433	1,217
8	38,030	3,170	1,585	1,463	732	70,356	5,863	2,932	2,706	1,353
Each Add'l Member Add	+3,850	+321	+161	+149	+75	+7,123	+594	+297	+274	+137
Hawaii										
1	10,200	850	425	393	197	18,870	1,573	787	726	363
2	13,740	1,145	573	529	265	25,419	2,119	1,060	978	489
3	17,280	1,440	720	665	333	31,968	2,664	1,332	1,230	615
4	20,820	1,735	868	801	401	38,517	3,210	1,605	1,482	741
5	24,360	2,030	1,015	937	469	45,066	3,756	1,878	1,734	867
6	27,900	2,325	1,163	1,074	537	51,615	4,302	2,151	1,986	993
7	31,440	2,620	1,310	1,210	605	58,164	4,847	2,424	2,238	1,119
8	34,980	2,915	1,458	1,346	673	64,713	5,393	2,697	2,489	1,245
Each Add'l Member Add	+3,540	+295	+148	+137	+69	+6,549	+546	+273	+252	+126

[FR Doc. 02–7757 Filed 3–29–02; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Forest Service

Mt. Ashland Ski Area Expansion, Rogue River National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service will prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of a proposal to expand the Mt. Ashland Ski Area (MASA). The project area is located approximately 7 miles south of Ashland, Oregon, within the Siskiyou Mountains in Southern Oregon. The proposed expansion would include construction of two chairlifts, two surface lifts, and approximately 73 acres of associated new ski run terrain primarily within the western half of the Special Use Permit area. There would be an additional 11 acres of clearing for lift corridors, widening of existing runs, and staging areas. In addition, expanded features would include a tubing facility in the southern portion of the permit area; three guest services buildings, a yurt, additional night lighting; additional maintenance access road segments; additional power, water lines and storage tanks, sewer lines; an additional snow fence, and an increase in parking by 220 spaces. Additional watershed restoration projects would be implemented, including structural storm water control, and non-structural controls, such as the placement of coarse woody material. The proposed projects would be implemented and financed by the Mt. Ashland Association (MAA) as soon as possible after Forest Service authorization. Overall completion may take 10 or more years. The agency will give notice of the full environmental analysis and decision making process on the proposed expansion so interested and affected members of the public may participate and contribute in the final decision.

DATES: Additional comments concerning the scope of this analysis should be received by May 3, 2002.

ADDRESSES: Submit additional written comments to Linda Duffy, District Ranger, Ashland Ranger District, Rogue River National Forest, 645 Washington Street, Ashland, Oregon, 97520.

FOR FURTHER INFORMATION CONTACT: Linda Duffy or Steve Johnson, Ashland Ranger District, Rogue River National Forest, 645 Washington Street, Ashland, Oregon, 97520, Telephone (541) 482–3333; FAX (541) 858–2402.

SUPPLEMENTARY INFORMATION: This site specific EIS will focus on a project proposal for expansion within the existing ski permit area. A draft EIS was released in February 2000, documenting detailed analysis of three alternatives including No-Action. Extraordinary public response on that draft EIS has caused the Forest Service to conduct additional analysis that will result in a new environmental impact statement. The new EIS will result in an analysis that reflects active citizen participation and improves the range of alternatives considered in detail. This process is designed as a continuation of the ongoing environmental analysis and all input previously received will be utilized in the formulation of the new EIS. The stated purpose and need is modified from the February 2000 draft EIS. The proposal, as received from MAA, has also been modified to reflect further refinements that reduce environmental impacts. The environmental analysis will consider and include new information or changed circumstances since the programmatic decision on the ''Master Plan'' was made in 1991, including an action partially contained within an inventoried roadless area.

In a 1991 Record of Decision (ROD) and final EIS, the Forest Service decided that expanding the Mt. Ashland Ski Area (MASA) was an appropriate use of National Forest System Lands. In this current EIS process, the Forest Service is responding to a modified request (March 2002) by Mt. Ashland Association (MAA) to allow construction of some of the expanded ski facilities programmatically approved in 1991. MAA believes that operations and economic viability at the MASA would be enhanced by construction of proposed new facilities, which are intended to bring the ski area up to date relative to ski industry terrain and safety standards. The Forest Service agrees that this overall need exists and has agreed to consider options for meeting this need. The Forest Service and MAA have cooperatively determined six specific purpose elements for ski area expansion at the MASA at this time. Purpose 1 is terrain balance and diversity, including: develop a balance of terrain by ability level, develop suitable terrain for beginners, provide accessibility of existing lower level terrain, increase terrain for special programs and competitions, increase diversity of non-traditional terrain, and provide recreational opportunities for non-skiers. Purpose 2 is guest access and circulation including: enhance lift access and skier density, and improve access to facilities. Purpose 3 is update and balance guest services and facilities including: enhance guest experience by updating the quality of existing skier services, and provide additional guest services to improve accessibility. Purpose 4 is skier safety including: enact improvements that provide for and improve user safety. Purpose 5 is economic viability and longevity including: augment and modernize existing facilities to provide an economically viable and stable ski area, and provide a quality recreation experience appealing to the broadest spectrum of the skiing and snowboarding market. Purpose 6 is watershed restoration including: implement restoration projects to maintain or improve the trend of recovering watersheds.

Concurrent with the analysis of the Proposed Action under NEPA, the Forest Service will document several non-significant Forest Plan Amendments to make the Land and Resource Management Plans for the Rogue River and Klamath National Forests, consistent with the decision reached in the 1991 ROD/final EIS.

Based on extensive previous scoping, analysis and public comment received on the February 2000 draft EIS, a preliminary site specific list of project issues has been developed. The significant issue categories that will be used to develop the range of alternatives in the forthcoming draft EIS include: Effects on Water Quality, Effects to Wetlands and Riparian Reserves, Effects to Englemann Spruce, Effects to Mt. Ashland Lupine and Henderson's Horkelia, Effects Associated with Human Social Values, and Effects Associated with Economics.

Based on extensive public input and detailed field survey and analysis conducted by ski area planners, the following five alternatives will be analyzed in detail (at a minimum) in the forthcoming draft EIS: No-Action (as required by NEPA, the Proposed Action (based on a revised proposal received from Mt. Ashland Association), an alternative to the Proposed Action in the Middle Fork Ashland Creek area that addresses a reduced impact to Englemann spruce and wetlands, an expansion alternative based on development of additional facilities sited in the ''Knoll'' area, and an alternative that would primarily expand ski area facilities in areas already

developed (current facility expansion). The legal location description for all actions being considered is T. 40 S., R. 1 E., in sections 15, 16, 17, 20, 21, and 22, W.M., Jackson County, Oregon.

Comments received on the draft EIS will be considered in the preparation of the final EIS. The draft EIS is now expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in July 2002. The comment period on the draft EIS will be 45-days from the date EPA publishes the Notice of Availability in the **Federal Register.** At the end of the comment period on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by fall 2002.

Comments received in response to this notice, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within a specified number of days.

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until completion of the final EIS, may be waived or dismissed by the courts. *City Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is important that those interested in this proposed action participate by the close of the 45-day comment period so substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

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

The Forest Service, Rogue River National Forest, is the Lead Agency for this EIS. The Forest Supervisors of the Rogue River and Klamath National Forests are the Responsible Officials. The Responsible Officials will consider the comments, responses to the comments, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies. The Responsible Officials will document the Mt. Ashland Ski Area Expansion decision and the rationale for the decision in a Record of Decision (ROD). The Forest Service decision will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: March 25, 2002.

Thomas K. Reilly,

Acting Forest Supervisor.

[FR Doc. 02–7759 Filed 3–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

South Mt. Baker-Snoqualmie Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meetings.

SUMMARY: The South Mt. Baker-Snoqualmie Resource Advisory Committee (RAC) will meet Thursday, April 25, 2002, at the Washington State University Puyallup Research and Extension Center, 7612 E. Pioneer Way, Puyallup, WA 98371–4998.

The meeting will begin at 9 a.m. and continue until about 4:00 p.m. Agenda items to be covered include: (1) Background for the Secure Rural Schools and Community Self-Determination Act of 2000, (2) Organization and future program of work for the South Mt. Baker-Snoqualmie Resource Advisory Committee.

All South Mt. Baker-Snoqualmie Resource Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The South Mt. Baker-Snoqualmie Resource Advisory Committee advises King and Pierce Counties on projects, reviews project proposals, and makes recommendations to the Forest Supervisor for projects to be funded by Title II dollars. The South Mt. Baker-Snoqualmie Resource Advisory Committee was established to carry out the requirements of the Secure Rural Schools and Community Self-Determination Act of 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Management Specialist, USDA Forest Service, Mt. Baker-Snoqualmie National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: March 26, 2002.

Ron DeHart,

Acting Designated Federal Official.

[FR Doc. 02–7758 Filed 3–29–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Little Wood River Irrigation District, Gravity Pressurized Irrigation Delivery System, Blaine County, ID

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

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 being prepared for a federally assisted proposed project by the Little Wood River Irrigation District, Blaine County, Idaho.

FOR FURTHER INFORMATION CONTACT: Richard Sims, State Conservationist, Natural Resources Conservation Service, 9173 W. Barnes Dr., Suite C, Boise, Idaho, 83709–1574, telephone: 208–378–5700.

SUPPLEMENTARY INFORMATION: The preliminary information of this federally assisted proposed action indicates that the project may cause significant local, regional, or national impacts on the environment. As a result of these findings, Richard Sims, State Conservationist, has determined that the preparation and review of an environmental impact statement is needed for this project.

The Little Wood River Irrigation District objectives include water and energy savings, public safety, and energy generation. The proposed project would convert the open canal irrigation delivery system to a closed, gravity pressurized delivery system and includes a hydroelectric generating facility. Alternatives under consideration to reach these objectives include: No Action, Concrete Lined Canals, Gravity Pressurized Irrigation Delivery System, and Gravity Pressurized Irrigation Delivery System with Hydroelectric Generation.

A draft environmental impact statement will be prepared and circulated for review by agencies and the public. The Natural Resources Conservation Service invites participation and consultation of agencies and individuals that have special expertise, legal jurisdiction, or interest in the preparation of the draft environmental impact statement.

NRCS will hold public scoping meetings in Carey, Idaho, to determine the scope of the evaluation of the proposed action. Further information on the proposed action or future public meetings may be obtained from Richard Sims, State Conservationist, at the above address or telephone 208–378–5700.

Dated: March 11, 2002.

Joyce Swartzendruber,

Acting State Conservationist.

[FR Doc. 02–7787 Filed 3–29–02; 8:45 am]

BILLING CODE 3210–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Jeffrey C. Anspacher, Director, Office of Export Trading Company Affairs, International Trade Administration, by telephone at (202) 482–5131 (this is not a toll-free number) or e-mail at *oetca@ita.doc.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 02–00001.'' A summary of the application follows.

Summary of the Application

Applicant: ROCACO INC., dba REIS Network & World Business Exchange Network, 5777 W. Century Blvd., Suite 300, Los Angeles, California 90045.

Contact: Roosevelt Roby, Founder and Chairman.

Telephone: (310) 829–2606.

Application No.: 02–00001.

Date Deemed Submitted: March 18, 2002.

Members (in addition to applicant): The REIS Foundation, Los Angeles, CA.

ROCACO INC., dba REIS Network and World Business Exchange Network seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

All products.

2. Services

All services.

3. Technology Rights

Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.

4. Export Trade Facilitation Services

Export Trade Facilitation Services include professional services in the areas of government relations and assistance with state and federal programs; foreign trade and business protocol; consulting; market research and analysis; collection and dissemination of information on trade opportunities; marketing; negotiations; joint ventures; export management; export licensing; advertising; documentation and services related to compliance with customs requirements; insurance and financing; trade show exhibitions and seminars; organizational development; management and labor strategies; transfer of technology and facilitating transportation and shipping.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Applicant seeks to have the following export conduct certified:

1. To promote all Products and Services suitable for Export Trade;

2. To recruit and train individuals, companies and entrepreneurs on the

methods of facilitating the exportation of goods and service produced in the U.S.;

3. To stimulate productive business attitudes and create well-developed export trade intermediaries;

4. To assist in creating and maintaining manufacturing and other trade related jobs to achieve economies of scale and acquire expertise enabling them to export goods and services profitably;

5. To participate in those activities of State and local government authorities which initiate, facilitate or expand exports of goods and services for the expansion of total U.S. exports; as well as for experimentation in the development of innovative export programs keyed to local, State and regional economic needs;

6. Be able to draw upon the resources, expertise and knowledge of the United States banking system, both in the U.S. and abroad;

7. Work closely with the Department of Commerce for the development and promotion of U.S. exports, and especially for facilitating the export of finished products by U.S. manufacturers;

8. Promote Technology Rights, including, but not limited to, patents, trademarks, copyrights, and trade secrets, that relate to Products and Services;

9. Provide Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights);

10. With respect to the sale of Products and Services, licensing of Technology Rights and provisions of Export Trade Facilitation Services, Applicant may:

a. Develop Export Trading Companies who provide and/or arrange for the provisions of Export Trade Facilitation Services;

b. Engage in promotional and marketing activities and collect information on trade opportunities in the Export Markets and distribute such information to clients;

c. Enter into exclusive and/or non-exclusive licensing and/or sales agreements with Suppliers for the export of Products, Services, and/or Technology Rights in Export Markets;

d. Enter into exclusive and/or non-exclusive agreements with distributors and/or sales representatives in Export Markets;

e. Allocate export sales or divide Export Markets among Suppliers for the sale and/or licensing of Products, Services, and/or Technology Rights;

f. Allocate export orders among Suppliers.

11. Applicant may:

a. Establish the price of Products, Services, and/or Technology Rights for sales and/or licensing in Export Markets;

b. Negotiate, enter into, and/or manage licensing agreements for the export of Technology Rights; or

c. Enter into contracts for shipping.

12. Applicant and individual Suppliers may regularly exchange information on a one-on-one basis regarding that Supplier's inventories and near-term production schedules in order that the availability of Products for export can be determined and effectively coordinated by applicant with its distributor trainees in Export Markets.

Definitions

1. ''Supplier'' means a person who produces, provides, or sells a Product and/or Service.

Dated: March 27, 2002.

Jeffrey C. Anspacher,

Director, Office of Export Trading Company Affairs.

[FR Doc. 02–7786 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 060600B]

Fisheries of the Exclusive Economic Zone Off Alaska; Individual Fishing Quota Program

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

ACTION: Announcement of approval of data collection.

SUMMARY: NMFS is announcing the approval of information collection requirements under the Individual Fishing Quota (IFQ) Program, first, for gear type as an additional question on the landing report and, second, for annual updates on the status of corporations, partnerships, and other collective entities holding IFQ quota shares. National Marine Fisheries Service

DATES: Effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7008.

SUPPLEMENTARY INFORMATION: The information collection requirements for §§ 679.5(l)(2)(vi) and 679.42(j)(6), which were contained in the final rule to amend regulations implementing the IFQ Program for the Pacific halibut and sablefish fixed gear fisheries in and off Alaska (67 FR 27908, May 21, 2001) were approved by the Office of Management and Budget (OMB) on March 11, 2002, in the renewal of OMB control number 0648–0272.

Dated: March 26, 2002.

John H. Dunnigan,

Director Office of Sustainable Fisheries, National marine Fisheries Service.

[FR Doc. 02–7812 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 022702A]

Nominations for the Marine Fisheries Advisory Committee (MAFAC)

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

ACTION: Notice of request for nominations.

SUMMARY: The Marine Fisheries Advisory Committee (the ''Committee'') is the only Federal Advisory Committee with the responsibility to advise the Secretary of Commerce (the ''Secretary'') on all matters concerning living marine resources that are the responsibility of the Department of Commerce. The Committee makes recommendations to the Secretary to assist in the development and implementation of Departmental regulations, policies and programs critical to the mission and goals of the National Marine Fisheries Service (the ''Agency''). The Committee is composed of leaders in the commercial, recreational, environmental, academic, state, tribal, and consumer interests from the nation's coastal regions. The Department of Commerce is seeking up to ten highly qualified individuals knowledgeable about fisheries and living marine resources to serve on the Committee.

DATES: Nominations must be postmarked on or before May 16, 2002.

ADDRESSES: Nominations should be sent to MAFAC, Office of Constituent Services, NMFS, 1315 East-West Highway, 14743, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Laurel Bryant, Designated Federal Official; telephone (301)713-9501 x171. E-mail: *Laurel.Bryant@noaa.gov*.

SUPPLEMENTARY INFORMATION: The establishment of MAFAC was approved by the Secretary on December 28, 1970, and initially chartered under the Federal Advisory Committee Act, 5, U.S.C. App.2, on February 17, 1971. The Committee meets twice a year with supplementary subcommittee meetings as determined necessary by the Secretary. Individuals serve for a term of 3 years for no more than two consecutive terms if reappointed. No less than 15 and no more than 21 individuals may serve on the Committee. Membership is comprised of highly qualified individuals representing commercial and recreational fisheries interests, environmental organizations, academic institutions, governmental, tribal and consumer groups from a balance of geographical regions, including the Hawaii and the Pacific Islands, and the U.S. Virgin Islands.

Nominations are encouraged from all interested parties involved with or representing interests affected by the Agency's actions in managing living marine resources. Nominees should possess demonstrable expertise in a field related to the management of living marine resources and be able to fulfill the time commitments required for two meetings annually.

A MAFAC member cannot be a Federal agency employee or a member of a Regional Fishery Management Council. Selected candidates must have security checks and complete financial disclosure forms. Membership is voluntary, and except for reimbursable travel and related expenses, service is without pay.

Each submission should include the submitting person's or organization's name and affiliation, a cover letter describing the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of nominee, and no more than three supporting letters describing the qualifications of the nominee. Self nominations are acceptable. The following contact information should accompany each nominee's submission: name, address, phone number, fax number, and e-mail address if available.

Nominations should be sent to (*see* **ADDRESSES**) and nominations must be received by (*see* **DATES**). The full text of the Committee Charter and its current membership can be viewed at the Agency's web page at *www.nmfs.noaa.gov/mafac.htm*.

Dated: March 4, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–7811 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030702A]

Small Takes of Marine Mammals Incidental to Specified Activities; Seismic Reflection Data off Southern California

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

ACTION: Notice of receipt of application and proposed authorization for a small take authorization; request for comments.

SUMMARY: NMFS has received a request from the U.S. Geological Survey (USGS) for an authorization to take small numbers of marine mammals by harassment incidental to collecting marine seismic reflection data to investigate the landslide and earthquake hazards off Southern California. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the USGS to incidentally take, by harassment, small numbers of marine mammals in the above mentioned area during June, 2002.

DATES: Comments and information must be received no later than May 1, 2002.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application, which includes a list of references used in this document, and other documents referenced herein may be obtained by writing to this address or by telephoning one of the contacts listed below.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055, or Christina Fahy, NMFS, 562–960–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined ''negligible impact'' in 50 CFR 216.103 as ''an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.''

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA defines ''harassment'' as:

> Any act of pursuit, torment, or annoyance which (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45–day time limit for NMFS review of an application followed by a 30–day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

The USGS proposes to conduct a high-resolution seismic-reflection survey offshore from southern California for two weeks during June 2002. The USGS will collect this seismic-reflection data to investigate the hazards posed by landslides, tsunamis, and potential earthquake faults in the nearshore region from Ventura to Santa Barbara, CA. This task is part of a multiyear hazard analysis that requires high-resolution, seismic-reflection data using several acoustic sources. In addition, a few days of survey time will be used to

conduct a seafloor imaging survey in support of environmental studies in the area offshore Pt. Conception.

The USGS plans to collect seismic-reflection data using three basic instrument systems:

(1) A Huntec™ or a Geopulse™ boomer sound-source to collect high-resolution seismic-reflection data of the sub-seafloor;

(2) A high-resolution multi-channel system for which the primary source will be either a 2–kilo-Joule (kJ) sparker system for shallow water or a small GI airgun in deeper water. The type of sparker to be used will depend on the results of a sparker feasibility study completed earlier this year in the Seattle, Washington area. A 250–m-long (820.2–ft) hydrophone streamer is used for both multi-channel sources.

(3) A Klein sidescan sonar for the environmental survey off Pt. Conception, CA.

The high-resolution Huntec™ boomer system uses an electrically powered sound source that is towed behind the ship at depths between 30 m (98.4 ft) and 160 m (525 ft) below the sea surface. The hydrophone arrays for listening are attached to the tow vehicle that houses the sound source. The USGS plans to use the Huntec™ primarily in water depths greater than 300 m (984.2 ft). The system is triggered at 0.5–to 1.25–second intervals, depending upon the source tow depth. This system provides detailed information about stratified sediment, so that dates obtained from fossils in sediment samples can be correlated with episodes of fault offset. The sound pressure level (SPL) for the Huntec™ unit is 205 dB re 1 μPa-m (root-mean-squared (RMS)). The output-sound bandwidth is 0.5 kHz to 8 kHz, with the main peak at 4.5 kHz.

The USGS plans to use the surface-towed Geopulse™ boomer system in the shallow water parts of the survey area, typically in water depths from 20 m to 300 m (65.6 to 984.2 ft). The sound source consists of two Geopulse 5813A boomer plates mounted on a catamaran sled built in-house. The catamaran is towed just behind the vessel, while the 5–m-long (16.4–ft) hydrophone streamer is usually towed from a boom on one side of the vessel. The source level for the Geopulse is 204 dB re 1 μPa-m (RMS), and its effective bandwidth is about 0.75 to 3.5 kHz. The firing rate is generally 0.5 to 1 second interval.

The primary sound source for the high-resolution multi-channel system will be a 2.0 kJ sparker system such as the SQUID 2000™ minisparker system manufactured by Applied Acoustic Engineering, Inc. This minisparker includes electrodes that are mounted on a small pontoon sled. The electrodes simultaneously discharge electric current through the seawater to an electrical ground. This discharge creates an acoustic signal. The pontoon sled that supports the minisparker is towed on the sea surface, approximately 5 meters (16.4 ft) behind the ship.

Source characteristics of the SQUID 2000™ provided by the manufacturer show an SPL of 209 dB re 1 μPa-m (RMS). The amplitude spectrum of this pulse indicates that most of the sound energy lies between 150 Hz and 1700 Hz, and the peak amplitude is at 900 Hz. The output sound pulse of the minisparker has a duration of about 0.8 ms. When operated at sea for the proposed multichannel seismic-reflection survey, the minisparker will be discharged every 1 to 4 seconds.

The second source for the multi-channel system is a small airgun of special type called a generator-injector, or GI gun (trademark of Seismic Systems, Inc., Houston, TX). This type of airgun consists of two small airguns within a single steel body. The two small airguns are fired sequentially, with the precise timing required to nullify the bubble oscillations that typify sound pulses from a single airgun of common type. These oscillations impede detailed analysis of fault structure. For arrays consisting of many airguns, bubble oscillations are cancelled by careful selection of airgun sizes. The GI gun is a mini-array that is carefully adjusted to achieve the desired bubble cancellation. Airguns and GI guns with similar chamber sizes have similar peak output pressures. The GI gun for this survey has two chambers of equal size (35 in^3) and the gun will be fired every 12 seconds. Compressed air delivered to the GI gun will have a pressure of about 3000 psi. The gun will be towed 5 meters (16.4 ft) behind the vessel and suspended from a float to maintain a depth of about 1 m (3.2 ft).

The manufacturer's literature indicates that a GI gun of the size the USGS will use has an SPL of about 220 dB re 1 μPa-m (RMS). The GI gun's output sound pulse has a duration of about 10 ms. The amplitude spectrum of this pulse, as shown by the manufacturer's data, indicates that most of the sound energy is at frequencies below 500 Hz. Field measurements by USGS personnel indicates that the GI gun produces low-sound-amplitudes at frequencies above 500 Hz. Thus high-amplitude sound from this source is at frequencies that are outside the main hearing band of odontocetes and pinnipeds (Richardson *et al.*, 1995).

The environmental survey off Pt. Conception will be accomplished with sidescan-sonar surveying. The system that will be used will be the Klein 3000 or the Klein 2000. The Klein 2000 sidescan sonar uses an electrically powered sound source. In operation, the sound source, or ''fish'', is towed behind the research vessel at depths of 1 to 10 m (3.2 to 32.8 ft) below the sea surface. The unit emits a short pulse of sound about every 0.25 second; the interval depends on the swath width (i.e., the area of seafloor to be imaged). The sidescan-sonar system measures the return time and intensity of echoes to create a high-resolution image of the seafloor that is similar to an air photo on land. The sidescan system has a sound pressure level (SPL) of about 210 dB re 1 μPa-m (RMS). The output sound pulse is very short, with a time duration of less than 0.1 ms. The frequency bandwidth of the outgoing signal is 100kHz or 500 kHz.

The Klein 3000 is a system that has just been developed and its operating frequencies are 128kHz and 445 kHz. The SPL for these frequencies are 212 dB re 1 μPa-m (RMS) for the 125 kHz and 200 dB re 1 μPa-m (RMS) for the 455 kHz source. The pulse lengths are selectable from among 50/100/200/400 ms.

The work is planned for thirteen days during June 2002. The possible operational window is from mid-May to mid-August 2002, but the preferred time is early June. At this time, the USGS is in the process of leasing a vessel, and exact availability is not yet known. The primary work area (70 percent of the time) is between Pt. Dume and offshore Gaviota, California, in the western Santa Monica Basin and Santa Barbara Channel. The secondary work area is offshore between Pt. Conception and Pt. Arguello (but staying within 30 km (18.6 mi) of the coast). If authorized, the USGS will work inside a small part of the Channel Islands Marine Sanctuary. Some work might be attempted during transit between the two work areas.

Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Phocoena phocoena*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whales

(*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whales (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), northern sea lion (*Eumetopias jubatus*), California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otters (*Enhydra lutris*). General information on these species can be found in the USGS application and in Forney *et al.* (2000). Forney *et al.* (2000) is available at the following URL:

http://www.nmfs.noaa.gov/prot__res/PR2/Stock__Assessment__Program/sars.html Please refer to these documents for information on these species in California waters.

Potential Effects of Marine Seismic Reflection Studies on Marine Mammals

Discussion

Disturbance by acoustic noise is the principal means of taking incidental to this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessels could also lead to some non-acoustic effects involving visual or other cues.

The effects of underwater sounds on marine mammals are highly variable, and can be categorized as follows: (1) The sounds may be too weak to be heard at the location of the animal (i.e. lower than the prevailing ambient noise level, the hearing threshold of the animal at relevant frequencies, or both); (2) the sounds may be audible but not strong enough to elicit any overt behavioral response; (3) the sounds may elicit behavioral reactions of variable conspicuousness and variable relevance to the well being of the animal; these can range from subtle effects on respiration or other behaviors (detectable only by statistical analysis) to active avoidance reactions; (4) upon repeated exposure, animals may exhibit diminishing responsiveness (habituation), or disturbance effects may persist (the latter is most likely with sounds that are highly variable in characteristics, unpredictable in occurrence, and associated with situations that the animal perceives as a threat); (5) any sound that is strong enough to be heard has the potential to reduce (mask) the ability of marine mammals to hear natural sounds at similar frequencies, including calls from conspecifics and/or echolocation sounds, and environmental sounds such as storms and surf noise; and (6) very strong sounds have the potential to cause either a temporary or a permanent reduction in hearing sensitivity (i.e., temporary threshold shift (TTS) or permanent threshold shift (PTS), respectively). In addition, intense acoustic or explosive events may cause trauma to tissues associated with organs vital for hearing, sound production, respiration and other functions. This trauma may include minor to severe hemorrhage.

Few data on the effects of non-explosive sounds on hearing thresholds of marine mammals have been obtained. However, in terrestrial mammals (and presumably in marine mammals), received sound levels must far exceed the animal's hearing threshold for there to be any TTS and must be even higher for there to be risk of PTS (Richardson *et al.*, 1995).

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by seismic operations may be detectable some substantial distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or masking a signal of comparable frequency. Harassment is presumed to occur when marine mammals in the vicinity of the acoustic source (or vessel) show a significant behavioral response to the generated sounds or visual cues.

Seismic pulses are known to cause some species of whales, including gray and bowhead whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of the acoustic pulses created by the planned survey's instruments will limit the extent of masking. Bowhead whales, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and season. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses, include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors such as feeding, socializing or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal very close to one of the acoustic devices would be at risk of temporary or permanent hearing impairment, TTS is a theoretical possibility for animals within a few hundred meters (Richardson *et al.*, 1995), if the SPL of an acoustic source is of sufficient intensity, such as with large seismic airgun arrays. However, considering the low intensity of the proposed acoustic devices, and the planned monitoring and mitigation measures (described later in this document), which are designed to detect marine mammals occurring near the acoustic sources and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing hearing damage, neither TTS, nor PTS are considered likely.

Maximum Sound-Exposure Levels for Marine Mammals

The adverse effects of underwater sound on mammals have been documented for exposure times that for up to several minutes, but adverse effects have not been documented for the brief pulses typical of the minisparker (0.8 ms) and the Huntec system (typically 0.3 ms).

For impulse noise, NMFS has previously established that activities should avoid, to the greatest extent practicable, exposing mysticetes and sperm whales to an SPL of 180 dB re 1 μPa-m (RMS) or higher. For odontocetes and pinnipeds, activities should avoid, to the greatest extent practicable, exceeding a level of 190 dB re 1 μPa-m (RMS). These determinations were based on findings at the High-Energy Seismic Workshop held at Pepperdine University in 1997 as updated by the NMFS' Acoustics Workshop held in Silver Spring, MD in 1999. In 1999 however, the California Coastal Commission (CCC) limited this maximum sound-exposure level to 180 dB re 1 μPa-m (RMS) for all marine mammals, including pinnipeds, within the coastal zone of California and NMFS expects that the CCC will require similar limitations for this action.

However, current scientific consensus indicates that a safe level for impulse sounds for pinnipeds that avoids TTS is higher than the level indicated for

cetaceans (e.g., 180 dB). As a result, although scientists have preliminarily established an SPL of 190 dB re 1 µPa-m (RMS) as a safe level for pinnipeds underwater, and while NMFS adopts this information as the best scientific information available, the USGS has agreed to abide by the conditions contained in its CCC consistency determination.

NMFS notes moreover, that the recent precautionary application of a 180–dB safety zone for protecting marine mammals does not necessarily mean that animals entering that zone will be adversely affected. It simply means that animals have the *potential* to incur a temporary elevation in hearing threshold (i.e., TTS), lasting, at worst, for a few minutes at the 180 dB sound pressure level.

The USGS has provided two estimates of how close marine mammals can approach each sound source before it needs to be shut off. The first estimate follows the procedure required by the CCC in 1999, in that underwater sound is assumed to attenuate with distance according to 20log(R), and the maximum SPL to which marine mammals can be exposed is 180 dB re 1µPa-m (RMS). The alternative estimate of safe distance is proposed for operations in shallow water. In shallow water, sound from the sources will decay with distance more sharply than 20log(R) because some of the sound energy will exit the water and penetrate the seafloor when the source is physically close to the seafloor.

The zone of impact for the sound sources is a circle whose radius is the distance from the source to where the SPL is reduced to 180 dB re 1 µPa-m (RMS). In the deeper water (>50 m; >164 ft) areas of the proposed survey, for a 20log(R) sound attenuation, the zone of impact for a 209 dB (RMS) minisparker source has a radius of 28 m (92 ft). The 204 dB Geopulse™ and 205 dB Huntec™ boomers yield radii of 16 and 18 m (52.5 and 59 ft) respectively. The 210 dB Klein sidescan yields a safety radius of 32 m (105 ft), and the 220 dB GI gun yields a safety radius of 100 m (328 ft). The USGS proposes that safety zones of 30 m (98 ft) around the boomers, minisparker, sidescan fish, and of 100 m (328 ft) around the airgun be used in water deeper than 50 m (164 ft).

In water <50 m (<164 ft) deep, underwater sound commonly attenuates more sharply than 20log(R). In 1999, the USGS measured a sound attenuation of 27log(R) off southern California, so it proposes that for inshore areas, underwater sound attenuates approximately like 25log(R). Strictly for inshore areas, then, an attenuation of 25log(R) yields zones of influence for the boomers of 10 m (32.8 ft), for minisparker 15 m (49 ft), and for sidescan 20 m (65.6 ft).

Potential Level of Taking by Harassment of Marine Mammals

The following summary is from a report by Calambokidis and Chandler (2001) that was submitted in compliance with an Incidental Harassment Authorization (IHA) issued to the USGS on June 5, 2000 (65 FR 39871, June 28, 2000). During a similar acoustic survey in early June, 2000, there were a total of 241 marine mammal sightings (not including re-sightings), representing at least 11 species and 4,792 marine mammals. (Sighting a marine mammal should not be interpreted to mean that the animal was being harassed.) Small cetaceans were the most numerous and accounted for 54 percent of the sightings and 96 percent of the animals. Common dolphins made up 74 sightings and 3,764 of the sighted animals. Risso's dolphins, bottlenose dolphins and Dall's porpoises were seen in smaller numbers. Pinnipeds accounted for 98 sightings and these were predominantly California sea lions. Smaller numbers of harbor seals and a single elephant seal were also sighted. Four species of large cetaceans were sighted in small numbers. Blue whales were most common with 5 sightings of single animals. Fin, humpback and minke whales were each sighted once or twice. Sighting rates versus acoustic source appeared to be related to habitat of operations and not to the sound source itself.

The sound source was shutdown a total of 40 times (22 daylight and 18 nightime). Shutdowns were in response to five different species. Common dolphins triggered a shutdown in 29 instances; Risso's dolphin, bottlenose dolphins and California sea lions each resulted in 3 to 4 shutdowns each. The only shutdown for a large whale was for a sighting of a blue whale which, although still outside the 250–m (820–ft) mitigation zone, was prompted as precautionary measure.

The high proportion of shutdowns caused by common dolphins was a result both of their being one of the most common species in the area and their tendency to approach the ship. Common dolphins accounted for 31 percent of marine mammal sightings but were responsible for 72 percent of the shutdowns. California sea lions, which accounted for 36 percent of the sightings were responsible for only 7 percent of the shutdowns. Although other dolphin species were less common, both Risso's and bottlenose dolphins had shutdown rates that were similar to common dolphins. Overall, 30 percent of small cetacean sightings made while the sound source was operational led to shutdowns compared to only 4 percent of pinniped sightings. A low proportion of large whale sightings led to shutdowns. The 11 sightings of whales made during sound source operations led to only a single precautionary shutdown.

Behavioral observations were made both while the sources were on and when they were off. For small dolphins and pinnipeds there did not appear to be a difference in behavior between the two operational modes. There was also no apparent difference in the orientation (direction of swimming) of these animals in relation to transmissions. Breaching was observed in two cases for large cetaceans; a minke whale and a group of two humpback whales. Sound transmissions were occurring only during the minke whale sighting.

The Need for 24–hour Seismic Operations

The USGS has requested that the IHA allow for 24–hour operations, specifically for the minisparker and/or boomers or sidescan. The reasons for around-the-clock operation that benefit the environment are: (1) When the sound sources cease to operate, marine mammals might move back into the survey area and incur an increased potential for harm when operations resume, and (2) Daylight-only operations prolong activities in a given area, thus increasing the likelihood that marine mammals will be harassed.

The 2002 survey will require only two weeks, and the ship will be moving continuously through the Santa Barbara Channel, so no single area will see long-term activity. The USGS believes that the best course is to complete the survey as expeditiously as possible. Also, operating less than 24 hours each day incurs substantially increased cost for the leased ship, for which the USGS has not been provided funding (Normark *et al.*, 1999b). The ship schedule provides a narrow time window for this project; typically, other experiments are scheduled to precede and follow the USGS project. Thus they are not able arbitrarily to extend the survey time to include large delays for dark or poor visibility. Delays could require scheduling additional surveys in future years to complete the missed work.

Mitigation

Several mitigation measures to reduce the potential for marine mammal

harassment will be implemented by USGS as part of their proposed activity. These include:

(1) The survey is planned for June, when gray whales are not migrating.

(2) The smallest possible acoustic sources have been selected to minimize the chances of incidental harassment.

(3) To avoid potential incidental injury to marine mammals, safety zones will be established and monitored continuously. Whenever the seismic source(s) approaches a marine mammal closer than the assigned safe distance the USGS will shut them down.

(4) For mysticetes and sperm whales, the marine mammal species near the survey area that are considered to be most sensitive to the frequency and intensity of sound that will be emitted by the seismic sources, operations will cease when members of these species approach within 250 m (820 ft) of the sound source.

(5) For odontocetes, with their lower sensitivity to low frequency sound, operations will cease when these animals approach a safety zone of 30 m (98.4 ft) from the boomer, minisparker, or sidescan fish, and a zone of 100 m (328 ft) from the airgun.

(6) For pinnipeds (seals and sealions): if the research vessel approaches a pinniped, a safety radius of 30 m (98.4 ft) around the boomer, minisparker, or sidescan fish and 100 m (328 ft) around the airgun will be maintained from the animal(s). However, if a pinniped approaches the acoustic source, the USGS will not be required to shut it down. Experience indicates that pinnipeds will come from great distances to scrutinize seismic-reflection operations. Seals have been observed swimming within airgun bubbles, 10 m (33 ft) away from active arrays. More recently, Canadian scientists, who were using a high-frequency seismic system that produced sound closer to pinniped hearing than will the USGS sources, describe how seals frequently approached close to the seismic source, presumably out of curiosity. Therefore, because pinnipeds indicate no adverse reaction to seismic noise, the above-mentioned mitigation plan is proposed. In addition, the USGS will gather information on how often pinnipeds approach the sound source(s) on their own volition, and what effect the source(s) appears to have on them.

(7) During seismic-reflection survey operations, the ship's speed will be 4 to 5 knots so that when the seismic sources are being discharged, nearby marine mammals will have gradual warning of the ship's approach and can move away.

(8) The USGS will have marine biologists onboard the seismic vessel who will have the authority to stop seismic operations whenever a mammal enters the safety zone. These observers will monitor the safety zone to ensure that no marine mammals enter the zone, and record observations on marine mammal abundance and behavior.

(9) If observations are made that one or more marine mammals of any species are attempting to beach themselves when the seismic source is operating in the vicinity of the beaching, the seismic sources will be immediately shut off and NMFS contacted.

(10) Upon notification by a local stranding network that a marine mammal has stranded where the acoustic sources had recently been operated, NMFS will investigate the stranding to determine whether a reasonable chance exists that the seismic survey caused the animal's death. If NMFS determines, based upon a necropsy of the animal(s), that the death was likely due to the seismic source, the survey shall cease until procedures are altered to eliminate the potential for future deaths.

Monitoring

Monitoring of marine mammals while the sparker or airgun sound sources are active will be conducted continuously. Trained marine mammal observers will be onboard the vessel to mitigate the potential environmental impact from either of the two systems and to gather data on the species, number, and reaction of marine mammals to the sources. Each observer will use equipment, such as Tasco 7x50 binoculars with internal compasses and reticules, to record the horizontal and vertical angle to sighted mammals. Nighttime operations in shallow water will be conducted with a spotlight to illuminate the radius of influence around the minisparker tow sled and observers will have night-vision goggles.

Monitoring data to be recorded during seismic-reflection operations include which observer is on duty and what the weather conditions are like, such as Beaufort Sea state, wind speed, cloud cover, swell height, precipitation and visibility. For each mammal sighting the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut all active seismic sources whenever a marine mammal enters a safety zone.

Reporting

The USGS will provide an initial report to NMFS within 120 days of the completion of the marine seismic reflection survey project. This report will provide dates and locations of seismic operations, details of marine mammal sightings, and estimates of the amount and nature of all takes by harassment. A final technical report will be provided by USGS within 1 year of completion of the project. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an IHA. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

National Environmental Policy Act (NEPA)

In conjunction with the promulgation of regulations implementing section 101(a)(5)(D) of the MMPA, NMFS completed an Environmental Assessment (EA) on May 9, 1995 that addressed the impacts on the human environment from issuance of IHAs and the alternatives to that action. NMFS' analysis resulted in a Finding of No Significant Impact (FONSI). In addition, this proposed seismic reflection survey will use acoustic instruments that are significantly less intense and thereby have a significantly lower impact on the marine environment than acoustic sources used in other surveys for which EAs and resulting FONSIs have been prepared previously. Accordingly, this proposed action qualifies for a categorical exclusion under NEPA and, therefore, a new EA will not be prepared. A copy of relevant previous EAs are available (*see* **ADDRESSES**).

Preliminary Conclusions

NMFS has preliminarily determined that the short-term impact of conducting a marine seismic survey in southern California waters will result, at worst, in a temporary modification in behavior by certain species of pinnipeds, and possibly some individual cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from airgun arrays, this behavioral change is expected to result in the harassment of only small numbers of each of several species of marine mammals and would have no more than a negligible impact on these affected species or stocks.

In addition, no take by injury and/or death is anticipated and takes by harassment will be at the lowest level

practicable due to incorporation of the mitigation measures mentioned previously. Known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals that occur within or near the planned area of operations during the season of operations are unlikely to be affected.

As a result, NMFS proposes to issue an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic reflection data in southern California waters, provided the above-mentioned mitigation, monitoring, and reporting requirements are incorporated.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (*see* **ADDRESSES**).

Dated: March 26, 2002.

Wanda Cain,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–7813 Filed 3–29–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–17]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–17 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 MAR 2002
In reply refer to:
I-02/001996

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-17 and under separate cover the classified offset certificate thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to the Republic of Korea for defense articles and service estimated to cost $1.2 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Offset certificate

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-17

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) **Prospective Purchaser: Republic of Korea**

(ii) **Total Estimated Value:**

Major Defense Equipment*	$0.533 billion
Other	$0.667 billion
TOTAL	$1.200 billion

(iii) **Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: three AEGIS Shipboard Combat Systems, three AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe systems, three shipboard gridlock systems, three Common Data Link Management System/Joint Tactical Distribution Systems, three MK 34 gun weapon systems, three Navigation Sensor System Interfaces, testing and combat system engineering technical assistance, computer program maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support.**

(iv) **Military Department: Navy (LPN)**

(v) **Prior Related Cases, if any: none**

(vi) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none**

(vii) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached**

(viii) **Date Report Delivered to Congress: 18 MAR 2002**

* **as defined in Section 47(6) of the Arms Export Control Act.**

POLICY JUSTIFICATION

Republic of Korea – AEGIS Combat Systems

The Republic of Korea (ROK) has requested a possible sale of three AEGIS Shipboard Combat Systems, three AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe systems, three shipboard gridlock systems, three Common Data Link Management System/Joint Tactical Distribution Systems, three MK 34 gun weapon systems, three Navigation Sensor System Interfaces, testing and combat system engineering technical assistance, computer program maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support. The estimated cost is $1.2 billion.

This proposed sale will contribute to the foreign policy and national security of the United States by significantly improving the defense capabilities and security of a key defense treaty ally which has been and continues to be an important force for political stability and economic progress in Northeast Asia.

Installation of the AEGIS Combat System on ships of the ROK naval force will provide enhanced capabilities to defend against possible aggression by the Democratic People's Republic of Korea (DPRK), as well as protect sea lines of communications. AEGIS is the keystone in Korea's efforts to upgrade its shipboard anti-air warfare capability. Korea is fully capable of integrating this system into their operational forces and will receive data sufficient for basic maintenance of the equipment.

The proposed sale of this equipment and support will have a positive impact on the military balance in the region by improving the inter-operability of U.S. and ROK naval forces and increasing the ROK's ability to defend against any aggressive naval, air or missile attack undertaken by the DPRK.

The principal contractors will be Lockheed Martin Naval Electronic Systems and Support of Morristown, New Jersey; Raytheon Company of Andover, Massachusetts; General Dynamics Armament Systems of Burlington, Vermont; and Lockheed Martin Naval Electronics Systems and Support or Eagan, Minnesota. One or more proposed offset agreements may be related to proposed sale.

Implementation of this sale will not require the assignment to Korea of any U.S. Government representatives. It will require the assignment of approximately 50 contractor representatives for approximately five years to support integration and testing of the AEGIS Combat Systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-17

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. AEGIS Weapon System (AWS) hardware is unclassified, with the exception of the RF oscillator used in the Fire Control transmitter, which is classified Confidential. AEGIS documentation in general is unclassified. However, seven operation and maintenance manuals are classified Confidential, and there is also a classified Secret supplement to the AEGIS Combat System Maintenance Manual. The manuals and technical documents are limited to those necessary for operational use and organizational maintenance.

2. While the hardware associated with the SPY-1D radar is unclassified, the computer programs are classified Secret. It is the combination of the SPY-1D hardware and the computer program for the SPY-1D radar that constitutes the technology sensitive aspects of the AWS. SPY-1D radar hardware design and computer program documentation will not be released. Additionally, life cycle maintenance of the AWS computer programs will be performed by the U.S. Navy.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Korea can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–7733 Filed 3–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 02–19]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02–19 with attached transmittal and policy justification.

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–08–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

18 MAR 2002
In reply refer to:
I-02/002418

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-19 and under separate cover, the classified documents thereto. This Transmittal concerns the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to Austria for defense articles and service estimated to cost $1 billion. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Reporting of Offset Agreements in accordance with Section 36(b)(1)(C) of the Arms Export Control Act (AECA), as amended, requires a description of any offset agreement with respect to this proposed sale. Section 36(g) of the AECA, as amended, provides that reported information related to offset agreements be treated as confidential information in accordance with section 12(c) of the Export Administration Act of 1979 (50 U.S.C. App. 2411(c)). Information about offsets for this proposed sale is described in the enclosed confidential attachment.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachment
As stated

Separate Cover:
Classified Annex
Offset certificate
Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 02-19

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Austria

(ii) Total Estimated Value:

Major Defense Equipment*	$0.595 billion
Other	$0.405 billion
TOTAL	$1.000 billion

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: 30 F-16A/B aircraft upgraded with the Falcon Up structural modification and the Mid-Life Update (MLU) capability modification. The aircraft includes: F-100-PW-220 alternate fighter engines, AN/APG-66(V)2 radar sets, LAU-129 launchers, M61A1 20mm cannons, provisions for AN/ALQ-131 Electronic Counter Measure pods, PANTERA (LANTIRN derivative) or LITENING II targeting pods, and the capability to employ a wide variety of munitions. This possible sale includes: four F-16A Block 10 operational capabilities upgrade aircraft for cannibalization, four spare F-100-PW-220 engines, 4,000 rounds of 20mm cannon ammunition, eight AN/ALQ-131 Electronic Counter Measure pods, 16 PANTERA (LANTIRN derivative) or 16 LITENING II targeting pods, 30 M61A1 20mm cannons, associated support equipment, software development/integration, ammunition, radar, modem, receivers, installation, avionics, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability.

(iv) Military Department: Air Force (ACB)

(v) Prior Related Cases, if any: none

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex under separate cover

(viii) Date Report Delivered to Congress: 18 MAR 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Austria – F-16A/B Aircraft

The Government of Austria has requested a possible sale of 30 F-16A/B aircraft upgraded with the Falcon Up structural modification and the Mid-Life Update (MLU) capability modification. The aircraft includes: F-100-PW-220 alternate fighter engines, AN/APG-66(V)2 radar sets, LAU-129 launchers, M61A1 20mm cannons, provisions for AN/ALQ-131 Electronic Counter Measure pods, PANTERA (LANTIRN derivative) or LITENING II targeting pods, and the capability to employ a wide variety of munitions. This possible sale includes: four F-16A Block 10 operational capabilities upgrade aircraft for cannibalization, four spare F-100-PW-220 engines, 4,000 rounds of 20mm cannon ammunition, eight AN/ALQ-131 Electronic Counter Measure pods, 16 PANTERA (LANTIRN derivative) or 16 LITENING II targeting pods, 30 M61A1 20mm cannons, associated support equipment, software development/integration, ammunition, radar, modem, receivers, installation, avionics, spare and repair parts, flight test instrumentation, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor technical and logistics personnel services, and other related requirements to ensure full program supportability. The estimated cost is $1 billion.

The MLU modification is an outgrowth of the development program notified to the Congress in August 1990. This multi-national effort has included the countries of Belgium, Denmark, The Netherlands, Norway, and Portugal who have participated with the United States Air Force in the full scale MLU engineering development and integration effort. The MLU is an avionics retrofit program for F-16 aircraft consisting of: Heads-Up Display Pilot's Display Unit, AN/APX-113 Advanced Identification Friend or Foe, Common Color Multi-Function Displays, Common Programmable Display Generator, Modular Mission Computer, Voice Message Unit, Common Data Entry Electronics Unit, Global Positioning System antennas, Interference Blanking Unit, and configuration of the APG-66(V)2 radar.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in Europe.

The Austrian Air Force currently operates SAAB JAS-35 Draken and SAAB-105 aircraft. These aging fighters are expensive to operate and maintain. This proposed sale will provide operational capabilities as the SAAB aircraft eventually are retired. It will also allow AAF to meet training requirements starting in early 2003. This proposed sale will not impact the regional military balance of power.

The principal contractors will be Lockheed Martin Aeronautics Company in Fort Worth, Texas; Pratt and Whitney in East Hartford, Connecticut; SABCA in Gosselies, Belgium; and Fokker Services in The Netherlands. One or more proposed offset agreements may be related to this proposed sale.

Implementation of this sale will require the assignment of approximately 12 each U.S. Government and contractor representatives for a period of up to four years to provide program support commencing with delivery of the aircraft to Austria.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 02–7734 Filed 3–29–02; 8:45 am]
BILLING CODE 5001–08–C

DEPARTMENT OF DEFENSE

Office of Secretary

National Security Education Program, National Flagship Language Initiative; Advanced Language Institutional Grants Pilot Program

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The National Security Education Program (NSEP) announces a special competition for Advanced Language Institutional Grants under a pilot program. The competition is administered for NSEP by the National Foreign Language Center (NFLC), University of Maryland.

DATES: Grant Solicitations will be available online beginning Monday, April 1, 2002. Proposals must be received no later than Wednesday, May 15, 2002. Electronic submissions will not be accepted.

ADDRESSES: Obtain copies of the solicitation, beginning April 1, 2002 via Internet at *http://www.nfl.org.* Requests for copies of the proposal to those who are unable to obtain copies through the Internet should be directed by email to NFLC at: *flagships@nflc.org>mailto: tgething@nfc.org>* or by fax: 301–403–1754.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas W. Gething, Deputy Director, National Foreign Language Centers, 7100 Baltimore Avenue, #300, College Park, Maryland 20742; Electronic mail address: *tgething @nflc. org<mailto: tgething@nflc.org>*

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–7732 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Computer Matching Program

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, DoD.

ACTION: Notice of a computer matching program.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended (5 U.S.C. 552a), requires agencies to publish advanced notices of any proposed or revised computer matching program by the matching agency for public comment. The Department of Defense (DoD), Defense Manpower Data Center (DMDC), as the matching agency under the Privacy Act, compensation and pension is hereby giving notice to the record subjects of a computer matching program between Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD) that their records are being matched by computer. The purpose of the computer matching program is to attempt to verify eligibility for VA Compensation and Pension (C&P) benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

DATES: This proposed action will become effective May 1, 2002, and matching may commence unless changes to the matching program are required due to public comments or by Congressional or by Office of Management and Budget objections. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502.

FOR FURTHER INFORMATION CONTACT: Mr. Vahan Moushegian, Jr. at (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the VA OIG and DMDC have concluded an agreement to conduct a computer matching program between agencies. The purpose of the computer matching program is to attempt to verify eligibility for VA C&P benefits by matching veteran's record of those benefits with the military service record of veterans eligible for those benefits for themselves or their beneficiaries.

The parties to this agreement have determined that a computer matching program is the most efficient, expeditious, and effective means of obtaining and processing the information needed by VA OIG to verify the military service record of veterans eligible for VA (C&P) benefits, to identify potential fraudulent payments to fictitious veterans, and to identify payments that should be adjusted where the beneficiary is not entitled to all or part of the VA C&P benefits received. The principal alternative to using a computer matching program for identifying such individuals would be to conduct a manual comparison of all veterans or their beneficiaries receiving VA (C&P) benefits with the other files. Conducting a manual match, however, would clearly impose a considerable administrative burden, constitute a greater intrusion on the individual's privacy, and would result in additional delay in the eventual response to possible fraud and abuse. By comparing the information received through the computer matching program between VA OIG and DMDC on a recurring basis, information on successful matches (hits) can be provided to VA to initiate research on these discrepancies, thus assuring that benefit payments are proper.

A copy of the computer matching agreement between VA OIG and DoD is available upon request. Requests should be submitted to the address caption above or to the Department of Veterans Affairs, Office of Inspector General (52CO), 810 Vermont Avenue NW., Washington, DC 20420.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published on June 19, 1989, at 54 FR 25818.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on March 20, 2002 to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 25, 2002.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Notice of a Computer Matching Program Agreement Between; Office of the Inspector General, the Department of Veterans Affairs and Defense Manpower Data Center, the Department of Defense for Verification of Eligibility

A. Participating Agencies

Participants in this computer matching program are the Department of Veterans Affairs, Office of Inspector General (VA OIG) and the Department of Defense (DoD), Defense Manpower Data Center (DMDC). The VA OIG is the source agency, i.e., the activity

disclosing the records for the purpose of the match. The DoD is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. Purpose of the Match

Upon the execution of this agreement, VA will provide and disclose VA Compensation and Pension (C&P) and Veterans Assistance Discharge Systems (VADS) records to DMDC to identify individuals that have not separated from military service and/or confirm elements of military service relevant to the adjudication of VA benefits. VA OIG will use this information to initiate an independent verification process to determine eligibility and entitlement to VA benefits.

C. Authority for Conducting the Match

The authority to conduct this match is 5 U.S.C. App. 3, the Inspector General Act of 1978 (IG Act). The IG Act authorizes the VA OIG to conduct audits and investigations relating to the programs and operations of VA. IG Act, § 2. In addition, § 4 of the IG Act provides that the IG will conduct activities designed to promote economy and efficiency and to prevent and detect fraud and abuse in VA's programs and operations.

D. Records To Be Matched

The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. Agencies must publish ''routine uses'' pursuant to subsection (b)(3) of the Privacy Act for those systems of records from which they intend to disclose information. The systems of records described below contain an appropriate routine use provision which pertains to disclosure of information between the agencies.

2. VA will use personal data from the following Privacy Act record system for the match: Compensation, Pension, Education and Rehabilitation Records—VA, 58VA21/22, first published at 41 FR 9294, March 3, 1976, and last amended at 65 FR 37605, June 15, 2000, with other amendments as cited therein.

3. DoD will use personal data from the following Privacy Act record system for the match: Defense Manpower Data Center Data Base—S322.10 DMDC, published in the **Federal Register** at 66 FR 29552 on May 31, 2001.

E. Description of Computer Matching Program

VA, as the source agency, will provide DMDC with two electronic files, the C&P and VADS files. The C&P file contains names of veterans, SSNs, and compensation and pension records. The VADS file contains names of veterans, SSNs, and DD214 data. Upon receipt of the electronic files, DMDC will perform a match using the SSNs in the VA C&P file, and the VADS file against the DMDC Active Duty Transaction, Reserve Transaction, and Reserve Master files. DMDC will provide VA OIG an electronic listing of VA C&P and VADS records for which there is no matching record from any of the three DMDC files, and an electronic listing of records that contain data that are inconsistent with data contained in the VA C&P or VADS files. VA OIG is responsible for verifying and determining that the data on the DMDC electronic reply file are consistent with the VA source file and for resolving any discrepancies or inconsistencies on an individual basis.

F. Inclusive Dates of the Matching Program

The effective date of the matching agreement and date when matching may actually begin shall be at the expiration of the 40-day review period for OMB and Congress, or 30 days after publication of the matching notice in the **Federal Register**, whichever date is later. The parties to this agreement may assume OMB and Congressional concurrence if no comments are received within 40 days of the date of the transmittal letter on an annual basis. The 40-day OMB and Congressional review period and the mandatory 30-day public comment period for the **Federal Register** publication of the notice will run concurrently. By agreement between VA OIG and DMDC, the matching program will be in effect for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. Address for Receipt of Public Comments or Inquiries

Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Suite 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 02–7735 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.356A]

Alaska Native Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 2002.

Purpose of Program: To meet the unique educational needs of Alaska Natives and to support the development of supplemental educational programs to benefit Alaska Natives.

Permissible Activities: Activities may include the following: (1) The development and implementation of plans, methods, and strategies to improve the education of Alaska Natives; (2) the development of curricula and educational programs that address the educational needs of Alaska Native students; (3) professional development activities for prospective or current educators of Alaska Native students; (4) the development and operation of home instruction programs for Alaska Native preschool children, to ensure the active involvement of parents in their children's education from the earliest ages; (5) family literacy services; (6) the development and operation of student enrichment programs in science and mathematics; (7) research and data collection activities to determine the educational status and needs of Alaska Native children and adults; (8) other research and evaluation activities related to the purposes of this program; (9) remedial and enrichment programs to assist Alaska Native students in performing at a high level on standardized tests; (10) education and training of Alaska Native students enrolled in a degree program that will lead to certification or licensing as teachers; (11) parenting education for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development), including parenting education provided through in-home visitation of new mothers; (12) activities carried out through Even Start programs carried out under subpart 3 of part B of title I of the Elementary and Secondary Education Act of 1965, as amended, and Head Start programs carried out under the Head Start Act, including the training of teachers; (13) other early learning and preschool programs; (14) dropout prevention programs such as the Cook Inlet Tribal Council's Partners for Success program; (15) career preparation activities to enable Alaska Native children and adults to prepare for meaningful employment, including programs providing tech-prep,

mentoring, training, and apprenticeship activities; (16) provision of operational support and purchasing of equipment to develop regional vocational schools in rural areas of Alaska, including boarding schools for Alaska Native students in grades 9 through 12, or at higher levels of education, to provide the students with necessary resources to prepare for skilled employment opportunities; and (17) other activities, consistent with the purposes of the Alaska Native Education Programs, to meet the educational needs of Alaska Native children and adults.

Eligible Applicants: Alaska Native organizations, educational entities with experience in developing or operating Alaska Native programs or programs of instruction conducted in Alaska Native languages, cultural and community-based organizations with experience in developing or operating programs to benefit Alaska Natives, and consortia of organizations and entities described in this paragraph to carry out programs that meet the purposes of the program. A State educational agency or local educational agency may apply for an award under this program only as part of a consortium involving an Alaska Native organization. The consortium may include other eligible applicants.

Applications Available: April 1, 2002.

Deadline for Transmittal of Applications: May 16, 2002.

Estimated Available Funds: $10.2 million, including not less than $1 million for parenting education programs and not less than $2 million for dropout prevention programs (*see PRIORITIES* section in this notice).

Estimated Range of Awards: $500,000—$2,000,000.

Estimated Number of Awards: 16.

Note: These estimates are projections for the guidance of potential applicants. The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations and Statute: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 86, 97, 98, and 99. Title VII, Part C of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Pub. L. No. 107–110.

Selection Criteria: The Secretary will use the following selection criteria in 34 CFR 75.210 to evaluate applications under this competition (the specific selection criteria and factors that will be used in evaluating applications are detailed in the application package). The maximum score for all of the selection criteria is 100 points. The maximum points for each criterion is as follows:

(a) Need for Project—5 points.

(b) Significance—5 points.

(c) Quality of Project Design—25 points.

(d) Adequacy of Project Services—25 points.

(e) Quality of Project Personnel—15 points.

(f) Adequacy of Resources—5 points.

(g) Quality of Management Plan—10 points.

(h) Quality of Project Evaluation—10 points.

Priorities

(a) *Competitive Preference.* Except for activities listed in section 7304(d)(2) of the authorizing statute, which have statutory minimum funding levels, the Secretary will award up to 5 bonus points to applications from Alaska Native regional nonprofit organizations and up to 5 bonus points to applications from consortia that include at least one Alaska Native regional nonprofit organization. These priorities are specified in the authorizing statute for this program. The bonus points are in addition to any points the applicant earns under the selection criteria listed above. The Secretary may select an application that meets a priority over an application of comparable merit that does not meet the priority.

(b) *Absolute Preferences.* In accordance with statutory requirements, the Secretary is establishing two separate priorities for proposals to use grant funds to support (1) dropout prevention programs; and (2) parenting education programs for parents and caregivers of Alaska Native children to improve parenting and caregiving skills (including skills relating to discipline and cognitive development), including parenting education provided through in-home visitation of new mothers. To implement the priority for dropout prevention programs, the Secretary is establishing a separate competition for applications that meet this priority and reserves $2 million solely for this competition. To implement the priority for parenting education programs, the Secretary is establishing a separate competition for applications that meet this priority and reserves $1 million solely for this competition. The Secretary may adjust the amount reserved for these separate competitions after determining the number of high-quality applications received.

Instructions for Transmittal of Applications

Note: Some of the procedures in these instructions for transmitting applications differ from those in the Education Department General Administrative Regulations (EDGAR) (34 CFR 75.102). Under the Administrative Procedure Act (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed regulations. However, these amendments make procedural changes only and do not establish new substantive policy. Therefore, under 5 U.S.C. 553(b)(A), the Secretary has determined that proposed rulemaking is not required.

Pilot Project for Electronic Submission of Applications

In Fiscal Year 2002, the U.S. Department of Education is continuing to expand its pilot project of electronic submission of applications to include additional formula grant programs and additional discretionary grant competitions. The Alaska Native Education Program, CFDA 84.356A is one of the programs included in the pilot project. If you are an applicant under the Alaska Native Education Program, you may submit your application to us in either electronic or paper format.

The pilot project involves the use of the Electronic Grant Application System (e-APPLICATION, formerly e-GAPS) portion of the Grant Administration and Payment System (GAPS). We request your participation in this pilot project. We shall continue to evaluate its success and solicit suggestions for improvement. If you participate in this e-APPLICATION pilot, please note the following:

- Your participation is voluntary.
- You will not receive any additional point value or penalty because you submit a grant application in electronic or paper format.
- You can submit all documents electronically, including the Application for Federal Assistance (ED 424), Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- Within three working days of submitting your electronic application fax a signed copy of the Application for Federal Assistance (ED 424) to the Application Control Center after following these steps:

1. Print ED 424 from the e-APPLICATION system.

2. Make sure that the institution's Authorizing Representative signs this form.

3. Before faxing this form, submit your electronic application via the e-APPLICATION system. You will receive an automatic acknowledgement, which will include a PR/Award number (an identifying number unique to your application).

4. Place the PR/Award number in the upper right hand corner of ED 424.

5. Fax ED 424 to the Application Control Center at (202) 260–1349.

• We may request that you give us original signatures on all other forms at a later date.

You may access the electronic grant application for the Alaska Native Education Program at: *http://e-grants.ed.gov.*

We have included additional information about the e-APPLICATION pilot project (*see* Parity Guidelines between Paper and Electronic Applications) in the application package.

For Applications and Information Contact: Mrs. Lynn Thomas, (202) 260–1541, U.S. Department of Education, 400 Maryland Avenue, SW., FOB6, Room 3C126, Mail Stop 6140, Washington, DC 20202. The e-mail address for Mrs. Thomas is: *Lynn.thomas@ed.gov.*

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed above.

Individuals with disabilities may also obtain a copy of the application package in an alternate format on request to the contact person listed above. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document: You may view this document, as well as other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet 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 preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office, toll free, at 1–888–293–6498, or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations are available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: Pub. L. No. 107–110.

Dated: March 26, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–7810 Filed 3–29–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1360–000]

DTE East China, LLC; Notice of Filing

March 26, 2002.

Take notice that on March 21, 2002, DTE East China, LLC tendered for filing under Section 205 of the Federal Power Act a proposed FERC Electric Tariff No. 2 pursuant to which it proposes to make wholesale sales of test power at negotiated rates per MWh up to, but not exceeding, the purchaser's avoided costs in such hour.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). 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. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket #'' and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the ''e-Filing'' link.

Comment Date: April 5, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–7745 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–106–000, et al.]

Vandolah Power Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

March 26, 2002.

Take notice that the following filings have been made with the Commission. Any comments should be submitted in accordance with Standard Paragraph E at the end of this notice.

1. Vandolah Power Company, L.L.C.

[Docket No. EG02–106–000]

On March 21, 2002, Vandolah Power Company, L.L.C. (Vandolah Power), a Delaware limited liability corporation with its principal place of business in Houston, Texas, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Vandolah Power owns a 630–MW power generation facility that is under construction in Hardee County, Florida. (the ''Facility''). When completed, the Facility will be interconnected to the transmission system of Florida Power Corporation. The Facility is scheduled to begin commercial operation in June 2002.

Comment Date: April 16, 2002.

2. New England Power Pool

[Docket No. EL00–62–044, ER98–3853–013]

Take notice that on March 18, 2002, the New England Power Pool (NEPOOL) Participants Committee filed for acceptance materials (1) to permit NEPOOL to expand its membership to include Sprague Energy Corp. (Sprague); and (2) to terminate the memberships of Niagra Mohawk Energy Inc. (NIMO) and Amerada Hess Corporation (Hess). The Participants Committee requests an effective date of March 1, 2002 for commencement of participation in NEPOOL by Sprague and December 31, 2001 and February 1, 2002 for the terminations of NIMO and Hess, respectively.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in NEPOOL.

Comment Date: April 15, 2002.

3. PPL Large Scale Distributed Generation II, LLC and PPL Midwest Finance, LLC

[Docket No. EL02–72–000]

Take notice that on March 15, 2002, PPL Large Scale Distributed Generation II, LLC and PPL Midwest Finance, LLC filed with the Federal Energy Regulatory Commission (Commission), a Petition for Declaratory Order Disclaiming Jurisdiction.

Comment Date: April 15, 2002.

4. Access Energy Cooperative

[Docket No. EL02–73–000]

Take notice that on March 21, 2002, Access Energy Cooperative (AEC) filed a conditional request for waiver of the requirements of Order No. 888 and Order No. 889 pursuant to 18 CFR 35.28(d) of the Federal Energy Regulatory Commission's (Commission) Regulations. AEC also requests waiver of 18 CFR 35.28(d)(ii)'s 60-day notice requirement. AEC's filing is available for public inspection at its offices in Mt. Pleasant, Iowa.

Comment Date: April 15, 2002.

5. Virginia Electric and Power Company

[Docket No. ER01–3032–003]

Take notice that on March 18, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) the revised description of the work to be performed (Revised Description) and cost support for the estimated total cost for the direct assignment interconnection facilities (Cost Support) set forth in the executed Generator Interconnection and Operating Agreement (Interconnection Agreement) between Dominion Virginia Power and Tenaska Virginia Partners, L.P. (Tenaska). This filing is being made to comply with the Commission's February 15, 2002 unpublished letter order in Docket No. ER01–3032–002.

Dominion Virginia Power respectfully requests that the Commission accept the Revised Description and Cost Support to allow the Interconnection Agreement to become effective on November 9, 2001, the same date the Commission made the Interconnection Agreement effective in its December 6, 2001 order in these proceedings. Copies of the filing were served upon Tenaska and the Virginia State Corporation Commission.

Comment Date: April 8, 2002.

6. El Paso Electric Company

[Docket No. ER02–1141–001]

Take notice that on March 20, 2002, El Paso Electric Company (El Paso) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Arizona Electric Power Cooperative, Inc. for Firm Transmission Service under El Paso's Open Access Transmission Tariff. The Service Agreement was originally submitted for filing on February 27, 2002 but contained an erroneous service agreement designation. This filing corrects the error.

El Paso requests that the proposed Service Agreement be permitted to become effective on January 24, 2002. El Paso states that this filing is in accordance with Part 35 of the Commission's regulations, 18 CFR part 35, and that a copy has been served on the Texas Public Utility Commission.

Comment Date: April 10, 2002.

7. El Paso Electric Company

[Docket No. ER02–1142–001]

Take notice that on March 20, 2002, El Paso Electric Company (El Paso) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Service Agreement with Arizona Electric Power Cooperative, Inc. for Non-Firm Transmission Service under El Paso's Open Access Transmission Tariff. The Service Agreement was originally submitted for filing on February 27, 2002 but contained an erroneous service agreement designation. This filing corrects the error.

El Paso requests that the proposed Service Agreement be permitted to become effective on January 24, 2002. El Paso states that this filing is in accordance with Part 35 of the Commission's regulations, 18 CFR 35, and that a copy has been served on the Texas Public Utility Commission.

Comment Date: April 10, 2002.

8. Ocean State Power II

[Docket No. ER02–1178–001]

Take notice that on March 19, 2002, Ocean State Power II (Ocean State II) tendered for filing revisions to Attachments A and B to Ocean State II's annual rate of return on equity (ROE) to Rate Schedule FERC Nos. 5–8. Ocean State II states that these sheets are being filed to correct omissions from their February 28, 2002 filing in this proceeding.

Ocean State II requests an effective date of April 29, 2002, for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: April 9, 2002.

9. Ocean State Power

[Docket No. ER02–1184–001]

Take notice that on March 19, 2002, Ocean State Power (Ocean State) tendered for filing revisions to Attachments A and B to Ocean State's annual rate of return on equity (ROE) to Rate Schedule FERC Nos. 1–4. Ocean State states that these sheets are being filed to correct omissions from their February 28, 2002 filing in this proceeding.

Ocean State requests an effective date of April 29, 2002, for these revisions. Copies of the filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment Date: April 9, 2002.

10. American Electric Power Service Corporation

[Docket No. ER02–1215–001]

Take notice that on March 19, 2002 American Electric Power Service Corporation tendered for filing, on behalf of its affiliated companies including Central Power and Light Company and West Texas Utilities Company, (collectively, AEP), a revised Interim Qualified Scheduling Entity Service Agreement (Agreement).

AEP requests that the revised Agreement substitute an agreement that AEP previously filed in this docket. AEP requests that the revised Agreement be made effective on March 3, 2002. Copies of the transmittal letter have been served on the party to the Agreement as well as on the Public Utility Commission of Texas.

Comment Date: April 9, 2002.

11. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER02–1323–001]

Take notice that on March 18, 2002, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Second Revised Service Agreement No. 110 and Supplement No. 1 to Second Revised Service Agreement No. 110 under Allegheny Power's Open Access Transmission Service Tariff. Second Revised Service Agreement No. 110 and its supplement consist of an executed Network Integration Transmission Service Agreement and Network Operating Agreement with the Borough of Tarentum and replace First Revised Service Agreement No. 110 and its Supplement No. 1. Allegheny Power

requests that the effective date for Second Revised Service Agreement No. 110 and its Supplement No. 1 remain March 16, 2002.

Copies of the filing have been provided to the Customer and the Pennsylvania Public Utility Commission.

Comment Date: April 8, 2002.

12. Mirant Oregon, L.L.C.

[Docket No. ER02–1331–001]

Take notice that on March 20, 2002, Mirant Oregon, L.L.C. (Mirant Oregon) tendered for filing an amendment to its application filed on March 18, 2002 to correct an error in the initial filing. Mirant Oregon states that correct location of the Coyote Springs 2 generating facility (Facility) is the Avista Corporation control area and not the Portland General Electric Company control area referred to in the initial filing. Accordingly, Mirant Oregon has included a new Supply Margin Assessment for the Avista Corporation control area in Mirant Oregon's application for market-based rates.

Comment Date: April 10, 2002.

13. American Transmission Systems, Inc.

[Docket No. ER02–1346–000]

Take notice that on March 20, 2002, American Transmission Systems, Inc. filed a Service Agreement to provide Non-Firm Point-to-Point Transmission Service for Dominion Energy Marketing, Inc., the Transmission Customer. Services are being provided under the American Transmission Systems, Inc. Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER99–2647–000. The proposed effective date under the Service Agreement is March 18, 2002 for the above mentioned Service Agreement in this filing.

Comment Date: April 10, 2002.

14. Pacific Gas and Electric Company

[Docket No ER02–1351–000]

Take notice that on March 21, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing Generator Special Facilities Agreements (GSFAs) and Generator Interconnection Agreements (GIAs) between PG&E and King City Energy Center, LLC (King City), Gilroy Energy Center, LLC (Gilroy), Duke Energy Morro Bay LLC (Duke Morro Bay), Wellhead Power Panoche, LLC (Wellhead Panoche) and Wellhead Power Gates, LLC (Wellhead Gates) (collectively, Parties). In addition, PG&E is filing Supplemental Letter Agreements with King City and Gilroy. PG&E has requested certain waivers.

Copies of this filing have been served upon King City, Gilroy, Duke Morro Bay, Wellhead Panoche, Wellhead Gates, the California Independent System Operator Corporation and the CPUC.

Comment Date: April 16, 2002.

15. Black Hills Corporation, n/k/a Black Hills Power, Inc.

[Docket No. ER02–1352–000]

Take notice that on March 21, 2002, Black Hills Corporation, d/b/a Black Hills Power, Inc., a wholly-owned subsidiary of Black Hills Corporation, Inc. (a South Dakota holding corporation), tendered for filing an executed Service Agreement for Non-Firm Point-to-Point Transmission Service with Black Hills Generation, Inc.

Copies of the filing were provided to the regulatory commission of the states of Montana, South Dakota and Wyoming. Black Hills Power, Inc. has requested that further notice requirement be waived and the executed Service Agreement be allowed to become effective February 1, 2002.

Comment Date: April 16, 2002.

16. Appalachian Power Company

[Docket No. ER02–1353–000]

Take notice that Appalachian Power Company (APCo), on March 21, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation for Rate Schedule FERC No. 99, which became effective on May 21, 1984.

APCo states that the current version of Rate Schedule 99 on file with the Commission contains a one (1) year notice of cancellation provision and that APCo gave Central Virginia Electric Cooperative, Inc. (CVEC), the only customer served by Apco under Rate Schedule FERC No. 99, timely written notification of its election to terminate Rate Schedule FERC No. 99 and service to CVEC under APCo's cost-based rates.

Since no service is to be provided by APCo under Rate Schedule No. 99 after May 20, 2002, APCo requests, for good cause shown, in accordance with Section 35.15 of the Commission's Regulations, that its Notice of Cancellation be made effective as of May 21, 2002. APCo further states that copies of its filing have been served upon the Virginia State Corporation Commission and CVEC.

Comment Date: April 16, 2002.

17. Twelvepole Creek, LLC

[Docket No. ER02–1354–000]

Take notice that on March 21, 2002, Twelvepole Creek, LLC (Twelvepole Creek) tendered for filing six copies of the Umbrella Service Agreement for Short-Term Sales Under Market-Based Rate Tariff between Twelvepole Creek, LLC and Orion Power MidWest, L.P. (Umbrella Service Agreement), as Original Service Agreement No. 1 under Twelvepole Creek's market-based rate tariff.

Comment Date: April 16, 2002.

18. Orion Power MidWest, L.P.

[Docket No. ER02–1355–000]

Take notice that on March 21, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Valu Source Energy Services, LLC (Agreement) as Original Service Agreement No. 2 under Orion Power MidWest's market-based rate tariff. Orion Power MidWest requested confidential treatment for the unredacted copy of the Agreement.

Comment Date: April 16, 2002.

19. Orion Power MidWest, L.P.

[Docket No. ER02–1356–000]

Take notice that on March 21, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Reliant Energy Services, Inc., (Agreement) as Original Service Agreement No. 1 under Orion Power MidWest's market-based rate tariff. Orion Power MidWest requested confidential treatment for the unredacted copy of the Agreement.

Comment Date: April 16, 2002.

20. California Independent System Operator Corporation

[Docket No. ER02–1357–000]

Take notice that on March 21, 2002, the California Independent System Operator Corporation (ISO) filed Third Revised Service Agreement No. 32 Under ISO Rate Schedule No. 1, which is a Participating Generator Agreement between the ISO and Pacific Gas and Electric Company. The ISO has revised the PGA to update the list of generating units listed in Schedule 1 of the PGA.

The ISO requests an effective date for the filing of March 22, 2002. The ISO has served copies of this filing upon all entities that are on the official service

list for Docket Nos. ER98–1002 and ER01–2433.

Comment Date: April 16, 2002.

21. West Valley Leasing Company, LLC

[Docket No. ER02–1358–000]

Take notice that on March 21, 2002, West Valley Leasing Company, LLC, an Oregon limited liability company (WVLC), f/k/a/ PPM Five LLC (PPM Five) is canceling its FERC Rate Schedule No. 1 and related State of Policy and Code of Conduct.

WVLC request that the cancellation of the Rate Schedule be made effective March 20, 2002.

Comment Date: April 16, 2002.

22. Kansas Electric Power Cooperative, Inc.

[Docket No. NJ02–4–000]

Take notice that on March 21, 2002, Kansas Electric Power Cooperative, Inc., a non-jurisdictional generation and transmission cooperative, tendered for filing a request for waiver of Order No. 889.

Comment Date: April 15, 2002.

23. California Independent System Operator Corporation

[Docket No. EL02–18–001]

Take notice that on March 18, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Compliance Report pursuant to the Commission's March 1, 2002 Order, 98 FERC ¶ 61,228.

Comment Date: April 17, 2002.

24. PacifiCorp

[Docket No. ER01–3071–002]

Take notice that PacifiCorp on March 25, 2002, tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission (Commission) Rules and Regulations, a First Revised Service Agreement No. 50 under PacifiCorp's FERC Electric Tariff Vol. 12 between PacifiCorp and Flathead Electric Cooperative, Inc.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: April 15, 2002.

25. Michigan Electric Transmission Company and Consumers Energy Company

[Docket No. ER02–800–001]

Take Notice that on March 22, 2002, Consumers Energy Company (Consumers) and Michigan Electric Transmission Company (Michigan Transco) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Second Supplemental Notice of Succession and a Revised Rate Schedule for Consumers related to the transfer of transmission assets from Consumers to Michigan Transco. The Second Supplemental Notice of Succession and Revised Rate Schedule were to become effective April 1, 2001.

By acceptance letter dated February 20, 2002, that submittal was accepted by the Commission effective April 1, 2001, conditioned upon compliance with Order No. 614 within 30 days of the issuance of that acceptance letter. A Compliance Filing in the referenced docket, purporting to satisfy the aforementioned condition, was made by Consumers and Michigan Transco on March 22, 2002.

A full copy of the filing was served upon the Michigan Public Service Commission, and Customers: Michigan South Central Power Authority, Michigan Public Power Authority and Wolverine Power Supply Cooperative, were sent the Notice of Succession and related materials.

Comment Date: April 12, 2002.

26. Somerset Windpower LLC

[Docket No. ER02–954–001]

Take notice that on March 22, 2002, Somerset Windpower LLC (''Somerset'') submitted to the Federal Energy Regulatory Commission (Commission) an amendment to the Request for Authorization to Amend Market-Based Rate Tariff that it previously filed with the Commission on February 1, 2002. Somerset is engaged exclusively in the business of owning and operating a 9 MW wind-powered electric generating facility located in Somerset Township, Somerset County, Pennsylvania and selling its capacity and energy at wholesale to Exelon Power Generation LLC.

Comment Date: April 12, 2002.

27. Mill Run Windpower LLC

[Docket No. ER02–955–001]

Take notice that on March 22, 2002, Mill Run Windpower LLC (Mill Run) submitted to the Federal Energy Regulatory Commission (Commission) an amendment to the Request for Authorization to Amend Market-Based Rate Tariff that it previously filed with the Commission on February 1, 2002. Mill Run is engaged exclusively in the business of owning and operating a 15 MW wind-powered electric generating facility located in Springfield and Stuart townships, Fayette County, Pennsylvania and selling its capacity and energy at wholesale to Exelon Power Generation LLC.

Comment Date: April 12, 2002.

28. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER02–1359–000]

Take notice that on March 21, 2002, Florida Keys Electric Cooperative Association, Inc. tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment Date: April 11, 2002.

29. Western Resources, Inc.

[Docket No. ER02–1361–000]

Take notice that on March 22, 2002, Western Resources, Inc. (WR) (d.b.a. Westar Energy) tendered for filing a Service Agreement between WR and Morgan Stanley Capital Group (MSCG). WR states that the purpose of this agreement is to permit MSCG to take service under WR's Market Based Power Sales Tariff on file with the Commission. This agreement is proposed to be effective March 1, 2002.

Copies of the filing were served upon MSCG and the Kansas Corporation Commission.

Comment Date: April 12, 2002.

30. Western Resources, Inc.

[Docket No. ER02–1362–000]

Take notice that on March 22, 2002, Western Resources, Inc. (WR) (d.b.a. Westar Energy) tendered for filing a Revised Sheet No. 2 to the Service Agreement between WR and the City of Larned. WR states that the purpose of revision is to correct an inadvertent error in the originally filed document. This agreement is proposed to be effective June 15, 2001.

Copies of the filing were served upon the City of Larned and the Kansas Corporation Commission.

Comment Date: April 12, 2002.

31. Virginia Electric and Power Company

[Docket No. ER02–1363–000]

Take notice that on March 22, 2002, Virginia Electric and Power Company, doing business as Dominion Virginia Power, tendered for filing with the Federal Energy Regulatory Commission (Commission) a Notice of Cancellation and a revised cover sheet to cancel an unexecuted Generator Interconnection and Operating Agreement (Interconnection Agreement) between

Dominion Virginia Power and GenPower Earleys, L.L.C. (GenPower).

Dominion Virginia Power respectfully requests that the Commission allow the Notice of Cancellation and the revised cover sheet to become effective March 25, 2002. Copies of the filing were served upon GenPower and the Virginia State Corporation Commission.

Comment Date: April 12, 2002.

32. Potlatch Corporation

[Docket No. ER02–1364–000]

Take notice that on March 22, 2002, Potlatch Corporation filed a Notice of Withdrawal of its Power Purchase Agreement with Minnesota Power in the above-referenced docket.

A copy of the filing was served upon Minnesota Power, the sole customer of Potlatch Corporation and on the Minnesota Public Utilities Commission.

Comment Date: April 12, 2002.

33. Cokinos Power Trading Co.

[Docket No. ER02–1365–000]

Take notice that on March 22, 2002, Cokinos Power Trading Co. (Cokinos) petitioned the Commission for acceptance of Cokinos Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations.

Cokinos intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cokinos is not in the business of generating or transmitting electric power. Cokinos is a wholly-owned subsidiary of Cokinos Energy Corporation, which, through its affiliates, is primarily engaged in the marketing of crude oil and natural gas.

Comment Date: April 12, 2002.

34. Hess Energy Power & Gas Company, LLC

[Docket No. ER02–1366–000]

Take notice that on March 22, 2002, Hess Energy Power & Gas Company, LLC (Seller) petitioned the Federal Energy Regulatory Commission (Commission) for an order: (1) Accepting Seller's proposed FERC rate schedule for market-based rates; (2) granting waiver of certain requirements under Subparts B and C of Part 35 of the regulations; (3) granting the blanket approvals normally accorded sellers permitted to sell at market-based rates; and (4) granting waiver of the 60-day notice period.

Comment Date: April 12, 2002.

35. Calpine Oneta Power, L.P.

[Docket No. ER02–1367–000]

Take notice that on March 22, 2002, Calpine Oneta Power, L.P. (the Applicant) tendered for filing, under section 205 of the Federal Power Act, a request for authorization to make wholesale sales of electric energy, capacity and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a nominal 1000 megawatt electric generation facility located in Wagoner County, Oklahoma. Applicant also submitted for filing a power marketing agreement for which it requests privileged and confidential treatment.

Comment Date: April 12, 2002.

36. Orion Power MidWest, L.P.

[Docket No. ER02–1368–000]

Take notice that on March 22, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Dominion Retail, Inc. (Agreement) as Original Service Agreement No. 3 under Orion Power MidWest's market-based rate tariff.

Comment Date: April 12, 2002.

37. Orion Power MidWest, L.P.

[Docket No. ER02–1369–000]

Take notice that on March 22, 2002, Orion Power MidWest, L.P. (Orion Power MidWest) tendered for filing one confidential, unredacted copy and fourteen redacted copies of the Master Power Purchase and Sale Agreement between Orion Power MidWest and Allegheny Energy Supply Company, LLC (Agreement) as Original Service Agreement No. 4 under Orion Power MidWest's market-based rate tariff.

Comment Date: April 12, 2002.

38. Commonwealth Edison Company

[Docket No. ER02–1370–000]

Take notice that on March 22, 2002, Commonwealth Edison Company (ComEd) submitted for filing a Service Agreement for Firm Point to Point Transmission Service and a corresponding Network Upgrade Agreement with MidAmerican Energy Company (MidAmerican) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of March 14, 2002 and, accordingly, seeks waiver of the Commission's notice requirements.

ComEd states that a copy of this filing has been served on MidAmerican and the Illinois Commerce Commission.

Comment Date: April 12, 2002.

Standard Paragraph

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7765 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–80–000]

Reliant Energy Gas Transmission Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed White River Compressor Station Project and Request for Comments on Environmental Issues

March 26, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the potential environmental impacts of the White River Compressor Station. This project involves the construction and operation of a new compressor station by Reliant Energy Gas Transmission Company (Reliant) on its Line J system in Jackson County,

Arkansas.[1] These facilities would consist of a new 4,740-horsepower White River Compressor Station and other facilities. This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' was attached to the project notice Reliant provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (*www.ferc.gov*).

Summary of the Proposed Project

Reliant wants to expand the capacity of its facilities in Arkansas by 108,000 dekatherms per day (Dth/d) in order to render firm natural gas transportation service of 102,000 Dth/d to TPS Dell, LLC (Dell). Reliant seeks authority to construct and operate the White River Compressor Station consisting of two 2,370-horsepower Ariel JGK/6 compressors and two Caterpillar G3608TALE drivers complete with inlet filters, H.G. exhaust silencers, PLC control panels, motor driver water coolers, pulsation bottles, an inlet scrubber, and lube oil tanks. The location of the project facilities is shown in appendix 1.[2]

Dell is constructing the Teco Dell, LLC Power Plant (Power Plant), a 640-megawatt combined cycle generating plant in Dell, Arkansas. Reliant is constructing a 2.2 mile, 6-inch-diameter pipeline and a tap in Mississippi County, Arkansas, under parts 157.208 and 157.211 of the Commission's regulations, to connect Line J to the Power Plant.

Land Requirements for Construction

Construction of the proposed compressor station would require about 5 acres. Of this total, approximately 1 acre would be maintained as the new compressor station site. The remaining 4 acres would be returned to agricultural use.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us [3] to discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils
- Water resources, fisheries, and wetlands
- Vegetation and wildlife
- Endangered and threatened species
- Land use
- Cultural resources
- Air quality and noise
- Public safety

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be presented in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified one issue (air and noise impacts of the proposed compressor station) that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Reliant. This preliminary list of issues may be changed based on your comments and our analysis.

Also we have made a preliminary decision not to address the impacts of the nonjurisdictional facilities. We will briefly describe their location and status in the EA.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send an original and two copies of your letter to: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of Gas 1, PJ–11.1.
- Reference Docket No. CP02–80–000.
- Mail your comments so that they will be received in Washington, DC on or before April 25, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal service. As a result, we will include all comments that we receive within a rerasonable time frame

[1] Reliant's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the ''RIMS'' link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE., Washington, DC 20426, or call (202) 208–1371. For instructions on connecting the RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] ''We'', ''us'', and ''our'' refer to the environmental staff of the Office of Energy Projects (OEP).

in our environmental analysis of this project. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link to the User's Guide. Before you can file comments or interventions you will need to create an account which can be created by clicking on ''Login to File'' and then ''New User Account.''

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (*see* appendix 2) [4]. Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (*www.ferc.gov*) using the ''RIMS'' link to information in this docket number. Click on the ''RIMS'' link, select ''Docket #'' from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the ''CIPS'' link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the ''CIPS'' link, select ''Docket #'' from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7744 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

[4] Interventions may also be filed electronically via the internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Protests, Motions To Intervene, Rcommendations, and Terms and Conditions

March 26, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Conduit Exemption.

b. *Project No.:* 12147–000.

c. *Date filed:* January 30, 2002.

d. *Applicant:* City of Burbank.

e. *Name of Project:* Valley Power Plant.

f. *Location:* At the City of Burbank's existing domestic water pumping facility within the City of Burbank, in Los Angeles County, California. The source of water for the conduit is purchased water from the Metropolitan Water District of Southern California taken from the Sacramento and San Joaquin Rivers in California and locally produced groundwater. The project would not occupy Federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Ronald E. Davis, General Manager, Burbank Water and Power Department, 164 West Magnolia Boulevard, Burbank, CA 91502, (818) 238–3500.

i. *FERC Contact:* Tom Papsidero, (202) 219–2715.

j. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see the following paragraphs about filing responsive documents.

k. *Deadline for filing comments, protests and motions to intervene:* April 26, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–12147–000) on any comments, protests, or motions filed.

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.

l. *Description of Project:* The purchased water is delivered at higher pressure than the groundwater and blending now requires pressure reducing valves; the city proposes to use a turbine/generator as the primary pressure reducer. The project would consist of two proposed turbine/generator units with a total generating capacity of 300 kilowatts which would be connected to the City of Burbank's existing Valley Pumping Plant. The average annual generation would be 900,000 kilowatthours.

m. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing maybe 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 shown in item h above.

Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

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.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 30 days from the issuance date of this notice. All reply comments must be filed with the Commission within 45 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION,'' ''COMPETING APPLICATION,'' ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7746 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 346–037]

Notice of Application Ready for Environmental Analysis and Soliciting Comments, Terms and Conditions, Recommendations and Prescriptions

March 26, 2002.

Take notice that the following hydroelectric application and applicant prepared environmental assessment (APEA) have been filed with the Commission and are available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 346–037.

c. *Date Filed:* August 23, 2001.

d. *Applicant:* Minnesota Power Inc.

e. *Name of Project:* Blanchard Hydroelectric Project.

f. *Location:* On the Mississippi River near the City of Little Falls, in Morrison County, MN. The project occupies Federal lands of the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a) 825(r).

h. *Applicant Contact:* Bob Bohm, Minnesota Power, Inc., P.O. Box 60, Little Falls, MN 56345, *rbohm@mnpower.com* 320–632–2318, ext. 5042.

i. *FERC Contact:* Tom Dean, *thomas.dean@ferc.fed.us,* 202–219–2778.

j. *Deadline for filing comments, final terms and conditions, recommendations, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(l)(iii) and the instructions on the Commission's web site at under the ''e-Filing'' link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person that is on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application and the APEA have been accepted for filing and are now ready for environmental analysis. No additional information or studies are needed to prepare the Commission's environmental assessment. Comments are now being requested from interested parties. The applicant will have 45 days following the end of this comment period to respond to any comments filed within the comment period.

l. *The existing Blanchard Project consists of:* (1) a 750-foot-long, 62-foot-high concrete gravity dam comprising: (a) a 190-foot-long non-overflow section; (b) a 437-foot-long gated spillway section; (c) eight 44-foot-wide by 14.7-foot-high Taintor gates; and (d) a 124-foot-wide integral powerhouse; (2) approximately 3,540-foot-long earth dikes extending from both sides of the concrete dam; (3) a 1,152-acre reservoir at normal water surface elevation of 1,081.7 feet NGVD; (4) a powerhouse containing three generating units with a total installed capacity of 18,000 kW; and (5) other appurtenances.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application and APEA be filed with the Commission within 60 days from

the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

These deadlines may be extended by the Commission, but only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must; (1) Bear in all capital letters the title ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant, and the project number of the application, to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filings must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7748 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8361–037]

Notice of Application for Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

March 26, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Amendment of License.

b. *Project No:* 8361–037.

c. *Date Filed:* March 8, 2002.

d. *Applicant:* Olsen Power Partners.

e. *Name of Project:* Belleville Hydroelectric Project.

f. *Location:* The project is located on Old Cow Creek in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825'') and Section 4.201 of the Commission's regulations.

h. *Applicant Contact:* Arthur Hagood; Synergics Energy Services, LLC, 191 Main Street, Annapolis, MD 21401; (410) 268–8820.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Thomas LoVullo at (202) 219–1168, or e-mail address: *thomas.lovullo@ferc.gov*.

j. *Deadline for filing comments, motions to intervene and protests:* April 26, 2002.

All documents (an original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington DC 20426. Please include the project number (P–8361–037) on any comments or motions filed.

k. *Description of Request:* Olsen Power Partners (licensee) proposes to study, over a five-year period, the minimum flow released into the project's bypass reach and its effect on fishery resources. The current license requirement states that the licensee shall discharge from the project diversion, a continuous minimum flow of 30 cubic feet per second (cfs), or inflow to the project, whichever is less, for the protection of fish and wildlife resources in Old Cow Creek. The licensee stated that it believes the required minimum flow is set too high exceeding any necessary protection for the fishery and needlessly constraining generation. The licensee would like to reduce the minimum flow from 16 cfs during the first year of the study to 10 cfs for the next two years, followed by 5 cfs for the last two years of the study. The licensee indicated that at any time during the five year study, if and when impacts are detected, the continuation of the testing would be re-evaluated and a long term release flow recommendation developed.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the web at *http://www.ferc.gov* using the ''RIMS'' link, select ''Docket#'' and follow the instructions (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.

n. 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.

o. 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. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. 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.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the ''e-Filing'' link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7749 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11541–000, Idaho]

Atlanta Power Station; Notice of Meeting

March 26, 2002.

A telephone conference will be convened by staff of the Office of Energy Projects on April 2, 2002, at 1 p.m. eastern standard time. It's a follow up meeting was necessary to further clarify our position on the relicensing process

for the Atlanta Power Station Hydroelectric Project.

Any person wishing to be included in the telephone conference should contact Gaylord W. Hoisington at (202) 219–2756 or e-mail at *gaylord.hoisington@ferc.fed.us*. Please notify Mr. Hoisington if you want to be included in the telephone conference.

Magalie R. Salas,

Secretary.

[FR Doc. 02–7747 Filed 3–29–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[HI02–01; FRL –7166–1]

Notice of Deficiency for Clean Air Operating Permits Program; State of Hawaii

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deficiency.

SUMMARY: Pursuant to its authority under section 502(i) of the Clean Air Act and the implementing regulations at 40 CFR 70.10(b)(1), EPA is publishing this notice of deficiency for the State of Hawaii's (Hawaii or State) Clean Air Act title V operating permits program, which is administered by the Hawaii Department of Health. The notice of deficiency is based upon EPA's finding that Hawaii's provisions for insignificant emissions units do not meet minimum Federal requirements for program approval. Publication of this notice is a prerequisite for withdrawal of Hawaii's title V program approval, but does not effect such withdrawal.

EFFECTIVE DATE: March 22, 2002. Because this Notice of Deficiency is an adjudication and not a final rule, the Administrative Procedure Act's 30-day deferral of the effective date of a rule does not apply.

FOR FURTHER INFORMATION CONTACT: Robert Baker, EPA, Region 9, Air Division (AIR–3), 75 Hawthorne Street, San Francisco, CA 94105, (415) 972–3979.

SUPPLEMENTARY INFORMATION:

I. Description of Action

EPA is publishing a notice of deficiency for the Clean Air Act (CAA or Act) title V operating permits program for the State of Hawaii. This document is being published to satisfy 40 CFR 70.10(b)(1), which provides that EPA shall publish in the **Federal Register** a notice of any determination that a title V permitting authority is not adequately administering or enforcing its title V operating permits program. The deficiency that is the subject of this notice relates to Hawaii's requirements for insignificant emissions units (IEUs) and applies to the State permitting authority that implements Hawaii's title V program.

A. Approval of Hawaii's Title V Program

The CAA requires all State and local permitting authorities to develop operating permits programs that meet the requirements of title V of the Act, 42 U.S.C. 7661–7661f, and its implementing regulations, 40 CFR part 70. Hawaii's operating permits program was submitted in response to this directive. EPA granted interim approval to Hawaii's air operating permits program on December 1, 1994 (59 FR 61549).

After Hawaii revised its program to address the conditions of the interim approval, EPA promulgated final full approval of Hawaii's title V operating permits program on November 26, 2001 (66 FR 62945).

B. Exemption of IEUs From Permit Content Requirements

Part 70 authorizes EPA to approve as part of a state program a list of insignificant activities and emission levels (IEUs) which need not be included in the permit application, provided that an application may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate the fee amount required under the EPA-approved schedule. *See* 40 CFR 70.5(c). Nothing in part 70, however, authorizes a state to exempt IEUs from the testing, monitoring, recordkeeping, reporting, or compliance certification requirements of 40 CFR 70.6.

Hawaii's regulations contain criteria for identifying IEUs. *See* HAR § 11–60.1–82(f) thru (g). Hawaii's regulations also require that the permit application include identification and description of all points of emissions and all applicable requirements. *See* HAR § 11–60.1–83. The Hawaii program, however, exempts IEUs from all permitting requirements including testing, monitoring, recordkeeping, reporting, and compliance certification requirements. *See* HAR § 11–60.1–82(e). Because part 70 does not exempt IEUs from the testing, monitoring, recordkeeping, reporting, and compliance certification requirements of 40 CFR 70.6, EPA has determined that Hawaii must revise its IEU regulations.

The deficiency involving the provisions in the State's program that exempt insignificant activities from part 70 permitting requirements, came to light as a result of the court decision in *Western States Petroleum Association (WSPA)* v. *Environmental Protection Agency*, 87 F.3d 280 (9th Cir. 1996).

The court found in the WSPA case that EPA had acted inconsistently in its approval of the insignificant activities provisions in several part 70 programs, including the State of Hawaii's program. In order to address the inconsistencies identified by the Ninth Circuit, EPA is now notifying Hawaii that it must bring its IEU provisions into alignment with the requirements of part 70 and other State and Local title V programs or face withdrawal of its title V operating permits program.

C. Effect of Notice of Deficiency

Part 70 provides that EPA may withdraw a part 70 program approval, in whole or in part, whenever the approved program no longer complies with the requirements of part 70 and the permitting authority fails to take corrective action. 40 CFR 70.10(c)(1). This section goes on to list a number of potential bases for program withdrawal, including the case where the permitting authority's legal authority no longer meets the requirements of part 70. 40 CFR 70.10(b) sets forth the procedures for program withdrawal, and requires as a prerequisite to withdrawal that the permitting authority be notified of any finding of deficiency by the Administrator and that the notice be published in the **Federal Register**. Today's notice satisfies this requirement and constitutes a finding of program deficiency. If the permitting authority has not taken ''significant action to assure adequate administration and enforcement of the program'' within 90 days after publication of a notice of deficiency, EPA may withdraw the State program, apply either of the sanctions specified in section 179(b) of the Act, or promulgate, administer, and enforce a Federal title V program. 40 CFR 70.10(b)(2). Section 70.10(b)(3) provides that if a State has not corrected the deficiency within 18 months of the finding of deficiency, EPA will apply the sanctions under section 179(b) of the Act, in accordance with section 179(a) of the Act. Upon EPA action, the sanctions will go into effect unless the State has corrected the deficiencies identified in this notice within 18 months after signature of this notice. In addition, section 70.10(b)(4) provides that, if the State has not corrected the deficiency within 18 months after the date of notice of deficiency, EPA must promulgate, administer, and enforce a whole or partial program within 2 years of the date of the finding.

This document is not a proposal to withdraw Hawaii's title V program. Consistent with 40 CFR 70.10(b)(2), EPA will wait at least 90 days, at which point it will determine whether Hawaii has taken significant action to correct the deficiency.

II. Administrative Requirements

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of today's action may be filed in the United States Court of Appeals for the appropriate circuit within 60 days of April 1, 2002.

Dated: March 22, 2002.

Wayne Nastri,

Regional Administrator, Region 9.

[FR Doc. 02–7775 Filed 3–29–02; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

Small Package Tender of Service

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of issuance of the GSA Small Package Tender of Service for comment.

SUMMARY: The General Services Administration (GSA), in compliance with 41 U.S.C. 418b, is publishing the GSA Small Package Tender of Service (SPTOS) for comments. The SPTOS establishes a uniform basis for buying routine small package transportation. GSA's solicitation and acceptance of small package rates and charges provides highly competitive pricing, which in certain cases includes the solicitation and acceptance of rates specific to an individual agency that accommodate that agency's particular traffic characteristics. GSA's Federal customer agencies benefit from the SPTOS, which leverages the Government's buying power to provide agencies, standardized cost effective small package transportation services. All submitted comments will be considered prior to issuing the SPTOS. Publication in the **Federal Register** of the revised SPTOS will effectively cancel this issue.

DATES: Please submit your comments by May 31, 2002.

ADDRESSES: Mail comments to the General Services Administration, Travel and Transportation Management Division (FBL), Washington, DC 20406, Attn: Raymond Price.

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch by phone at 703–305–7536 or by e-mail at *raymond.price@gsa.gov.*

Dated: March 14, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

GSA Small Package Tender of Service (SPTOS)

Part 1

General Small Package Tender of Service No. 10

General Services Administration, Federal Supply Service, Freight Program Management Office (6FBD–X), 1500 E. Bannister Rd., Kansas City, MO 64131

Table of Contents

Section 1—General

Item 1–1 Scope of the Small Package Tender of Service (SPTOS)

A. The GSA Small Package Tender of Service (SPTOS) Consists of the Following Parts

- Part 1 The GSA General Small Package Tender of Service No. 10 (GSA SPTOS No. 10);
- Part 2 The GSA National Small Package Rules Tender No. 11 (GSA No. 11); and
- Part 3 The GSA Small Package Baseline Rate Publication No. 12 (GSA No. 12).

B. General

Hereinafter, GSA or the other Government agencies participating in the TOS will be referred to as a participating agency. This TOS provides terms and conditions for the transportation and all related services within CONUS for GSA or the other Government agencies participating in the TOS. This TOS is applicable to all tenders filed with the TOS participating agencies.

C. Description of Freight

The property to be moved under this SPTOS consists of a variety of commodities to be used by Government agencies or authorized contractors for the Government and will be generally described as freight-all-kinds (FAK) except Class 1.1, 1.2, and 1.3 explosives (these are new designations for previous Class A and B explosives), hazardous wastes, and radioactive articles requiring a hazardous material label, and items of extraordinary value. It is further required that all transportation service providers (TSPs) participating in the TOS possess the required insurance and authority to transport hazardous

materials other than those restricted herein.

D. TSP Liability

For small package shipments moved under this TOS, the TSP shall provide liability coverage of $100 per package, or the amount offered commercially, whichever is greater, unless a higher liability coverage is declared on the transportation documentation at the time the shipment is tendered. If additional protection is desired, insurance may be purchased for amounts in excess of $100. See GSA No. 11 Item 110 Additional Insured Value.

E. Freight Excluded

Excluded from the scope of this TOS are shipments that can be more advantageously or economically moved via truckload or less-truck-load carriers; parcel post; shipments of Class 1.1, 1.2, and 1.3 explosives (former Class A and Class B explosives); hazardous wastes; radioactive articles requiring a hazardous material label; uncrated used household goods; shipments that the Government may elect to move in Government vehicles; freight subject to specific agency programs or contracts, (e.g. Guaranteed Freight Programs or local drayage contracts.), and items of extraordinary value.

F. Hazardous Material Authority

Any Government agency shipping hazardous materials requires TSPs participating in this TOS to maintain a ''satisfactory'' safety rating from the Department of Transportation (DOT). If a TSP receives a ''conditional'' or ''unsatisfactory'' safety rating from DOT, the TSP will be placed in nonuse status until documentary evidence is furnished to the office placing the TSP in nonuse that such rating has been upgraded by DOT to ''satisfactory''.

Item 1–2 Participating Government Agencies

A. General

Participating agencies include GSA's Federal Supply Service and those agencies identified in the applicable Request for Offers (RFO) distributed by the Freight Program Management Office (6FBD–X), Kansas City, MO or another GSA Travel and Transportation Management Zone Office.

B. Rights of Participating Agencies

1. Participating agencies are entitled to issue their own RFOs referencing the terms and conditions of the GSA Small Package Tender of Service No. 10, the GSA National Small Package Rules Tender No. 11, and the GSA Small Package Baseline Rate Publication No. 12, supplements thereto and reissues thereof; and

2. Participating agencies are entitled to accept rate offers submitted by those TSPs approved in accordance with Item 2–2 which reference the terms and conditions of the GSA Small Package Tender of Service No. 10, the GSA National Small Package Rules Tender No. 11, and the GSA Small Package Baseline Rate Publication No. 12, supplements thereto and reissues thereof.

Item 1–3 Revising SPTOS Provisions and Method of Canceling Original or Revised Pages

This TOS will be revised by the Freight Program Management Office (6FBD–X), Kansas City, MO, through publication of the changes on GSA's WorldWide Web Page (*http://www.kc.gsa.gov/fsstt*), the issuance of page revisions (original or revised), or the reissuance of the document on an ''as needed'' basis.

A. *TOS Page Revisions:* Reserved.

B. *Reissuing the SPTOS:* Reserved.

Item 1–4 Unintentionally Accepted Tender Rule

Tenders that are unintentionally accepted and distributed for use, which are later found not to be in compliance with the TOS, are subject to immediate removal by the tender accepting agency. The TSP will be notified when tenders are removed under these circumstances and will be advised the basis for their removal. Even though a tender was unintentionally accepted, such tender may be used until it is canceled by the TSP.

Item 1–5 Lawful Performance, Operating Authority, and Insurance

All service shall be performed in accordance with applicable Federal, State, and local laws and regulations. TSPs shall possess the required carrier operating authority and maintain cargo as well as public liability insurance as required by Federal, State, and local regulatory agencies.

Item 1–6 Acceptance of the SPTOS

The acceptance of this TOS is a prerequisite for any small package TSP desiring to be considered for the transportation of Government property shipped by a participating agency.

The terms and conditions in this TOS are applicable to all interlining TSPs.

The conditions of the TOS are in addition to all service provisions of any applicable tender or tariff (including the GSA National Small Package Rules Tender No. 11 and the GSA Baseline Rate Publication No. 12) under which a shipment may be routed, except where these conditions may be in conflict with applicable Federal, State, and local laws and regulations.

If a conflict exists between the provisions of the TOS and the provisions named in the GSA National Small Package Rules Tender No. 11, the provisions of this TOS will apply.

The acceptance of the GSA TOS by a TSP shall be accomplished as specified in Section 2 of this document.

Item 1–7 Basis for Determining Applicable Distance

Unless otherwise authorized, all tenders shall be predicated on ITEM 30 Mileage To Zone Conversion of the GSA No. 12, regardless of the distance actually traveled by the carrier.

Item 1–8 Application of the Terms and Conditions Set Forth for Use of a Bill of Lading (BL) for the Government

The terms and conditions governing acceptance and use of Bills of Lading (BLs) as cited in 41 CFR 102–118.135 and 140 apply to all shipments handled pursuant to this Small Package Tender of Service (SPTOS) as follows:

A. When using commercial forms, all shipments must be subject to the terms and conditions set forth for use of a bill of lading for the Government. Any other non-conflicting applicable contracts or agreements between the TSP and an agency involving buying transportation services for Government traffic remain binding.

B. The shipment must be made at the restricted or limited valuation specified in the tariff or classification or established under section 13712 of the Interstate Commerce Commission (ICC) Termination Act of 1995 (49 U.S.C. 13712), formerly section 10721 of the Interstate Commerce Act, or limited contract, arrangement or exemption at or under which the lowest rate is available, unless indicated on the transportation documentation. (This is commonly referred to as an alternation of rates);

C. Receipt for the shipment is subject to the consignee's annotation of loss, damage, or shrinkage on the delivering TSP's documents and the consignee's copy of the same documents. If loss or damage is discovered after delivery or receipt of the shipment, the consignee must promptly notify the nearest office of the last delivering TSP and extend to the TSP the privilege of examining the shipment;

D. The rules and conditions governing commercial shipments for the time period within which notice must be given to the TSP, or a claim must be filed, or suit must be instituted, shall

not apply if the shipment is lost, damaged or undergoes shrinkage in transit. Only with the written concurrence of the Government official responsible for making the shipment is the deletion of this item considered valid;

E. Interest shall accrue from the voucher payment date on the overcharges made and shall be paid at the same rate in effect on that date as published by the Secretary of the Treasury pursuant to the Debt Collection Act of 1982 (31 U.S.C. 3717).

Section 2—Participation

Item 2–1 General

Participation in the GSA Small Package Tender Of Service (SPTOS) Small Package Freight Traffic Management Program is open to any TSP possessing the operating authority and insurance required in ITEM 1–5 of this TOS and who has met the approval requirements identified in Item 2–2, below.

Item 2–2 Approval To Participate

In order for a TSP to become eligible to transport traffic under this TOS, it must meet the approval requirements identified below. The applicable approval documentation must be mailed to: General Services Administration, Freight Program Management Office (6FBD–X), 1500 East Bannister Road, Kansas City, MO 64131 3088. Questions relating to the approval requirements may be directed to (816) 823–3646 or e-mail at internet *reg6.transportation@gsa.gov.*

Approval Requirements for Small Package TSPs

Small package TSPs must submit the following documentation to the address contained in Item 2–2 in order to meet the approval requirements for participation:

One (1) copy of the TSP's operating authority issued by the Department of Transportation. This copy of the TSP's operating authority must be provided in accordance with MC107 and/or The Motor Carrier Act of 1980;

One (1) signed copy of the TSP Certification of Eligibility for Submission of Rate Tenders for Transportation (See Section 15—Forms). Even if the TSP already has a copy of this form on file with a GSA Travel and Transportation Management Zone Office or the Freight Program Management Office (6FBD–X), Kansas City, MO, the TSP must re-submit the form to the address contained in Item 2–2 in order to meet the carrier approval requirements;

One (1) copy of the TSP's Standard Carrier Alpha Code (SCAC) assignment letter from the National Motor Freight Traffic Association (NMFTA); and

One (1) signed copy of the Trading Partner Agreement (See Section 15—Forms). Once the TSP has met all of the established approval requirements for participation, GSA will return to the TSP a signed copy of the Trading Partner Agreement.

Section 3—Offers of Service

Item 3–1 Solicitation of Rate Offers

Any participating agency as defined in Item 1–2.A. may solicit rate offers referencing the SPTOS from carriers approved in accordance with Item 2–2. The participating agency will make the determination if the rate offer(s) is to be submitted electronically or non-electronically.

Item 3–2 Submission of Rate Offers

A. Submission of Electronic Rate Offers

When a participating agency has determined that rate offers must be submitted electronically, those rate offers must be submitted electronically in accordance with the electronic filing instructions established by the General Services Administration Freight Program Management Office (6FBD–X), Kansas City, MO. All accepted electronic rate offers will be made available to GSA's Office of Transportation and Property Management's Audit Division.

1. Items in the GSA No. 11 that Contain Rates or Charges: The following Items from the GSA National Small Package Rules Tender No. 11 are all the Items that contain rates or charges. Carriers must indicate in their electronic rate offer either one percentage for all of these Items or separate percentages for each.

Item 100 Addition Handling Charge (each package)
Item 110 Additional Insured Value
Item 150 Each Address Correction
Item 200 Each Acknowledgement of Delivery
Item 210 Each Recall of a Prior Delivery
Item 220 Each C.O.D.
Item 230 Hazardous Material Surcharge (each package)
Item 270 Pickup Or Delivery Service—At Private Residences
Item 290 Pickup Or Delivery Service—Saturday

B. Submission of Non-Electronic Rate Offers

When a participating agency has determined that rate offers must be submitted non-electronically, the participating agency will provide the appropriate filing instructions.

Item 3–3 Time of Filing

A. Electronic Rate Offers

The time period(s) during which an electronic rate offer may be submitted will be identified by the participating agency requesting the submission of electronic rate offers. Requests for electronic rate offers made by GSA will automatically be distributed to all carriers approved to participate in accordance with Item 2–2. Requests for electronic rate offers made by other participating agencies will be distributed per the discretion of the requesting participating agency.

B. Non-Electronic Rate Offers

The time period(s) during which a non-electronic rate offer may be submitted will be identified by the participating agency requesting the submission of non-electronic rate offers. Requests for non-electronic rate offers made by GSA will automatically be distributed to all carriers approved to participate in accordance with Item 2–2. Requests for non-electronic rate offers made by other participating agencies will be distributed per the discretion of the requesting participating agency.

Item 3–4 Non-Alternation Tender Acceptance Policy

A. Unless specifically requested, TOS participating agencies will not accept electronic or non-electronic rate offers from carriers which contain a non-alternating provision.

B. Where a shipment involves both a Non-DOD government agency participating in this TOS and a DOD agency, the applicable tender will be that of the transportation documentation issuing office.

Section 4—Statement of Work

Item 4–1 Performance of Service

Carriers accepting shipments offered under this TOS shall establish effective service controls for the prompt and complete performance of all ordered pick-up, transport, active tracking, and delivery of general commodities to and from points within the continental United States (CONUS).

Item 4–2 Services To Be Provided

TSPs participating in this TOS shall provide the following:

A. Adequate terminal facilities at origin to effectively service the agency shipping facility.

B. Adequate facilities at destination to effectively service the receiving activity/customer.

C. Pickup and delivery pursuant to the standards set forth in this TOS.

D. Lowest overall transportation cost to the U.S. Government commensurate with satisfactory service.

E. Equipment spotting in accordance with the consignor or consignee's instructions.

F. Accessorial and special services, as requested or annotated on the transportation documentation.

G. Prompt inspection of damaged material.

H. Settlement of all claims for loss or damage attributable to carrier liability within 120 days.

I. Protection from elements and securing of the loads.

J. Transportation of hazardous materials other than Class 1.1, 1.2, and 1.3 explosives; hazardous wastes; and radioactive articles requiring a hazardous material label in accordance with Title 49 of the Code of Federal Regulations (49 CFR). TSPs which do not ordinarily provide transportation of hazardous materials are not required to do so.

K. Inside pickup or delivery, when requested and annotated on the transportation documentation. (Unwarranted refusal or selective acceptance of cargo is prohibited.)

L. Continuous control of shipments. When requested by either a representative of the consignor or consignee, the TSP shall monitor and trace shipments to ensure prompt completion of all required service as well as giving status and location of a shipment within 24 hours of the request.

M. Proof of delivery (copy of signed, dated delivery receipt) for any shipment that the transportation documentation issuing officer (or designee) determines is needed to verify the TSP's delivery certification on the transportation documentation.

N. Return of shipment service. In the event a TSP is required to return a shipment to the original shipping location as ordered by the agency or designated official, the TSP will assess the rate applicable to the original outbound movement or the applicable tender rate, whichever is lower. The TSP shall obtain the necessary amendment or documentation from the party ordering the additional movement.

O. All services (e.g., spotting of trailers, assisting in the loading of packages into conveyance, and reporting to the agency shipping facility at the requested time), as requested by the designated agency shipping facility representatives, for shipments tendered.

Item 4–3 Completion of Service

Service performed under this TOS is deemed complete when delivery and other destination services have been furnished. TSP service can be accomplished by either direct or interline service. When jointline rates are offered, the tender submitting TSP shall ensure that any interline TSP(s) transports the shipment at the original offered discounted rate or charge and provides all services as specified in the TOS.

Item 4–4 Attempted Delivery

(1) The TSP shall attempt to deliver a shipment three times.

(2) The TSP shall leave a notice of attempted delivery with each shipment.

(3) For purposes of TSP performance, the delivery shall be considered accomplished on the date and time of the first attempted delivery to the address on the package.

Item 4–5 Prompt Notification of Undelivered Freight

When a shipment cannot be delivered because of the consignee's inability or refusal to receive or accept the shipment, TSPs shall (except for shipments originated by GSA) notify the applicable agency shipping facility traffic manager/contact point and request additional handling or forwarding instructions from the consignor. For GSA originated shipments, carriers shall request additional handling or forwarding instructions from either the GSA National Customer Service Center (6FR) (NCSC), 1500 East Bannister Road, Kansas City, MO 64131–3088 (1–800–488–3111) (FAX 816–926–6952) or the consignor.

Item 4–6 Rules and Accessorial Charges

Shipments transported under this TOS shall be subject to the rules and accessorial charges published in the applicable GSA National Small Package Rules Tender No. 11. No TSP independent actions (TSPs' rules or accessorial tariffs) or bureau published tariffs deviating from the GSA National Small Package Rules Tender No. 11 are acceptable.

Item 4–7 Special Services Ordered by the Consignor

Only special or accessorial services annotated on the transportation documentation by the consignor or provided for by an amendment to the transportation documentation are authorized and will be paid by the agency.

Item 4–8 Department of Transportation (DOT) Emergency Response Guidebook

Each TSP that is subject to this TOS that picks up or transports a hazardous material shipment shall maintain emergency response information as specified in Title 49 of the Code of Federal Regulations (49 CFR) Section 172.602 in the same manner as prescribed for shipping papers. The TSP shall have in its possession a copy of the current Department of Transportation (DOT) Emergency Response Guidebook when picking up, transporting, or delivering a shipment of hazardous material. This information must be immediately accessible to a transport vehicle operator or crew in the event of an incident involving a hazardous material.

Item 4–9 Tracing Shipments

Requests by the Government to have a shipment traced shall be made through either the TSP's centralized tracing system, if such a system is available, or its origin terminal. Upon request, the TSP shall trace the shipment through its entire system (including any interlining TSPs), and provide the requester (or third party as directed) a reply through the same communication media as the request, or through the media directed in the request. When a TSP offers the Government direct access to their mechanized tracing system and the requester elects to use it, the TSP will, when required by the requester, trace the shipment through any interlining system, and provide a reply as above.

Section 5—Performance Requirements

Item 5–1 Transit Time

A. All agencies as identified in Item 1–2.A. and the General Services Administration (GSA) Distribution Centers, and direct deliveries from the National Industries For The Blind (NIB), and the National Industries For The Severely Handicapped (NISH).

B. Delivery Time:

Up to 150 mi. 1 day
151 to 500 mi. 2 days
501 to 1500 mi. 4 days
1501 to 2100 mi. 5 days
2101 mi. & over 6 days

C. Method of Measuring Transit Time.

(1) Start of Transit Time.

Transit time begins the next business day after the shipment is signed for by the TSP and ends at the time the shipment is delivered (or made available for delivery) to the receiving activity (destination). In instances where a shipment is signed for by the TSP on a Saturday, Sunday, or holiday

the transit time will not begin until the NEXT BUSINESS DAY.

(2) Computation of Transit Time.

(i) Transit time for small package shipments is measured in business days, excluding Saturday, Sunday, and holidays as set forth in ITEM 30 Definition Of Terms, (2) Legal Holidays in the GSA National Small Package Rules Tender No. 11 herein.

(ii) Unless the agency or customer requests and authorizes delivery on Saturdays, Sundays, or holidays (as set forth in ITEM 30 Definition Of Terms, (2) Legal Holidays in the GSA National Small Package Rules Tender No. 11 herein), TSPs shall not be required to deliver shipments on these days. TSPs shall not be penalized if they refuse to voluntarily make Saturday, Sunday, or holiday delivery.

Item 5–2 Pickup

A. General

TSP pickup service shall include arriving on time for pickup.

B. Ordering Equipment

When ordering equipment or requesting a pickup date, TSPs will receive advance notice. Unless an abnormal amount or type of equipment is requested, TSPs will be notified in the afternoon prior to the day the equipment is needed. However, in some circumstances, TSPs may be required to perform same day pickup service. TSPs will not be penalized if they are unable to provide this ''special'' same day pickup service.

C. Method of Measurement

Pickup service will be measured using agency shipping facility dispatcher records indicating the requested time and date of pickup and TSP sign-in registers indicating TSP date and time of arrival. Unless a TSP requested and received, from the agency shipping facility ordering official, permission to delay the pickup date or time, measurement of efficient pickup service will be based only on the agency shipping facility dispatch records.

Item 5–3 Loss or Damage

A. General

Loss or damage claims attributable to the TSP's performance must be acknowledged and settled within 120 days.

B. Method of Measurement

In all instances, loss or damage claim settlements will be applied to the origin TSP performance of service using reports, records, and history files compiled by the agency. These reports, records, and history files will include for each participating TSP, the number of shipments it handled as well as the number of claims settled against it.

C. Aggregation of Claims

A participating agency may aggregate claims to be filed against an individual TSP into a single filing. Such an aggregate filing will be construed as an individual filing of each claim and the participating agency will indicate on the aggregate filing the individual claimed amount, together with supporting documentation, for each included claim. The TSP against which an aggregate filing is made shall settle each claim as if it were filed independently. In order for a participating agency to take advantage of this Item 5–3.C., the participating agency must notify the TSP in writing of its intent to utilize the provisions of this Item 5–3.C.

Item 5–4 Unusual Incidents

Except for shipments originated with GSA, TSPs shall attempt to provide a report in writing to the transportation documentation issuing officer any event of major significance which produces substantial loss, damage, or delay to a shipment(s) such as theft or seizure of cargo, strikes, embargoes, fires, or other similar incidents, not later than the first working day after such incident.

For shipments originated by GSA, TSPs shall attempt to report the required information not later than the first working day after such incident to the consignor and the GSA National Customer Service Center (6FR) (NCSC), 1500 East Bannister Road, Kansas City, MO 64131–3088 (1–800–488–3111) (FAX 816–926–6952).

The initial written report shall include the following information and be followed up by a detailed written assessment of the loss or damage, and delays encountered and final disposition of the property:

A. Type of incident;

B. Location of incident;

C. Description of any hazardous cargo;

D. TSP's tracking number and Agency unique number;

E. Shipping documentation office;

F. Origin;

G. Destination;

H. Date shipment received by carrier;

I. If applicable, required delivery date;

J. Date and time of incident;

K. Estimated amount of loss and extent of damage;

L. Current status of shipment(s), including new estimated time of arrival (ETA); and

M. Location of shipment(s), if applicable.

Item 5–5 All Others

This category includes the evaluation of all other services that TSPs may be requested to provide, such as the ability to provide accessorial and special services as required, documented customer complaint(s), adherence in observing Federal, State, local, and agency shipping facility regulations, and unwarranted refusal of shipments. (Selective acceptance of shipments is prohibited.)

Item 5–6 Other Elements

All other service elements requiring TSP response and action due to a deficiency in performance must be responded to by the TSP within 10 days of receipt of an agency notice of such a deficiency. The TSP response must include a plan to correct the deficiency. The elements of service described herein generally refer to specific operational factors affecting the timely, efficient and cost-effective movement of agency freight. There are, however, other elements which will be considered in determining the overall performance of a TSP and the ability and fitness of a TSP to provide service to agencies. These elements are of such importance that one violation will render subject TSP to possible placement in temporary nonuse status.

These elements include, but are not limited to:

A. Willful violations of tenders or tariffs;

B. Failure to pay just debts so as to subject Government shipments to possible frustration, unlawful seizure, or detention;

C. Failure to maintain proper insurance coverage;

D. Operating without legal authority; and

E. Failure to have in its possession a current copy of the DOT Emergency Response Guidebook when picking up or transporting a shipment of hazardous material.

Item 5–7 Request for a Waiver of Requirements of the SPTOS or Application of the Terms and Conditions Set Forth for Use of a (BL) for the Government

A. When Granted and by Whom

The transportation documentation issuing officer, the agency shipping facility Traffic Manager or the agency servicing office representative, for an individual shipment, may waive one or more of the requirements in this TOS or of the BL in whole or in part because of the incompatibility of such requirements with the prevailing circumstances. An affected TSP may

submit the waiver request verbally to the transportation documentation issuing officer; however, the request must be confirmed in writing by the TSP to the transportation documentation issuing officer within one day of the initial request.

B. Confirmation of Waiver

If the transportation documentation issuing officer or designee determines that a waiver is justified, he/she will issue a waiver in writing, by amending the transportation documentation and distributing copies of the amendment, including a copy to the TSP, within 48 hours after receiving the TSP's request.

Item 5–8 Astray Package(s)

In the event that small packages are separated from the TSP's freight bill or transportation documentation, the following procedures will apply:

A. When the TSP is able to determine the consignee, either from the markings on the package or from the shipping documentation affixed to or contained within the package, the TSP will promptly deliver the package to the consignee.

B. When the consignee cannot be determined from the markings on the package or shipping documents, but the TSP is able to determine that the property belongs to a specific Government agency, then the TSP will contact the nearest installation of that agency for disposition instructions.

For GSA originated shipments, the TSP shall contact the GSA National Customer Service Center (6FR) (NCSC), 1500 East Bannister Road, Kansas City, MO 64131–3088 (1–800–488–3111) (FAX 816–926–6952) for disposition instructions.

C. When specific agency ownership cannot be determined for astray packages which are identifiable Government property, the TSP will contact the nearest Government installation for disposition instructions.

Section 6—Service Performance Standards

Item 6–1 TSP Performance Reviews

A. Documenting TSP Performance

TSP performance data will be obtained from a variety of sources, including, but not limited to the following:

(1) Complaints (both written and oral) submitted by an agency transportation officer, transportation documentation issuing officer, agency official, agency shipping facility operating personnel, or consignee;

(2) Reports obtained or formulated from TSP pickup records, history files, finance payment records, and agency discrepancy computer runs; and

(3) Serious incident reports.

Item 6–2 TSP Evaluation

A. TSP performance of all shipments tendered shall be evaluated monthly using the service standards established in this ITEM herein. Four categories will be analyzed.

A TSP will be issued a warning letter and may be placed in a temporary nonuse status based on deficiencies in any individual category.

B. Service Standard Table:

Ranking	Categories			
	1 Transit time	2 Pickup	3 Loss and damage	4 All others
Excellent	100–98%	100–99%	100–99%	100–99%
Very Good	97–96%	98–97%	98–97%	98–97%
Satisfactory	95–94%	96–94%	96–95%	96–95%
Unsatisfactory	Below 94%	Below 94%	Below 95%	Below 95%

C. If transportation costs are equal, maximum use will be made of TSPs whose ranking for all categories are excellent.

D. TSP performance that is determined to be ''unsatisfactory'' for one or more categories will result in the issuance of a warning letter by the respective agency servicing officer or his or her designee. The TSP will be advised that its service for one or more categories is ''unsatisfactory'' and that if service for that category(ies) fails to improve, the TSP will be subject to placement in temporary nonuse status.

E. TSP performance that is determined to be ''unsatisfactory'' for one or more of the categories will result in notification by the agency servicing officer or designee that action is being initiated to place it in a temporary nonuse status in accordance with the nonuse procedures set forth in Section 8—Temporary Nonuse, Debarment, And Suspension.

Section 7—Inspection

Item 7–1 General

Authorized representatives of the shipping agency shall have the right to inspect TSP facilities (local TSPs equipment, terminals, stations, or warehouses) and to inspect the performance of services (loading, pickup, delivery, and any other services performed or being performed by the TSP) in connection with any shipment handled under the provisions of this TOS.

A. An authorized representative of the shipping agency shall include personnel of the agency shipping facility.

B. Representatives may inspect the performance of services at the agency shipping facility, at the TSP terminal facilities, or at consignee receiving facilities during regular office hours or at any time work is being performed.

Item 7–2 Corrective Action

When authorized representatives of the Shipping Office determine that facilities, equipment, or services do not meet the terms, conditions or specifications prescribed by this TOS, the TSP or its agent shall cooperate fully to promptly correct the deficiency by taking appropriate action at no additional cost to the Government.

Item 7–3 Facilities

The TSP must furnish Government representatives with free access and reasonable facilities and assistance to accomplish their inspection.

Section 8—Temporary Nonuse, Debarment, and Suspension

Item 8–1 Basis and Time Period

TSPs may be placed in temporary nonuse by an agency shipping facility manager or tender servicing office for a period not exceeding 90 days if the terms or conditions of this TOS are not met or for any cause(s) listed in Title 41 of the Code of Federal Regulations (41 CFR) 41 CFR 102–117.290(a), or for debarment status for cause(s) set forth in 41 CFR 102–117.290(c), or for

suspension status for cause(s) set forth in 41 CFR 102–117.290(b).

When there is a sufficient basis to initiate temporary nonuse action against a TSP, the TSP will be notified by certified mail, return receipt requested, of the following:

A. The effective dates of the proposed temporary nonuse;

B. The extent or scope of the proposed temporary nonuse, including the specific transportation facilities to which the period of exclusion will be applicable;

C. The facts relied on to support the specified cause(s) for temporary nonuse;

D. Upon receipt of the initiating officer's notice of proposed temporary nonuse, the TSP will be given a period of 7 calendar days during which it may submit in person, in writing, or through a representative, rebuttal information and arguments opposing the temporary nonuse;

E. The initiating officer has a period of 5 working days to evaluate a TSP's rebuttal information, any opposing arguments and render a decision;

F. The availability of an appeal of the initiating officer's decision to a reviewing official, provided the request for review is received within 5 work days of receipt of the transportation officer's decision;

G. The corrective action required by the TSP to be removed from temporary nonuse; and

H. TSP failure to correct the cause(s) for temporary nonuse will result in an additional nonuse period of 30 calendar days during which the case will be referred to the agency's debarring official for appropriate action.

Sections 9 Through 14 Reserved

Section 15—Forms TSP Certification Statement

TSP certification of eligibility for the award of contracts for transportation.

A. By submitting this rate tender, the TSP certifies that:

(1) Neither the TSP, nor any of its subsidiaries, officers, directors, principal owners, or principal employees is currently suspended, debarred, (or in receipt of a notice of proposed debarment from any Federal agency as a result of a civil judgment or criminal conviction or for any cause from GSA), or has been placed in temporary nonuse status by GSA for the routes covered by this tender as of the date that this rate tender is offered.

(2) The TSP is not a corporation, partnership, sole proprietorship or any other business entity which has been formed or organized following the suspension or debarment of, a subsidiary, officer, director, principal owner, or principal employee thereof (or from such an entity formed after receipt of a notice of proposed debarment).

B. The following definitions are applicable to this certification:

(1) A subsidiary is a business entity whose management decisions are influenced by the TSP through legal or equitable ownership of a controlling interest in the firm's stock, assets, or otherwise.

(2) A principal owner is an individual or company which owns a controlling interest in the TSP's stock, or an individual who can control, or substantially influence, the TSP's management, through the ownership interest of family members or close associates.

(3) A principal employee is a person(s) acting in a managerial or supervisory capacity (including consultants and business advisors) who is able to direct, or substantially influence, the TSP's performance of its obligations under its contracts for transportation with the Federal Government.

C. The knowledge of the person who executes this certification is not required to exceed the knowledge which that person can reasonably be expected to possess, following inquiry, regarding the suspended or debarred status of the parties defined in (B), above.

D. The TSP has a continuing obligation to inform the GSA office to which this rate tender is submitted of any change in circumstances which results in its ineligibility for the receipt of contracts for transportation.

E. An erroneous certification of eligibility or failure to notify the GSA transportation zone office receiving this tender of a change in eligibility, may result in a recommendation for administrative action against the TSP. Additionally, false statements to an agency of the Federal Government are subject to criminal prosecution pursuant to 18 USC 1001, as well as possible civil penalties.

Company name _____
Signature and Title of Authorized Official
Date _____
TSP Contact _____
Name _____
Title _____
Address _____
City/State _____
Telephone No. ( ) _____

General Services Administration

Basic Transportation Trading Partner Agreement

Applicability: Check the box below which represents the activity of your firm under this Trading Partner Agreement:

☐ Freight Common TSP (All paragraphs, except Paragraph 4 and 5 of this agreement will apply and are binding).

☐ Small Package TSP (All paragraphs, except Paragraphs 3 and 4 of this agreement will apply and are binding).

☐ Household Goods Common TSP (All paragraphs, except Paragraphs 3 and 5 of this agreement will apply and are binding).

☐ Freight Freight Forwarder (All paragraphs, except Paragraph 4 and 5 of this agreement will apply and are binding).

☐ Household Goods Freight Forwarder (All paragraphs, except Paragraphs 3 and 5 of this agreement will apply and are binding).

☐ Freight Broker (All paragraphs, except Paragraphs 4 and 5 of this agreement will apply and are binding).

☐ Freight Shipper Agent/Intermodal Marketing Company (All paragraphs, except Paragraphs 4 and 5 of this agreement will apply and are binding).

☐ Rate Filing Service Provider (All paragraphs of this agreement will apply and are binding).

1. Introduction

This agreement prescribes the general procedures and polices to be followed when Electronic Commerce (EC) is used for transmitting and receiving requests for offers, rate tenders, or other business information in lieu of creating one or more paper documents normally associated with conducting business with the General Services Administration.

The General Services Administration (GSA or the agency) will transmit and receive using the File Transfer Protocol (FTP) of the Internet network (I–FTP) such transaction sets (documents) as it chooses and as established by the governing tender of service or the request for offers. These transaction sets will be transmitted to those firms, organizations, agencies, or other entities (trading partners) recognized by GSA that agree to accept such documents and to be bound by the terms and conditions contained in those documents, this agreement, and any applicable tender of service.

2. Purpose

This agreement is to ensure that all EC obligations are legally binding on all trading partners. Further, the use of any electronic equivalent of a standard business document referenced in Paragraphs 3 and 4 will be deemed an acceptable business practice and that no

trading partner will challenge the admissibility of the electronic information in evidence, except in circumstances in which an analogous paper document could be challenged.

3. Freight Reference

This agreement, in addition to the terms and conditions stated in Paragraph 6, is subject to the terms and conditions of the following documents:

- GSA Freight Traffic Management Program Standard Tender of Service
- Optional Form 280
- GSA Freight Traffic Management Program Request for Offers

4. Household Goods Reference

This agreement, in addition to the terms and conditions stated in Paragraph 6, is subject to the terms and conditions of the following documents:

- GSA Centralized Household Goods Traffic Management Program Tender of Service
- Optional Form 280
- GSA Centralized Household Goods Traffic Management Program Request for Offers

5. Small Package Reference

This agreement, in addition to the terms and conditions stated in Paragraph 6, is subject to the terms and conditions of the following documents:

- GSA Small Package Traffic Management Program Small Package Tender of Service
- Optional Form 280
- GSA Small Package Traffic Management Program Request for Offers

6. Terms and Conditions

(A) GSA will place electronic documents in a publicly accessible directory on GSA's FTP server (KCFTP.GSA.GOV/PUB) and when warranted in the directory of a confirmed trading partner (trading partner/<SCAC>), either directory hereinafter referred to as directory. It will receive documents from confirmed trading partners in each confirmed trading partner's directory via I–FTP. Receipt by the trading partner is considered to occur when the document is placed in either the public directory or the trading partner's directory, as the case may be.

(B) GSA will bear the costs of maintaining the GSA FTP server and the costs of placing documents issued by GSA in the appropriate directory on the GSA FTP server, and the costs of managing documents put on the GSA FTP server by its trading partners. The agency's trading partners are responsible for all costs associated with getting documents from or putting documents on the GSA FTP server.

(C) When the transmissions are submissions of rate tenders, the submitting firm must have first met all applicable approval requirements set out in the applicable, governing Tender of Service.

(D) GSA will be responsible for the accuracy of documents issued by it and placed in the GSA FTP server directory. GSA will not be responsible for errors occurring in documents put on the GSA FTP server, nor will GSA be responsible for errors occurring in documents gotten from the GSA FTP server.

(E) GSA will not be responsible for any damages incurred by a trading partner as a result of missing or delayed transmissions when the problem is not with or caused by GSA or the agency's FTP server.

(F) Any document placed in a directory maintained on the GSA FTP server is to be considered a valid and authentic document backed by the same guarantees of legitimacy as are found in a paper transaction. Likewise, any document from a trading partner put into a directory on the GSA FTP server will be considered a valid and authentic document backed by the same guarantees of legitimacy as are found in a paper transaction.

(G) In the event a TSP uses a broker, shipper agent/Intermodal Marketing Company, or filing service to file its rates with GSA, documents submitted on behalf of the TSP shall be accepted as though submitted by the TSP and in accordance with the terms and conditions of the trading partner agreement between the TSP and GSA. The use of a broker, shipper agent/Intermodal Marketing Company, or filing service does not relieve the TSP of any of its rights or obligations under the terms of this agreement, including the maintenance of a valid trading partner agreement with GSA.

7. Force Majeure

None of the parties in this agreement will be liable for failure to properly conduct EC in the event of war, accident, riot, fire, flood, epidemic, power outage, labor dispute, act of God, act of public enemy, malfunction or inappropriate design of hardware or software, or any other cause beyond such party's control. If standard business cannot be conducted by EC, GSA will, at its discretion, return to a paper based system.

8. Effective Date

The effective date of this agreement will be the latest of the date(s) shown on the signature page of this document.

9. Agreement Review

This agreement will be effective on a continuing basis, except as provided in Paragraph 10, below; provided, however, that GSA may from time to time make such changes to the agreement as are necessary, and the trading partner may request review of the agreement at any time.

10. Termination

(A) In the event that GSA terminates a firm's participation in the GSA Freight Traffic Management Program (including the Small Package Tender of Service) and/or the GSA Centralized Household Goods Traffic Management Program, this agreement shall be considered terminated as of the date notice is given to a firm of its participation termination.

(B) In the event that a firm terminates its participation in the GSA Freight Traffic Management Program (including the Small Package Tender of Service) and/or the GSA Centralized Household Goods Traffic Management Program, this agreement shall be considered terminated as of the date notice of such termination is received by the GSA.

(C) Except as provided above, this agreement may be terminated by either GSA or its trading partner, effective 30 days after receipt of written notice by either party. Termination will have no effect on transactions occurring prior to the effective date of termination.

11. Whole Agreement

This agreement and all addenda constitute the entire agreement between the parties. No changes in terms and conditions of this agreement shall be effective unless approved and signed by both parties. At the inception of this agreement, Addendum/Addenda (is) (are) not applicable. As the parties develop and implement additional EC capabilities, addenda may be incorporated into this agreement. Each addendum will be signed and dated by both parties. The latest date contained on the signature page will be the effective date of the addenda. The addendum will be appended to this agreement.

_____

Name and Signature

_____

Title

_____

Firm

_____

Mailing Address

_____

City, State, Zip

_____

Telephone

_____

_____
Fax

_____
Internet E-mail

_____
Electronic Commerce Contact

_____
Telephone

_____
Fax

_____
Internet E-mail

_____
Date

Representing the General Services Administration

Ed Hodges
Name and Signature

Manager, GSA Freight Program Management Office (FPMO)
Title

Federal Supply Service(6FBD–X)
Firm

1500 East Bannister Road, Room 1076
Street Address

Kansas City, MO 64131
City, State, Zip

816–823–3646
Telephone

816–823–3656
Fax

carey.deforest@gsa.gov
Internet E-mail

Carey DeForest
Electronic Commerce Contact

816–823–3646
Telephone

816–823–3656
Fax

carey.deforest@gsa.gov
Internet E-mail

_____
Date

Trading Partner Agreement Number: _____
(to be completed by gsa)

General Services Administration

Small Package Tender of Service No. 10

Letter of Intent—Carrier Agreement To Abide by the Terms and Conditions of the General Services Administration Small Package Tender of Service (SPTOS) General Small Package Traffic Management Program

Please accept our request to participate in the General Services Administration (GSA) Small Package Tender of Service (SPTOS) General Small Package Traffic Management Program. Only one letter of intent should be submitted to each participating Government agency office with the first tender filing, regardless of the number of tenders submitted.

I certify that I have read and will comply with all the provisions contained in the GSA Small Package Tender of Service (SPTOS) GSA General Small Package Tender of Service No. 10, the GSA National Small Package Rules Tender No. 11, and the GSA Small Package Baseline Rate Publication No. 12, effective November 1, 2002. I further certify that the undersigned company has the operating authority and insurance as required by ITEM 1–5 and SECTION 2, of the GSA GENERAL SMALL PACKAGE TENDER OF SERVICE NO. 10.

Company Name _____
Signature and Title of Authorized Official Date _____
TSP CONTACT _____
NAME _____
TITLE _____
ADDRESS _____
AREA CODE: (__) _____
Telephone No. _____

Sections 16 Through 20 Reserved

Part 2

General Services Administration

National Small Package Rules Tender No. 11

[GSA No. 11]

Providing Rules And Baseline Charges for Accessorial Services for Governing Publications, See ITEM 10

This tender applies on both Intrastate and Interstate traffic
General Services Administration
Federal Supply Service
Freight Program Management Office (6FBD-X)
1500 E. Bannister Rd.
Kansas City, Missouri 64131

Table of Contents

Section 1—General Tender Application

Item 5 Purpose, Explanation, and Application

Section 1. Purpose

The purpose of this General Services Administration (GSA) National Small Package Rules Tender No. 11 (GSA No. 11) is to articulate the transportation service needs of the participating Government agencies listed in Item 1–2 of the General Services Administration (GSA) General Small Package Tender of Service No. 10 (GSA SPTOS No. 10) herein, for the movement of routine ground small package traffic moving via commercial carriers and to assist in GSA's effort in implementing the standardization necessary to achieve a fully automated system for rating and routing Government small package shipments.

Section 2. Explanation

The baseline rates and charges, rules, and other provisions contained in this tender have been constructed by GSA and are above some commercial levels, and for the same provisions below other commercial levels.

Section 3. Application

Where reference is made to the GSA National Small Package Rules Tender No. 11 (GSA No. 11) in a TSP's tender or rate agreement, the rules and accessorial charges contained in this publication will govern the small package services of the TSP's tender, and will apply from, to, or between those points which are specified in the individual tender. This is not in any way to be construed as a setting of rates, rules or charges by GSA. TSP' Tenders cannot be made subject to any other publication for application of the rates or charges therein. If any TSP published rates, rules or terminal services tariff is shown in a tender, the tender will be rejected and returned to the carrier.

The publications listed in item 10 governing publications herein, form part of the rules publication and will not need to be listed in block 16 of the individual tenders.

Item 10 Governing Publications

This tender is governed, except as otherwise provided herein, by the following described tariffs or specifications, by supplements or loose-leaf page amendments thereto, or by successive issues or reissues thereof:

Title	Kind of tariff	Tariff number
National Motor Freight Traffic Association Inc., Agent	Directory Of Standard Multi-Modal Carrier And Tariff Agents Codes (SCAC and STAC) .	101–K.
ALK Associates	Automated Electronic Mileages based on 5 digit Zip codes .	Version 15.

Item 20 Revising Tender Provisions and Method of Canceling Original or Revised Pages

This TOS will be revised by the Freight Program Management Office (6FBD–X), Kansas City, MO through publication of the changes on GSA's WorldWide Web Page (*http://www.kc.gsa.gov/fsstt*), the issuance of page revisions (original or revised), or the reissuance of the document on an ''asneeded'' basis.

A. TOS Page Revisions: Reserved

B. Reissuing the SPTOS: Reserved

Item 30 Definition of Terms

(1) Accessorial Services

Other services in addition to the basic cost to transport the shipment.

(2) Business Hours and Days

(a) Business Hours: The term ''Business Hours'' is defined as the customer or agency's normal business hours.

(b) Business Days: The term ''Business Days'' is defined as Monday through Friday, except legal holidays (as shown in Item 30 Definition of Terms, (3) Legal Holidays herein).

(3) Legal Holidays

New Year's Day
Labor Day
Martin Luther King's Birthday
Columbus Day
Washington's Birthday (Presidents' Day)
Veterans Day
Memorial Day
Thanksgiving Day
Independence Day
Christmas Day
and any other day designated as a holiday by Federal statute or Executive Order.

(4) Transportation Service Provider (TSP)

A TSP is any party, person, agent or carrier that provides freight transportation and related services to an agency. For a freight shipment this would include packers, truckers and storers.

(5) Conus

''CONUS'' is defined as all points within the contiguous United States, including the District of Columbia (DC), (excluding Alaska, Hawaii and Puerto Rico).

(6) Desktop Delivery

Delivery to the desk/work station of the consignee or responsible individual at the destination address.

(7) Desktop Pick-up

Pick-up at the desk/work station of the consignor or responsible individual at the origin address.

(8) Dimensional Weight

When the charges for a shipment are computed on the basis of volume rather than weight it is referred to as a dimensional or DIM weight shipment. Dimensional weight is calculated by multiplying the length × width × height of each piece in the shipment in inches and dividing by 194 [i.e., (L × W × H) ÷ 194].

(9) Girth

The circumference of a package measured at the widest point of the package.

(10) Length

The longest side of a package.

(11) Length and Girth Combined

The measurement of a package obtained by adding the length of the package to the girth of the package.

(12) On-Time Delivery

On-time delivery includes delivery of the shipment intact, without loss or damage in the prescribed time. Partial deliveries, damaged shipments, and shipments not reported will be construed as late deliveries.

(13) Package

Package is defined as any container and its contents, and includes any article which may be handled loose if the handling can be accomplished in a reasonably safe manner. Individual packages can weigh up to 150 pounds, with no single dimension greater than 108 inches or a total of 130 inches in combined length and girth.

(14) Shipment

A single piece or multiple pieces tendered to a TSP by one consignor at one place at one time for delivery to one consignee at one place on one shipping document.

(15) Hundredweight Service

Packages addressed to a single consignee at one location with a total aggregate weight of 200 pounds or more for each shipment. Charges are calculated by multiplying the number of Hundredweight Units by the Rate Per Hundredweight.

(16) Subject to Note and See Note

(a) Subject to Note: The term ''Subject to Note'', when used in the title of an item in Section 2 herein, means that the note indicated applies to the entire item.

(b) See Note: The term ''See Note'', when used in the title of an item in Section 2 herein, means that the referenced note applies only where indicated, not to the entire item.

Item 35 Disposition of Fractions

A. Fractions of a cent resulting from the application of a TSP's independently-established percentages of the baseline rates in the GSA National Small Package Rules Tender No. 11 will be disposed of as follows:

1. Fractions of less than one-half of one cent will be omitted; and

2. Fractions of one-half of one cent or greater will be increased to the next whole cent.

B. Fractions of a cent resulting from the application of a TSP's independently-established rates will be disposed of as follows:

1. Fractions of less than one-half of one cent will be omitted; and

2. Fractions of one-half of one cent or greater will be increased to the next whole cent.

Item 40 Services Not Otherwise Specified

When a TSP performs services that are required for normal movement of small package shipments and such services are not identified in the GSA National Small Package Rules Tender No. 11 (GSA No. 11), the charges for these services will be negotiated between the responsible agency office and the TSP.

Section 2—General Rules and Specific Pickup/Delivery Charges

Item 100 Additional Handling Charge

1. In addition to the other rates and charges named in this Rules Tender, a charge of $5.00 for additional handling will be assessed on each shipment of:

• Any package exceeding 60 inches but not exceeding 108 inches in length.
• Any article not fully encased in an outside shipping container, any article that is encased in an outside shipping container made of metal or wood, and any drum or pail less than five gallons not fully encased in a shipping container made of corrugated cardboard.

2. In addition to the other rates and charges named in this Rules Tender, a $15.00 surcharge for additional handling will be assessed on each shipment of:
• Any package measuring more than 108 inches in length.
• Any package measuring more than 130 inches in length and girth combined.
• Any package weighing more than 150 pounds.

Item 110 Additional Insured Value

Additional insured value at a rate of $0.35 per $100 in excess of TSP liability coverage of $100 per package.

Item 130 Bill of Lading—Commercial

TSP will furnish commercial bill of lading sets required by the Government without any additional charge. The bill of lading sets can consist of any number of copies. When preparing shipments for tender, each package must contain a barcode label and address label. This can take the form of (1) a combined barcode/address label produced by an automated device, supplied software or other third-party parcel-processing equipment, or (2) a preprinted bar code label and an address label created by the shipper.

Item 150 Each Address Correction

If the TSP is unable to deliver a package because the Shipper-provided address is incorrect or a P.O. Box, the TSP will make every reasonable effort to secure the consignee's correct address, but takes no responsibility for its inability to complete the delivery under such circumstances. If the consignee's correct address can be secured, the TSP will make another attempt to deliver the package and notify the Shipper of the address correction. A charge of $5.00 will be assessed.

Item 200 Each Acknowledgement of Delivery

Shippers may request consignee acknowledgement of delivery by using a TSP-provided label. The Shipper will prepare this self-addressed form and attach it to thepackage at the time it is tendered for delivery. The TSP will obtain the consignee's signature acknowledging receipt of the package and mail the consignee-signed label to the Shipper. An additional charge of $2.00 will be assessed for each package bearing such label.

Item 210 Each Recall of a Prior Delivery

1. Shippers may request the recall of packages previously delivered either by:

a. Preparing a TSP-provided Call Tag Pickup List, or

b. Calling TSP customer service number and giving the locations of any packages to be recalled, or

c. Via electronic data transmission using the transmission means and data format specified by the carrier.

2. A charge of $5.00 will be assessed for this Call Tag service in addition to applicable transportation charges.

Item 220 C.O.D. Services (Collect on Delivery)

For each C.O.D. package, a charge of $6.00 will be assessed in addition to the applicable transportation charges.

Item 230 Hazardous Material Surcharge

For each package bearing a Hazardous Materials label, a charge of $17.00 per package will be assessed in addition to the applicable transportation charges.

Item 250 Payment of Charges

All rates, charges, or other amounts are stated as U.S. currency and all rates, charges, or other amounts are payable in lawful money of the U.S.

Item 270 Pickup or Delivery Service at Private Residences

Packages picked-up and/or delivered to private residences will be assessed a charge of $2.50 per package in addition to the applicable transportation charges.

Item 290 Pickup and Delivery Service—Saturday

The TSP will provide Saturday pickup and delivery service to those areas of CONUS where this service is performed for its commercial customers. This service will only be performed when specifically requested and mutually agreed. A charge of $10.00 will be assessed for this service in addition to the applicable transportation charges.

Item 300 Property of Unusual Value or Unsafe to Transport

TSPs are not required to accept articles of unusual value or freight that is unsafe to transport that may cause damage to other goods or to their equipment without adequate consideration or compensation.

Section 3—Fuel Related General Rate Adjustment

ITEM 1000 Fuel Related General Rate Adjustment (FRGRA)

TSPs participating in this Small Package Tender of Service (SPTOS), supplements thereto and reissues thereof will be entitled to or will be required to provide a Fuel Related General Rate Adjustment to the standard transportation charges in accordance with the following:

A. SPTOS Notice

The General Services Administration (GSA) Freight Program Management Office (FPMO), Kansas City, MO shall issue a SPTOS Notice setting forth the terms and conditions of the applicable Fuel Related General Rate Adjustment.

B. Applicability

The Fuel Related General Rate Adjustment is applicable to all GSA-negotiated tenders and tenders negotiated by Federal customers participating in the SPTOS. The FRGRA may not be waived or altered by any organization other than the FPMO, Kansas City, MO.

C. Setting Baseline

The diesel fuel price ranges and corresponding percent surcharge levels have been formulated based on discussions and research with the motor carrier industry as of November 2000. The levels indicated in this policy have been determined to be current industry standard practice. This policy and its entitlements will be reviewed on an as-needed basis.

D. Availability of SPTOS Notice

1. Reserved.

2. Reserved.

3. Distribution of: The SPTOS Notice will only be published on GSA's Traffic Management WorldWide Web Site at the following address: www.kc.gsa.gov/fsstt/

E. Shipment Application

Application of the Fuel-Related General Rate Adjustment will become effective on Wednesday following the National Average diesel fuel price posting by the Department of Energy, Energy Information Administration (EIA) on every Monday or the first working day after Monday if the Monday falls on a Federal Holiday.

Part 3

General Services Administration

Baseline Rate Publication No. 12

[GSA No. 12]

Containing Baseline Rates for the Movement of Civilian Agency Small Package Shipments

This tender applies on both Intrastate and Interstate traffic
General Services Administration
Federal Supply Service
Freight Program Management Office (6FBD–X)
1500 E. Bannister Rd.
Kansas City, Missouri 64131

Table of Contents

Section A—General Application and Instructions

Section B—Table of Baseline Rates

Section C—Table of Baseline Rates for Hundredweight Service

Section A—General Application and Instructions

Item 1 Purpose and Application

Purpose

This General Services Administration (GSA) Baseline Rate Publication No. 12 (GSA No. 12) is designed to afford carriers a simple method of expressing and filing Freight-All-Kinds (FAK) rate tender(s) for the civilian agencies of the U.S. Government. Its purpose is to provide the standardization necessary to achieve a fully automated system for rating and routing traffic, without requiring substantive changes in the manner in which rates for this traffic have traditionally been stated.

Application

The baseline rates contained in this publication shall serve as a basis for carriers to submit actual rates for small package shipments from, to, or between all points in CONUS.

Governing Rules

Rates offered to a civilian agency using this publication will be subject to the rules, accessorial services, and accessorial charges contained in General Services Administration (GSA) National Small Package Rules Tender No. 11 (GSA No. 11) and supplements or reissues thereto.

GSA Baseline Rates

The rates shown in this publication were adopted from United Parcel Service (UPS) Ground Commercial rate tables. This is not in any way to be construed as the setting of rates or charges by GSA. Carriers must independently establish their own rates only by utilizing a percentage above, below, or equal to the level of baseline rates shown in Section B, Item 100 Table of Baseline Rates and Section B, Item 101 Table of Baseline Rates for Hundredweight Service of this publication.

Application of General Rate Increases

The baseline rates contained in this publication will be adjusted on an as-needed basis.

Item 10 Revising Publication Provisions and Method of Canceling Original or Revised Pages

This SPTOS will be revised by the Freight Program Management Office (6FBD–X), Kansas City, MO through publication of the changes on GSA's WorldWide Web Page (http://www.kc.gsa.gov/fsstt), the issuance of page revisions (original or revised), or the reissuance of the document on an ''as-needed'' basis.

A. TOS Page Revisions: Reserved

B. Reissuing the SPTOS: Reserved

Item 20 Disposition of Fractions

Fractions of a cent resulting from the application of a TSP's independently-established percentage(s) of the baseline rates shown in SECTION B of this publication, shall be disposed of as follows:

A. Fractions of less than one-half of one cent shall be omitted; and

B. Fractions of one-half of one cent or greater shall be increased to the next whole cent.

Item 30 Mileage to Zone Conversion

Converting mileages to zones is as follows:

0 to 150 miles—ZONE 2

151 to 300 miles—ZONE 3

301 to 600 miles—ZONE 4

601 to 1000 miles—ZONE 5

1001 to 1400 miles—ZONE 6

1401 to 1800 miles—ZONE 7

1801 miles & over—ZONE 8

(Actual mileages as they relate to zones may vary)

Section B—Table of Baseline Rates

ITEM 100.—TABLE OF BASELINE RATES AND MINIMUM CHARGE

Weight not to exceed (in pounds)	ZONES						
	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6	ZONE 7	ZONE 8
1	$3.11	$3.22	$3.45	$3.51	$3.70	$3.74	$3.85
2	3.18	3.38	3.72	3.83	4.12	4.22	4.48
3	3.27	3.54	3.93	4.09	4.39	4.54	4.96
4	3.39	3.69	4.14	4.36	4.66	4.80	5.28
5	3.53	3.83	4.33	4.57	4.87	5.07	5.60
6	3.68	3.96	4.48	4.78	5.08	5.34	5.87
7	3.83	4.08	4.59	4.94	5.29	5.55	6.13
8	3.97	4.21	4.70	5.05	5.45	5.81	6.56
9	4.10	4.34	4.80	5.16	5.61	6.13	6.98
10	4.24	4.45	4.91	5.32	5.83	6.56	7.46
11	4.38	4.58	5.02	5.47	6.09	7.04	7.99
12	4.52	4.72	5.12	5.63	6.36	7.52	8.58
13	4.65	4.87	5.22	5.74	6.67	7.99	9.17
14	4.76	5.02	5.32	5.85	7.05	8.47	9.74
15	4.87	5.18	5.41	6.01	7.42	8.95	10.33
16	4.96	5.35	5.57	6.22	7.80	9.42	10.92
17	5.05	5.53	5.73	6.48	8.20	9.91	11.51
18	5.14	5.72	5.94	6.80	8.59	10.38	12.08
19	5.25	5.91	6.16	7.12	8.98	10.87	12.67

ITEM 100.—TABLE OF BASELINE RATES AND MINIMUM CHARGE—Continued

Weight not to exceed (in pounds)	ZONES						
	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6	ZONE 7	ZONE 8
20	5.37	6.10	6.37	7.44	9.37	11.29	13.26
21	5.50	6.29	6.59	7.76	9.76	11.71	13.84
22	5.63	6.48	6.81	8.08	10.17	12.13	14.42
23	5.77	6.67	7.04	8.34	10.56	12.62	15.01
24	5.91	6.86	7.26	8.61	10.95	13.09	15.59
25	6.05	7.02	7.49	8.88	11.34	13.58	16.18
26	6.19	7.19	7.70	9.14	11.73	14.00	16.71
27	6.32	7.34	7.94	9.41	12.12	14.42	17.24
28	6.46	7.51	8.18	9.69	12.53	14.85	17.83
29	6.60	7.67	8.41	9.98	12.92	15.33	18.41
30	6.74	7.86	8.63	10.27	13.31	15.81	18.99
31	6.88	8.03	8.87	10.56	13.70	16.28	19.58
32	7.01	8.22	9.10	10.86	14.09	16.76	20.17
33	7.16	8.39	9.32	11.16	14.48	17.24	20.75
34	7.28	8.58	9.56	11.44	14.86	17.72	21.32
35	7.41	8.76	9.78	11.74	15.24	18.20	21.90
36	7.54	8.94	10.00	12.03	15.62	18.67	22.47
37	7.66	9.12	10.24	12.32	15.99	19.16	23.02
38	7.79	9.30	10.47	12.61	16.35	19.63	23.58
39	7.91	9.49	10.69	12.90	16.70	20.11	24.13
40	8.02	9.66	10.92	13.18	17.04	20.59	24.67
41	8.14	9.85	11.13	13.46	17.38	21.06	25.22
42	8.26	10.02	11.36	13.75	17.72	21.55	25.74
43	8.37	10.21	11.58	14.04	18.05	22.02	26.28
44	8.49	10.38	11.78	14.33	18.37	22.51	26.81
45	8.58	10.57	11.99	14.62	18.67	22.93	27.34
46	8.66	10.73	12.20	14.90	18.97	23.35	27.87
47	8.75	10.90	12.38	15.18	19.26	23.77	28.40
48	8.84	11.04	12.58	15.44	19.54	24.21	28.88
49	8.92	11.19	12.75	15.70	19.81	24.63	29.30
50	9.00	11.31	12.94	15.95	20.05	25.00	29.68
51	9.09	11.42	13.10	16.18	20.30	25.37	30.05
52	9.18	11.54	13.28	16.39	20.55	25.69	30.42
53	9.26	11.64	13.43	16.60	20.80	25.96	30.74
54	9.34	11.74	13.60	16.82	21.03	26.17	31.00
55	9.42	11.86	13.74	17.03	21.28	26.33	31.27
56	9.52	11.96	13.90	17.24	21.53	26.49	31.49
57	9.60	12.06	14.03	17.45	21.75	26.65	31.69
58	9.68	12.17	14.17	17.61	21.98	26.81	31.91
59	9.76	12.28	14.30	17.77	22.20	26.97	32.13
60	9.86	12.37	14.42	17.93	22.39	27.13	32.33
61	9.94	12.46	14.54	18.04	22.59	27.29	32.55
62	10.02	12.57	14.66	18.15	22.76	27.45	32.77
63	10.10	12.66	14.77	18.25	22.94	27.61	32.97
64	10.20	12.75	14.88	18.36	23.09	27.76	33.19
65	10.28	12.85	14.99	18.47	23.25	27.92	33.39
66	10.36	12.95	15.08	18.58	23.38	28.08	33.61
67	10.43	13.04	15.18	18.71	23.52	28.24	33.83
68	10.52	13.13	15.28	18.85	23.63	28.40	34.03
69	10.59	13.24	15.37	18.99	23.73	28.56	34.25
70	10.65	13.33	15.47	19.16	23.85	28.72	34.47
71	15.33	17.26	19.19	21.28	25.70	30.05	35.53
72	19.36	21.20	22.91	23.94	27.56	31.64	36.59
73	22.76	24.49	26.09	26.60	29.42	33.24	37.38
74	25.10	26.94	28.49	29.25	31.28	34.57	38.18
75	26.38	28.21	30.08	30.85	32.88	35.63	38.71
76	27.66	29.27	30.88	31.91	34.21	36.43	39.24
77	28.72	30.23	31.57	32.70	35.27	36.96	39.67
78	29.68	31.14	32.21	33.51	36.06	37.44	40.10
79	30.42	32.03	32.80	34.03	36.60	37.92	40.52
80	31.06	32.94	33.32	34.47	37.02	38.34	40.94
81	31.64	33.41	33.81	34.89	37.45	38.77	41.37
82	32.18	33.89	34.27	35.31	37.87	39.19	41.80
83	32.65	34.34	34.72	35.73	38.30	39.62	42.22
84	33.07	34.79	35.18	36.16	38.72	40.04	42.64
85	33.51	35.23	35.61	36.59	39.15	40.47	43.08
86	33.93	35.65	36.03	37.01	39.57	40.89	43.50
87	34.35	36.07	36.47	37.44	40.00	41.31	43.92
88	34.78	36.50	36.91	37.86	40.43	41.75	44.34
89	35.21	36.93	37.35	38.29	40.85	42.17	44.78

ITEM 100.—TABLE OF BASELINE RATES AND MINIMUM CHARGE—Continued

Weight not to exceed (in pounds)	ZONES						
	ZONE 2	ZONE 3	ZONE 4	ZONE 5	ZONE 6	ZONE 7	ZONE 8
90	35.63	37.35	37.79	38.71	41.27	42.59	45.20
91	36.05	37.78	38.21	39.14	41.70	43.01	45.62
92	36.48	38.20	38.63	39.56	42.13	43.45	46.04
93	36.91	38.63	39.03	39.99	42.55	43.87	46.48
94	37.33	39.05	39.42	40.42	42.97	44.29	46.90
95	37.76	39.48	39.80	40.84	43.41	44.71	47.32
96	38.17	39.85	40.18	41.26	43.83	45.15	47.75
97	38.59	40.22	40.56	41.69	44.25	45.57	48.17
98	39.00	40.59	40.94	42.12	44.67	45.99	48.60
99	39.42	40.96	41.33	42.54	45.11	46.42	49.02
100	39.83	41.34	41.71	42.96	45.53	46.85	49.45
101	40.20	41.71	42.10	43.32	45.92	47.26	49.86
102	40.57	42.09	42.48	43.68	46.31	47.67	50.28
103	40.94	42.46	42.86	44.04	46.70	48.09	50.69
104	41.31	42.83	43.24	44.42	47.10	48.50	51.11
105	41.69	43.20	43.62	44.78	47.50	48.92	51.52
106	42.06	43.57	44.00	45.14	47.89	49.33	51.93
107	42.44	43.94	44.38	45.50	48.28	49.75	52.35
108	42.81	44.31	44.78	45.86	48.67	50.16	52.77
109	43.18	44.68	45.16	46.22	49.07	50.57	53.18
110	43.55	45.05	45.54	46.58	49.46	50.99	53.59
111	43.91	45.43	45.92	46.94	49.85	51.41	54.01
112	44.27	45.81	46.30	47.30	50.25	51.82	54.43
113	44.63	46.18	46.68	47.66	50.64	52.23	54.84
114	44.99	46.55	47.07	48.02	51.03	52.65	55.25
115	45.35	46.92	47.45	48.38	51.43	53.07	55.66
116	45.71	47.29	47.84	48.75	51.82	53.48	56.09
117	46.08	47.66	48.22	49.11	52.21	53.89	56.50
118	46.44	48.03	48.60	49.47	52.60	54.30	56.91
119	46.80	48.41	48.98	49.83	53.00	54.73	57.32
120	47.17	48.78	49.36	50.19	53.40	55.14	57.74
121	47.53	49.15	49.75	50.55	53.79	55.55	58.16
122	47.89	49.52	50.13	50.91	54.18	55.96	58.57
123	48.25	49.90	50.51	51.28	54.57	56.38	58.98
124	48.61	50.27	50.89	51.64	54.96	56.80	59.40
125	48.97	50.64	51.28	52.00	55.35	57.21	59.81
126	49.33	51.01	51.66	52.36	55.76	57.62	60.23
127	49.69	51.39	52.04	52.73	56.15	58.03	60.64
128	50.06	51.76	52.43	53.09	56.54	58.45	61.06
129	50.42	52.13	52.81	53.45	56.93	58.87	61.47
130	50.78	52.50	53.19	53.81	57.32	59.28	61.88
131	51.14	52.87	53.57	54.17	57.72	59.69	62.30
132	51.50	53.24	53.95	54.53	58.11	60.11	62.72
133	51.86	53.61	54.33	54.89	58.51	60.53	63.13
134	52.22	53.98	54.73	55.25	58.90	60.94	63.54
135	52.58	54.36	55.11	55.61	59.29	61.35	63.96
136	52.94	54.74	55.49	55.97	59.68	61.77	64.38
137	53.30	55.11	55.87	56.33	60.08	62.18	64.79
138	53.67	55.48	56.25	56.69	60.47	62.60	65.20
139	54.03	55.85	56.63	57.06	60.87	63.01	65.61
140	54.40	56.22	57.01	57.42	61.26	63.43	66.04
141	54.76	56.59	57.40	57.79	61.65	63.84	66.45
142	55.12	56.96	57.79	58.15	62.05	64.25	66.86
143	55.48	57.33	58.17	58.51	62.44	64.67	67.27
144	55.84	57.71	58.55	58.87	62.83	65.09	67.69
145	56.20	58.08	58.93	59.23	63.22	65.50	68.11
146	56.56	58.45	59.31	59.59	63.62	65.91	68.52
147	56.92	58.83	59.69	59.95	64.01	66.32	68.93
148	57.28	59.20	60.08	60.31	64.41	66.75	69.35
149	57.64	59.57	60.46	60.67	64.80	67.16	69.76
150	58.00	59.94	60.84	61.04	65.19	67.57	70.18

SECTION C.—TABLE OF BASELINE RATES FOR HUNDREDWEIGHT SERVICE.

ITEM 101.—TABLE OF BASELINE HUNDREDWEIGHT (CWT) RATES AND MINIMUM CHARGE.

	Zones						
Ground	Zone 2	Zone 3	Zone 4	Zone 5	Zone 6	Zone 7	Zone 8
	$17.30	$23.00	$28.70	$34.60	$40.50	$46.40	$52.30

Rates apply for shipments meeting these conditions:

Packages addressed to a single consignee at one location.

Total aggregate weight of 200 pounds or more for each shipment.

To calculate charges:

1. Divide the billing aggregate weight by 100 to determine the number of Hundredweight Units.

2. Refer to Zone Chart to determine the zone (Item 30 Mileage to Zone Conversion).

3. Locate the Rate Per Hundredweight for that zone on the chart above.

4. Multiply the number of Hundredweight Units by the Rate Per Hundredweight to calculate the shipping charge.

5. A minimum charge for a Hundredweight Shipment will be based on an average weight of 15 pounds per package or $57.50 per shipment, whichever is greater. When a minimum applies, rates for single packages may be more economical.

Example: Three 75lb packages being shipped to Zone 3. The total weight of the three packages = 225. 225 divided by 100 = 2.25. 2.25 × Zone 3 rate of $23.00 = $51.75. This is less than the minimum charge of $57.50, so the minimum charge applies.

[FR Doc. 02–7738 Filed 3–29–02; 8:45 am]

BILLING CODE 6820–24–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Meeting of the President's Council on Bioethics on April 25–26, 2002

AGENCY: Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The President's Council on Bioethics will hold its third meeting to discuss its agenda and future activities.

DATES: The meeting will take place April 25, 2002, from 8:30 am to 5:00 pm and April 26, 2002, from 8:30 am to 1 pm.

ADDRESSES: The Hilton Crystal City at National Airport, 2399 Jefferson Davis Highway, Arlington, VA 22202.

PUBLIC COMMENTS: The meeting agenda will be posted in the near future at *http://bioethics.gov.* Written statements may be submitted by members of the public for the Council's records. Please submit statements to Ms. Diane Gianelli (tel. 202/296–4669 or e-mail *info@bioethics.gov*). Persons wishing to comment in person may do so during the hour set aside for this purpose beginning at noon on Friday, April 26. Comments will be limited to no more than five minutes per speaker or organization. Please give advance notice of such statements to Ms. Gianelli at the phone number given above, and be sure to include name, affiliation, and a brief description of the topic or nature of the statement.

FOR FURTHER INFORMATION CONTACT: Diane Gianelli, 202/296–4669, or visit our website at *http://bioethics.gov.*

Dated: March 22, 2002.

Dean Clancy,

Executive Director, The President's Council on Bioethics.

[FR Doc. 02–7725 Filed 3–29–02; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cooperative Agreement to Support the World Health Organization International Programme on Chemical Safety; Notice to Accept and Consider a Single Source Application; Availability of Funds for Fiscal Year 2002; RFA-FDA-CFSAN-02-2

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition (CFSAN) is announcing its intent to accept and consider a single source application for the award of a cooperative agreement to the World Health Organization (WHO) to support the International Programme on Chemical Safety (IPCS). FDA anticipates providing $140,000 (direct and indirect costs) in fiscal year 2002 in support of this project. Subject to the availability of Federal funds and successful performance, two additional years of support up to $140,000 per year (direct and indirect costs) will be available.

The cooperative agreement assures FDA's participation in important international standard setting activities for food ingredients, contaminants, and veterinary drug residues which provides the public with greater assurance of the quality and safety of food sold in the United States.

DATES: Submit applications by May 1, 2002.

ADDRESSES: Application forms are available from, and completed applications should be submitted to: Rosemary Springer, Division of Contracts and Procurement Management (HFA–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7182. If an application is hand-carried or commercially delivered, it should be addressed to 5630 Fishers Lane, rm. 2129, Rockville, MD 20857, FAX 301–827–7101. Application forms can also be found at http://www.nih.gov/grants/phs398/forms_toc.html. Do not send the application to the Center for Scientific Review, National Institutes of Health (NIH). An application not received by FDA in time for orderly processing will be returned to the applicant without consideration. FDA can not receive an application electronically.

FOR FURTHER INFORMATION CONTACT:

Regarding the administrative and financial management aspects of this notice: Rosemary Springer (see **ADDRESSES**), e-mail: rspringe@oc.fda.gov.

Regarding the programmatic aspects: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–205), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 202–418–3083, e-mail: Mitchell. Cheeseman @CFSAN. fda.gov.

I. Introduction

FDA is announcing its intention to accept and consider a single source application from the WHO to support the International Programme on Chemical Safety. FDA's authority to enter into grants and cooperative agreements is detailed under section 301 of the Public Health Service Act (42

U.S.C. 241). FDA's research program is described in the Catalog of Federal Domestic Assistance No. 93.103. Before entering into cooperative agreements, FDA carefully considers the benefits such agreements will provide to the public. This application is not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs (45 CFR part 100).

II. Background

Under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348), premarket approval is required for food additives intended for direct addition to food. FDA grants approval for the use of such food additives by issuance of a regulation prescribing the conditions under which the additive may be safely used, including any specifications regarding identity or purity that the additive must meet.

New animal drugs also require premarket approval under section 512 of the act (21 U.S.C 360b). As with food additives, FDA establishes appropriate limitations and specifications for the use of animal drugs.

Since the early 1980s, FDA has provided support for the WHO International Programme on Chemical Safety.

IPCS is a cooperative venture of three United Nations agencies: WHO, International Labor Organization (ILO), and the United Nations Environmental Programme (UNEP). WHO is the executing agency and manages the Central Unit in Geneva.

The IPCS organizational setting provides an umbrella that allows for timely collaboration in undertaking multinational cooperative activities, which is an important step in serving the world community.

The various programs under the International Programme on Chemical Safety significantly contribute in the development of international standards. An important program under IPCS is the Food and Agriculture Organization/WHO Joint Expert Committee on Food Additives (JECFA), which is the scientific advisory body to the Codex Alimentarius Commission for food additives, contaminants, and residues of veterinary drugs in food. Relevant standards, guidelines, and recommendations for food additives, contaminants, and veterinary drug residues established by the Codex Alimentarius Commission are specifically recognized by the World Trade Organization (WTO) as necessary to protect human health, and are presumed to be consistent with the 1994 Uruguay Round of the General Agreement on Tariffs and Trade (GATT). GATT requires that countries consider Codex standards when establishing measures to ensure food safety.

Since its inception in 1962, FDA has participated in the standard-setting activities of the Codex Alimentarius Commission, including developing standards for food additives, contaminants, and veterinary drug residues. The result of this interaction has been to maintain the high safety standard for foods entering the United States from abroad and to facilitate trade between the United States and the 164 other countries that participate in the development of, and recognize, Codex standards. It is important that FDA continues to participate in such standard development in order to maintain input into the development of appropriate scientific standards for the protection of the safety of food ingredients and to share information on the development of such standards around the world.

FDA's participation in international harmonization and international standard setting activities enhances the Agency's ability to achieve international standards that are favorable; ensures that the safety of the U.S. food supply is not compromised by inadequate international standards; and promotes the safe use of food additives in foods in international trade and thereby enhances the safe use of food additives in imported food. Participation in international standard setting activities also reduces the likelihood of challenges involving food additives being brought before WTO either by the U.S. Government or against the U.S. Government.

III. Objectives

The following activities to be supported by this cooperative agreement are:

1. Schedule, plan, and conduct appropriate work groups and committee meetings, which have emphasis on food additives and contaminants, and the evaluation of residues in veterinary drugs in food.

2. Identify advisers and prepare working papers summarizing the data on substances under consideration.

3. Prepare written working papers and technical documents for JECFA, for the Codex Committee on Food Additives and Contaminants, and for the Codex Committee on Residues of Veterinary Drugs in Food.

IV. Delineation of Substantive Involvement

Substantive involvement by the awarding agency is inherent in the cooperative agreement award. Accordingly, FDA will have substantial involvement in the program activities of the project funded by the cooperative agreement. Substantive involvement includes, but is not limited to, the following:

1. FDA will participate as head of the U.S. Delegation in the Sessions of the Codex Committee on Food Additives and Contaminants (CCFAC). This includes participation in all ad hoc working groups associated with CCFAC. This participation includes, but is not limited to, serving as chair for the CCFAC ad hoc Working Group on the General Standard for Food Additives (GSFA), and the CCFAC ad hoc Working Group on Specifications, and participating in the CCFAC's ad hoc Working Group on Contaminants and Toxins.

2. FDA will participate in the Codex Committee on Residues of Veterinary Drugs in Food (CCRVDF). Current participation includes, but is not limited to, chair of CCRVDF and head of the U. S. Delegation to CCRVDF.

3. FDA will provide official comments to the Codex Secretariat on discussion documents, position papers, draft Codex standards, and other documents associated with CCFAC and CCRVDF that are circulated for comment. FDA will ensure that these comments are consistent with current agency policy on the use of food additives and the presence of contaminants in food (CCFAC), and on the presence of veterinary drug residues in food (CCRVDF).

4. FDA will work closely with the Codex Secretariat to provide, as needed, in accordance with charges given to the U.S. Delegation by CCFAC or CCRVDF, expert assistance in the timely development of Codex documents, which may include, but are not limited to, technical documents (e.g., associated with Meeting Reports of CCFAC and/or CCRVDF), databases, and draft Codex Standards (e.g., GSFA).

5. FDA will provide expert advice to FAO/WHO JECFA. This advice may include, but is not limited to, the areas of food additive specification development, estimation of intake of food additives and contaminants, risk assessment, and safety assessment of food additives, contaminants, and veterinary drug residues in food.

V. Availability of Funds

It is anticipated that FDA will fund this cooperative agreement at a level of

approximately $140,000 for the first year. An additional 2 years of support will be available, depending upon fiscal year appropriations, and successful performance.

VI. Reasons for Single-Source Selection

Competition is limited to WHO/IPCS because it is the parent organization of JECFA, which provides scientific advice to the Codex Alimentarius Commission. The international food standards established by the Codex Alimentarius Commission are recognized by WTO as necessary to protect public health and presumed to be consistent with the Sanitary and Phytosanitary Agreement of GATT. These programs under IPCS are the only such programs in existence and make IPCS unique as a participant in international standard setting for food ingredients, contaminants, and veterinary drug residues. Awarding this cooperative agreement will ensure that the risk assessments provided by JECFA to the Codex Alimentarius Commission are science-based, ensure that food sold in the United States is safe, and enhance the safe use of food additives in imported food.

VII. Submission Requirements

The original and two copies of the completed grant application form PHS 398 (rev. 5/01) with copies of the appendices for each of the copies, should be submitted to Rosemary Springer (see **ADDRESSES**). The outside of the mailing package should be labeled ''Response to RFA-FDA-CFSAN-02-2''. The application will be accepted during normal working hours, 8 a.m. to 4:30 p.m., Monday through Friday, on or before May 1, 2002. Information collection requirements requested on Form PHS 398 and the instructions have been submitted by the Public Health Service (PHS) to the Office of Management and Budget (OMB) and were approved and assigned OMB control number 0925–0001.

VIII. Reporting Requirements

An annual financial status report (FSR) (SF–269) is required. The original and two copies of the report must be submitted to FDA's Grants Management Officer within 90 days of the budget expiration date of the grant. Failure to file FSR in a timely fashion will be grounds for suspension or termination of the grant.

An annual program progress report is also required. The noncompeting continuation application (PHS 2590) will be considered the annual program progress report.

A final program progress report, FSR (SF–269), and invention statement must be submitted within 90 days after the expiration of the project period as noted on the notice of grant award.

IX. Review Procedures and Evaluation Criteria

A. Review Procedures

The application submitted by WHO/IPCS will first be reviewed by grants management and program staff for responsiveness. The requested budget must not exceed $140,000 (direct and indirect costs). The application will be considered nonresponsive if it is not in compliance with this document. If an application is found to be nonresponsive, it will be returned to the applicant without further consideration.

The application submitted by IPCS will undergo noncompetitive dual peer review. The application will be reviewed for scientific and technical merit by an ad hoc panel of experts based upon the applicable evaluation criteria. If the application is recommended for approval, it will then be presented to the National Advisory Environmental Health Sciences Council for their concurrence.

B. Review Criteria

The application will be reviewed and evaluated according to the following criteria:

1. The application clearly demonstrates an understanding of the purpose and objectives of the cooperative agreement regarding the safety of food ingredients, contaminants, and veterinary drug residues.

2. The application clearly describes the steps and a proposed schedule for planning, implementing, and accomplishing the activities to be carried out under the cooperative agreement. The application presents a clear plan and schedule of steps to accomplish the goals of the cooperative agreement.

3. The application establishes the applicant's ability to perform the responsibilities under the cooperative agreement including the availability of appropriate staff and sufficient funding.

4. The application specifies the manner in which interaction with FDA will be maintained throughout the lifetime of the project.

5. The application specifies how IPCS will monitor progress of the work under the cooperative agreement and how progress will be reported to FDA.

6. The application shall include a detailed budget that shows: (1) Anticipated costs for personnel, travel, communications and postage, equipment, and supplies; and (2) the sources of funds to meet those needs.

X. Mechanism of Support

Support for this project will be in the form of a cooperative agreement. This agreement will be subject to all policies and requirements that govern the research grant programs of PHS, including provisions of 42 CFR part 52, 45 CFR parts 74 and 92, and PHS's grants policy statement. The regulations issued under Executive Order 12372 do not apply. The length of support will be 1 year with the possibility of an additional 2 years of noncompetitive support. Continuation beyond the first year will be based upon satisfactory performance during the preceding year and the availability of Federal fiscal year appropriations. The NIH modular grant program does not apply to this FDA program.

XI. Legend

Unless disclosure is required under the Freedom of Information Act as amended (5 U.S.C. 552) as determined by the freedom of information officials of the Department of Health and Human Services or by a court, data contained in the portions of this application that have been specifically identified by page number, paragraph, etc. by the applicant as containing restricted information, shall not be used or disclosed except for evaluation purposes.

Dated: March 27, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7819 Filed 3–27–02; 2:54 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Obstetrics and Gynecology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2002, from 8 a.m. to 5 p.m.

Location: Gaithersburg Marriott Washingtonian Center, Salons E, F, and G, 9751 Washingtonian Blvd., Gaithersburg, MD.

Contact Person: Joyce M. Whang, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12524. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss, make recommendations, and vote on a premarket approval application for an intrapartum fetal monitor. Background information, including the agenda and questions for the committee, will be available to the public 1 business day before the meeting on the Internet at http://www.fda.gov/cdrh/panelmtg.html. Material for the April 22, 2002, meeting will be posted on April 19, 2002.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 11, 2002. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9 a.m. and between approximately 3 p.m. and 3:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 11, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact AnnMarie Williams, Conference Management Staff, at 301–594–1283, ext. 113, at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–7731 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Meeting of the Nonprescription Drugs Advisory Committee With Consultation From the Pulmonary and Allergy Drugs Advisory Committee and the Dermatologic and Ophthalmologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: Nonprescription Drugs Advisory Committee

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 22, 2002, from 8 a.m. to 5 p.m. and on April 23, 2002, from 9 a.m. to 12 noon.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: On April 22, 2002, the committee will consider the safety and efficacy of new drug applications (NDA): NDA 19–658, CLARITIN Tablet; NDA 20–704, CLARITIN RediTab; and NDA 20–641, CLARITIN Syrup. These three CLARITIN products (loratadine, Schering-Plough Corp.) are immediate release formulations of the products that are proposed for over-the-counter (OTC) use for the relief of symptoms associated with allergic rhinitis and chronic idiopathic urticaria (CIU). The primary purpose of the meeting is to discuss CIU as an OTC indication. The background material for this meeting will be posted under the Nonprescription Drugs Advisory Committee (NDAC) Docket site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to NDAC.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 12, 2002. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. on April 22, 2002, and the meeting will be closed to the public between approximately 9 a.m. and 12 noon on April 23, 2002. Time allotted for each presentation may be limited. Priority for presentations will be given to those who demonstrate that they plan to address CIU as an OTC indication. Those desiring to make formal oral presentations should notify the contact person before April 12, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Closed Committee Deliberations: On April 23, 2002, from approximately 9 a.m. to 12 noon, the meeting will be closed to provide an annual update and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 25, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–7730 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0266]

Draft Guidance on Current Good Manufacturing Practice for Positron Emission Tomography Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance entitled ''PET Drug Products—Current Good Manufacturing Practice (CGMP).'' We are announcing the availability of preliminary draft proposed regulations elsewhere in this issue of the **Federal Register**. We are making the draft guidance available so that producers of positron emission tomography (PET) drugs will better understand FDA's thinking concerning CGMP compliance if the preliminary draft proposed regulations were to become final after notice and comment rulemaking.

DATES: A public meeting on the draft guidance will be held on May 21, 2002.

Submit written or electronic comments on the draft guidance by June 5, 2002.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information (HFD–240), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your request. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Brenda Uratani, Center for Drug Evaluation and Research (HFD–325), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–0098.

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 1997, the President signed the Food and Drug Administration Modernization Act of 1997 (Modernization Act) (Public Law 105–115) into law. Section 121(c)(1)(A) of the Modernization Act directs us to establish appropriate approval procedures and CGMP requirements for PET drugs. Section 121(c)(1)(B) states that, in adopting such requirements, we must take due account of any relevant differences between not-for-profit institutions that compound PET drugs for their patients and commercial manufacturers of the drugs. Section 121(c)(1)(B) also directs us to consult with patient advocacy groups, professional associations, manufacturers, and physicians and scientists who make or use PET drugs as we develop PET drug CGMP requirements and approval procedures.

We presented our initial tentative approach to PET drug CGMP requirements and responded to numerous questions and comments about that approach at a public meeting on February 19, 1999. In the **Federal Register** of September 22, 1999 (64 FR 51274), we published a notice of availability of preliminary draft regulations on CGMP for PET drug products. Those preliminary draft regulations were discussed at a subsequent public meeting on September 28, 1999.

After considering the comments on the preliminary draft regulations, we have decided to make several revisions to those regulations. Elsewhere in this issue of the **Federal Register**, we are announcing the availability of a preliminary draft proposed rule on CGMP for PET drug products. We are making this draft guidance available now so that PET drug producers will better understand FDA's thinking concerning compliance with the preliminary draft proposed CGMP regulations if they were to become final after notice and comment rulemaking. We invite comments on whether the guidance would be a useful accompaniment to the proposed rule. The preliminary draft proposed rule and the draft guidance will be discussed at a public meeting to be held on May 21, 2002, from 9 a.m. to 4:30 p.m., at 5630 Fishers Lane, rm. 1066, Rockville, MD 20852.

II. Comments

Interested persons may submit to the Dockets Management Branch (address above) written or electronic comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Electronic comments may be submitted to http://www.fda.gov/dockets/ecomments. The draft guidance and the comments submitted to the docket may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document at http://www.fda.gov/cder/guidance/index.htm, http://www.fda.gov/ohrms/dockets/default.htm, or http://www.fda.gov/cder/fdama under ''Section 121—PET (Positron Emission Tomography).''

Dated: March 25, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–7729 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Proposed Collection; Comment Request

AGENCY: Indian Health Service.

ACTION: Request for public comment: 30-day proposed information collection; Hoz'ho'nii: An intervention to increase breast and cervical cancer screening among Navajo women.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed information collection projects, the Indian Health Service (IHS) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection project was previously published in the **Federal Register** (66 FR 66912) on December 27, 2001 and allowed 60 days for public comment. No public comment was received in response to the notice. The purpose of this notice is to allow 30 days for public comment to be submitted directly to OMB.

Proposed Collection: Title: Hoz'ho'nii: An Intervention To Increase Breast and Cervical Cancer Screening Among Navajo Women. *Type of Information Collection Request:* New. *Form Number:* None. *Need and Use of the Information Collection:* The information is needed to evaluate a culturally appropriate educational outreach program designed to increase breast and cervical cancer screening among Navajo women ages 20 and older. The purpose is to identify barriers that may prevent Navajo women from participating in breast and cervical cancer screening by comparing changes

in knowledge, attitudes, and behaviors of three study groups; educational outreach only, education outreach plus chapter-based clinic, and a control group. Results will be used to assess the impact of the impact of the educational outreach program, improve breast and cervical cancer screening, and to guide the IHS and Tribal health programs in the delivery of culturally appropriate intervention to reduce mortality rates from breast and cervical cancer among Navajo women. *Affected Public:* Individuals. *Type of Respondents:* Individuals. The table below provides the estimated burden response for this information collection:

ESTIMATED BURDEN RESPONSE TABLE

Data collection instrument	Estimated No. of respondents	Responses per respondent	Average burden hour per response	Total annual burden hrs
KAB Pretest	450	1	0.42 hr (25 minutes)	188.0
KAB Post test	450	1	0.42 hr (25 minutes)	188.0
Interviews	30	1	0.25 hr (15 minutes)	8.0
Total	930	1		384.0

[1] For ease of understanding, burden hours are also provided in actual minutes.

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report for this information collection.

Request for Comments: Your written comments and/or suggestions are invited on one or more of the following points: (a) Whether the information collection activity is necessary to carry out an agency function; (b) whether the IHS processes the information collected in a useful and timely fashion; (c) the accuracy of the public burden estimate (the estimated amount of time needed for individual respondents to provide the requested information); (d) whether methodology and assumptions used to determine the estimate are logical; (e) ways to enhance the quality, utility, and clarity of the information being collection; and (f) was to minimize the public burden through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Send your written comments and suggestions regarding the proposed information collection contained in this notice, especially regarding the estimated public burden and associated response time, to: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for IHS.

To request more information on the proposed collection or to obtain a copy of the data collection plan(s) and/or instruction(s), contact: Mr. Lance Hodahkwen, Sr., M.P.H., IHS Reports Clearance Officer, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20852–1601, or call non-toll free (301) 443–5938, or send via facsimile to (301) 443–2613, or send your e-mail requests, comments, and return address to: *lhodahkwen@hqe.ihs.gov.*

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

Dated: March 3, 2002.

Michael H. Trujillo,

Assistant Surgeon General, Director, Indian Health Service.

[FR Doc. 02–7763 Filed 3–29–02; 8:45 am]

BILLING CODE 4160–16

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Consensus Development Conference on Management of Hepatitis C: 2002

Notice is hereby given of the National Institutes of Health (NIH) Consensus Development Conference on ''Management of Hepatitis C: 2002'' to be held June 10–12, 2002, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8 a.m. on June 10 and 11, and at 9 a.m. on June 12 and will be open to the public.

The hepatitis C virus (HCV) is the leading cause of liver disease in the United States and certainly the most common cause of cirrhosis and hepatocellular carcinoma; it is also the most common reason for liver transplantation. Almost 4 million people in this country are believed to be infected with this virus. A Consensus Development Conference on hepatitis C was held at the National Institutes of Health in March 1997. This led to an important, widely distributed NIH Consensus Statement that, for several years, was broadly accepted as the standard of care.

In the five years since that time, there has been a dramatic increase in knowledge of the condition, indicating the need to re-examine the approaches to management and treatment. This conference is convened with the aim of reviewing the most recent developments regarding management, treatment options, and the widening spectrum of potential candidates for treatment.

During the first day-and-a-half of the conference, experts will present the latest hepatitis C research findings to an independent, non-Federal panel. After weighing all of the scientific evidence, the panel will draft a statement, addressing the following key questions:

- What is the natural history of hepatitis C?
- What is the most appropriate approach to diagnose and monitor patients?
- What is the most effective therapy for hepatitis C?
- Which patients with hepatitis C should be treated?
- What recommendations can be made to patients to prevent transmission of hepatitis C?
- What are the most important areas for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow, to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Institute of Diabetes and Digestive and Kidney Diseases and the NIH Office of Medical Applications of Research. Cosponsors of the meeting are: Centers for Disease Control and Prevention (CDC), the U.S. Food and Drug Administration (FDA), the U.S. Department of Veterans Affairs (VA), the National Institute of Child Health and Human Development (NICHD), the National Cancer Institute (NCI), the National Center for Complementary and Alternative Medicine (NCCAM), the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institute of Allergy and Infectious Diseases (NIAID), and the National

Heart, Lung, and Blood Institute (NHLBI).

Advance information about the conference and conference registration materials may be obtained from AIR Prospect Center of Silver Spring, Maryland, by calling 301–592–3320 or by sending e-mail to <*hepatitisc@prospectassoc.com*>. AIR Prospect Center's address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437. A conference agenda and registration information are also available on the NIH Consensus Program Web site at <*http://consensus.nih.gov*>.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. Conference attendees may want to leave extra bags or personal materials at their hotel to minimize the time needed for inspection. For more information about the new security measures at NIH, please visit the Web site at <*http://www.nih.gov/about/visitorssecurity.htm*>.

Dated: March 25, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7814 Filed 3–29–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

State-of-the-Science Conference on Symptom Management in Cancer: Pain, Depression, and Fatigue

Notice is hereby given of the National Institutes of Health (NIH) State-of-the-Science Conference on ''Symptom Management in Cancer: Pain, Depression, and Fatigue'' to be held July 15–17, 2002, in the NIH Natcher Conference Center, 45 Center Drive, Bethesda, Maryland 20892. The conference will begin at 8 a.m. on July 15 and 16, and at 9 a.m. on July 17 and will be open to the public.

While research is producing increasingly hopeful insights into the causes and cures of cancer, efforts to manage the side effects of the disease and its treatments have not kept pace. Evidence suggests that pain, for example, is frequently under-treated in the oncology setting.

In the past three decades, scientific discoveries have transformed cancer from a usually fatal disorder to a curable illness for some and a chronic disease for many more. With this shift has come a growing optimism about the future, but also a growing appreciation of the human costs of cancer care. As patients live longer with cancer, concern is growing about both the health-related quality of life of those diagnosed with cancer and the quality of care they receive. The challenge that faces us is how to increase awareness about the importance of recognizing and actively addressing cancer-related distress when it occurs. Specifically, we need to be able to identify who is at risk for cancer-related pain, depression, and/or fatigue; what treatments work best to address these symptoms when they occur; and how best to deliver interventions across the continuum of care.

This two-and-a-half-day conference will examine the current state of knowledge regarding the management of pain, depression and fatigue in individuals with cancer and identify directions for future research.

During the first day-and-a-half of the conference, experts will present the latest research findings on cancer symptom management to an independent non-Federal panel. After weighing all of the scientific evidence, the panel will draft a statement, addressing the following key questions:

- What is the occurrence of pain, depression, and fatigue, alone and in combination, in people with cancer?
- What are the methods used for clinical assessment of these symptoms throughout the course of cancer, and what is the evidence for their reliability and validity in cancer patients?
- What are the treatments for cancer-related pain, depression, and fatigue, and what is the evidence for their effectiveness?
- What are the impediments to effective symptom management in people diagnosed with cancer, and what are optimal strategies to overcome these impediments?
- What are the directions for future research?

On the final day of the conference, the panel chairperson will read the draft statement to the conference audience and invite comments and questions. A press conference will follow, to allow the panel and chairperson to respond to questions from the media.

The primary sponsors of this meeting are the National Cancer Institute and the NIH Office of Medical Applications of Research. Co-sponsors of the meeting are: the U.S. Food and Drug Administration (FDA), the National Institute on Aging (NIA), the National Institute of Dental and Craniofacial Research (NIDCR), the National Institute of Mental Health (NIMH), the National Institute of Nursing Research (NINR), the National Institute of Neurological Disorders and Stroke (NINDS), and the National Center for Complementary and Alternative Medicine (NCCAM).

Advance information about the conference and conference registration materials may be obtained from AIR Prospect Center of Silver Spring, Maryland, by calling 301–592–3320 or by sending e-mail to < *cancersymptoms@prospectassoc.com*>. AIR Prospect Center's address is 10720 Columbia Pike, Suite 500, Silver Spring, Maryland 20901–4437. A conference agenda and registration information are also available on the NIH Consensus Program Web site at <*http://consensus.nih.gov*>.

Please Note: The NIH has recently instituted new security measures to ensure the safety of NIH employees and property. All visitors must be prepared to show a photo ID upon request. Visitors may be required to pass through a metal detector and have bags, backpacks, or purses inspected or x-rayed as they enter NIH buildings. Conference attendees may want to leave extra bags or personal materials at their hotel to minimize the time needed for inspection. For more information about the new security measures at NIH, please visit the Web site at <*http://www.nih.gov/about/visitorssecurity.htm*>.

Dated: March 25, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 02–7815 Filed 3–29–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of renewal of a currently approved information collection.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs has submitted to the Office of Management and Budget a request for renewal of a currently approved information collection titled The Indian Service Population and Labor Force Estimates, OMB Control No. 1076–0147. You are invited to send comments on this collection to the Office of Management and Budget at the address listed in the **ADDRESSES** section.

DATES: Submit comments on or before May 1, 2002.

ADDRESSES: Written comments should be sent directly to the Office of Management and Budget, Office of

Information and Regulatory Affairs, Attention: Desk Officer for the Department of the Interior, Room 10102, 725 17th Street NW, Washington, DC 20503.

Send a copy of your comments to Mr. Harry Rainbolt, Budget Officer, Office of Tribal Services, Bureau of Indian Affairs, Department of the Interior, 1849 C Street NW, MS–4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Rainbolt, (202) 208–3463.

SUPPLEMENTARY INFORMATION: A 60-day notice requesting public comments was published in the **Federal Register** on October 19, 2001 (66 FR 53248). No comments were received.

I. Abstract

The information is mandated by Congress through Public Law 102–477, Indian Employment, Training and Related Services Demonstration Act of 1992, Section 17(a). The Act requires the Secretary to develop, maintain and publish, not less than biennially, a report on the population, by gender, income level, age, service area, and availability for work. The information is used by the U.S. Congress, other Federal Agencies, State and local governments and private sectors for the purpose of developing programs, planning, and to award financial assistance to American Indians.

II. Request for Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper performance of the functions of the BIA, including whether the information will have practical utility;

2. The accuracy of the BIA's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Please note that 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. All comments will be available for public inspection at 1849 C Street NW, Room 4660 during the hours of 8:00 a.m. to 4:00 p.m. EST, except weekends and Federal holidays. If you wish your name and address withheld from the public view, you must state so prominently at the beginning of your comments. We will honor your request to the extent of law.

III. Data.

Title: Department of the Interior, Bureau of Indian Affairs, Indian Service Population and Labor Force Estimate.

OMB Control Number: 1076–0147.

Affected Entities: American Indians and Alaska Natives, members and non-members, who are living on or near the tribe's defined service area and who are eligible for Bureau of Indian Affairs services.

Frequency of Response: Biennially.

Estimated Number of Biennial Responses: 561.

Estimated Time per Response: ½ hour.

Estimated Total Annual Burden Hours: 140 (biennially: 280).

Dated: March 11, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7741 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Notice of Fund Availability (NOFA)

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of extension of application deadlines.

SUMMARY: The Bureau of Indian Affairs (BIA) published a notice in the **Federal Register** of February 4, 2002, announcing the availability of $1.5 million for funding to tribal courts (including Courts of Indian Offenses) and qualified tribal applicants that assume responsibility over Supervised IIM Accounts under 25 CFR part 115. This notice extends the application deadline to May 10, 2002.

DATES: The application deadline is extended from March 6, 2002 to May 10, 2002.

ADDRESSES: Send applications to Ralph Gonzales, Bureau of Indian Affairs, Office of Tribal Services, Branch of Judicial Services, MS Room 4660–MIB, 1849 C Street, NW., Washington, DC 20240; Fax No. (202) 208–5113.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 208–4401.

SUPPLEMENTARY INFORMATION: As published in the **Federal Register** of February 4, 2002 (67 FR 5130), the deadline for submitting application forms under this NOFA was March 6, 2002. Because of several requests from tribal courts that 30 days to complete their applications does not provide enough time to collect required data from the BIA and to have the proper documentation acted on by the tribal government, we are extending the application deadline to May 10, 2002.

This notice is published under the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

Dated: March 20, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7740 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved tribal-State compact.

SUMMARY: Pursuant to section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Off-Track Wagering Compact between the Quapaw Tribe and the State of Oklahoma, which was executed on October 13, 2001.

DATES: This action is effective April 1, 2002.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 19, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–7742 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collections; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of information collection (1010–0017).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns form MMS–128, Semiannual Well Test Report.

DATES: Submit written comments by May 31, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the form.

SUPPLEMENTARY INFORMATION:

Title: Form MMS–128, Semiannual Well Test Report.

OMB Control Number: 1010–0017.

Abstract: The Outer Continental Shelf (OCS) Lands Act (Act), as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Operations on the OCS must preserve, protect and develop oil and natural gas resources in a manner which is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

This notice pertains to a form used to collect information required under 30 CFR 250, subpart K, on production rates. Section 250.1102(b) requires respondents to submit form MMS–128. Responses are mandatory. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to 30 CFR 250.196 (Data and information to be made available to the public), 30 CFR part 252 (OCS Oil and Gas Information Program), and the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2). Regional Supervisors use information submitted on form MMS–128 to evaluate the results of well tests to find out if reservoirs are being depleted in a way that will lead to the greatest ultimate recovery of hydrocarbons. We designed the form to present current well data on a semiannual basis to allow the updating of permissible producing rates and to provide the basis for estimates of currently remaining recoverable gas reserves. We are proposing no changes to the data elements on form MMS–128. However, we are reducing the number of copies respondents submit to require only an original and ''one'' copy.

Frequency: Semiannual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil and gas lessees.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: We estimate the burden to be 1½ hours per form for an estimated annual burden of 2,490 hours.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: We have identified no ''non-hour cost'' burdens associated with the subject form.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology. We will summarize written responses to this notice and address them in our submission for OMB approval, including any appropriate adjustments to the estimated burdens.

Agencies must estimate both the ''hour'' and ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. We have identified no non-hour cost burdens for this form. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. You should not include estimates for equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 28, 2002.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 02–7801 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension and revision of a currently approved information collection (OMB Control Number 1010–0050).

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), we are inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns the paperwork requirements in the regulations under 30 CFR 250, subpart J, Pipelines and Pipeline Rights-of-Way.

DATES: Submit written comments by May 31, 2002.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy at no cost of the regulations that require the subject collection of information.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way.

OMB Control Number: 1010–0050, incorporating 1010–0134.

Abstract: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior (Secretary) to prescribe rules and regulations to administer leasing of the OCS. Such rules and regulations will apply to all operations conducted under a lease. Section 1334(e) authorizes the Secretary to grant rights-of-way through the submerged lands of the OCS for pipelines ''for the transportation of oil, natural gas, sulphur, or other minerals, or under such regulations and upon such conditions as may be prescribed by the Secretary, * * * including (as provided in section 1347(b) of this title) assuring maximum environmental protection by utilization of the best available and safest technologies, including the safest practices for pipeline burial. * * *''

The Independent Offices Appropriations Act of 1952 (IOAA), 31 U.S.C. 9701, authorizes Federal agencies to recover the full cost of services that provide special benefits. Under the Department of the Interior's (DOI) policy implementing the IOAA, MMS is required to charge the full cost for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. Pipeline rights-of-way and assignments are subject to cost recovery and MMS regulations specify filing fees for applications.

This notice concerns the reporting and recordkeeping elements of 30 CFR 250, subpart J and related Notices to Lessees and Operators. OMB approved the information collection requirements in current subpart J regulations under control numbers 1010–0050 and 1010–0134. The first is the primary collection for subpart J. The latter was approved in connection with a final rule amending § 250.1000(c) to clarify regulatory issues involving the 1996 Memorandum of Understanding between DOI and the Department of Transportation (DOT). Our submission will consolidate these two subpart J collections under 1010–0050. Responses are mandatory or are required to obtain or retain a benefit. No questions of a ''sensitive'' nature are asked. MMS will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2), 30 CFR 250.196 (Data and information to be made available to the public) and 30 CFR part 252 (OCS Oil and Gas Information Program).

The lessees and transmission companies design the pipelines that they install, maintain, and operate. To ensure those activities are performed in a safe manner, MMS needs information concerning the proposed pipeline and safety equipment, inspections and tests, and natural and manmade hazards near the proposed pipeline route. MMS field offices use the information collected under subpart J to review pipeline designs prior to approving an application for a right-of-way or a pipeline permitted under a lease to ensure that the pipeline, as constructed, will provide for safe transportation of minerals through the submerged lands of the OCS. They review proposed routes of a right-of-way to ensure that the right-of-way, if granted, would not conflict with any State requirements or unduly interfere with other OCS activities. MMS field offices review plans for taking pipeline safety equipment out of service to ensure alternate measures are used that will properly provide for the safety of the pipeline and associated facilities (platform, etc.). They review notification of relinquishment of a right-of-way grant and requests to abandon pipelines to ensure that all legal obligations are met and pipelines are properly abandoned. MMS inspectors monitor the records on pipeline inspections and tests to ensure safety of operations and protection of the environment and to schedule their workload to permit witnessing and inspecting operations. Information is also necessary to determine the point at which DOI or DOT has regulatory responsibility for a pipeline and to be informed of the responsible operator if not the same as the right-of-way holder.

Frequency: The frequency of reporting is on occasion or annual.

Estimated Number and Description of Respondents: Approximately 130 Federal OCS oil, gas, and sulphur lessees and 106 holders of pipeline rights-of way.

Estimated Annual Reporting and Recordkeeping ''Hour'' Burden: The currently approved ''hour'' burden for the two subpart J information collections is a combined total of 79,086 hours. The following chart details the individual paperwork components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of business. We consider these to be usual and customary and took that into account in our estimates.

Citation 30 CFR 250 subpart J	Reporting and recordkeeping requirement	Burden per requirement (hrs)
1000(b), 1007(a)	Submit application to install new lease term pipeline (P/L), including exceptions/departures	140
1000(b), (d); 1007(a); 1009(a)(1), (b)(1); 1010; 1011.	Apply for P/L right-of-way (ROW) grant and installation of new ROW P/L, including exceptions/departures .	140
1000(b); 1007(b); 1010; 1012(b)(2), (c) .	Submit application to modify lease-term or ROW P/L, including exceptions/departures; notify operators of deviation .	40

Citation 30 CFR 250 subpart J	Reporting and recordkeeping requirement	Burden per requirement (hrs)
1000(b); 1006(a); 1007(c) .	Apply to abandon lease-term P/L, including exceptions/departures	8
1000(b); 1006(a); 1007(c); 1009(c)(9); 1014.	Apply to abandon ROW P/L and relinquish P/L ROW grant, including exceptions/departures	8
1000(c)(2)	Identify in writing P/L operator on ROW if different from ROW grant holder	¼
1000(c)(4)	Petition to MMS for exceptions to general operations transfer point description	5
1000(c)(8)	Request MMS recognize valves landward of last production facility but still located on OCS as point where MMS regulatory authority begins .	½
1000(c)(12)	Petition to MMS to continue to operate under DOT regs upstream of last valve on last production facility .	40
1000(c)(13)	Transportation P/L operators petition to DOT and MMS to continue to operate under MMS regs	40
1004(c)	Place sign on safety equipment identified as ineffective and removed from service. See footnote[1]	
1005(a)	Inspect P/L routes for indication of leakage[1], record results, maintain records 2 years[2]	20
1008(a), (c), (d), (e), (f), (h) .	Notify MMS and submit report on P/L or P/L safety equipment repair, removal from service, analysis results, or potential measurements .	16
1008(b)	Submit P/L construction report	16
1008(g)	Submit plan of corrective action and report of remedial action	16
1009(b)	Submit surety bond on form MMS–2030	¼
1009(c)(4)	Notify MMS of any archaeological resource discovery	4
1009(c)(8)	Make available to MMS design, construcion, operation, maintenance, and repair records on ROW area and improvements[2] .	10
1010(a)	Apply to convert lease-term P/L to ROW grant P/L; notify operators of deviation, including various exceptions/departures .	12
1011(d)	Request opportunity to eliminate conflict when application has been rejected	1
1013	Apply for assignment of a ROW grant	12
1000–1014	General departure and alternative compliance requests not specifically covered elsewhere in subpart J regulations .	2

[1] These activities are usual and customary practices for prudent operators.
[2] Retaining these records is usual and customary business practice; required burden is minimal.

Estimated Annual Reporting and Recordkeeping ''Non-Hour Cost'' Burden: The currently approved non-hour cost burden for collection 1010–0050 is $332,000; there was no non-hour cost burden under 1010–0134. Section 250.1010(a) specifies that an applicant must pay a non-refundable filing fee when applying for a pipeline right-of-way grant to install a new pipeline ($2,350) or to convert an existing lease-term pipeline into a right-of-way pipeline ($300). Under § 250.1013(b) an applicant must pay a non-refundable filing fee ($60) when applying for approval of an assignment of a right-of-way grant.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *''. Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information collected; and (d) minimize the burden on respondents, including automated collection techniques or other forms of information technology.

Agencies must also estimate the ''non-hour cost'' burdens to respondents or recordkeepers resulting from the collection of information. Except as noted above for application filing fees required in §§ 250.1010(a) and 250.1013(b), we have identified no other non-hour cost burdens. Therefore, if you have costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Capital and startup costs include, among other items, computers and software you purchase to prepare for collecting information, monitoring, and record storage facilities. Generally, your estimates should not include equipment or services purchased: (i) Before October 1, 1995; (ii) to comply with requirements not associated with the information collection; (iii) for reasons other than to 1 provide information or keep records for the Government; or (iv) as part of customary and usual business or private practices.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Policy: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from

individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 12, 2002.

William S. Hauser,

Acting Chief, Engineering and Operations Division.

[FR Doc. 02–7802 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Scientific Committee of the Minerals Management Advisory Board; Announcement of Plenary Session

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Minerals Management Advisory Board OCS Scientific Committee will meet at the Holiday Inn and Suites in Alexandria, Virginia.

DATES: Tuesday, April 23, and Wednesday April 24, 2002, from 8:30 a.m. to 5:00 p.m.; Thursday, April 25, from 8:30 to noon.

ADDRESSES: The Holiday Inn and Suites, 625 First Street, Alexandria, Virginia 22314, telephone (703) 548–6300.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. LaBelle or Ms. Julie Reynolds at the address or phone numbers listed below.

SUPPLEMENTARY INFORMATION: The OCS Scientific Committee is an outside group of scientists which advises the Director, MMS, on the feasibility, appropriateness, and scientific merit of the MMS OCS Environmental Studies Program as it relates to information needed for informed OCS decisionmaking.

The Committee will meet in plenary session on Tuesday, April 23. Presentations will be made by the Director, MMS, the Associate Director for Offshore Minerals Management, and a representative from the OCS Policy Committee. After these presentations, the rest of the day will be filled by presentations from the MMS regional studies chiefs on their research priorities and needs in the context of regional decisionmaking.

On Wednesday, April 24, the Committee will meet in discipline subcommittee breakout sessions to review the specific research plans of the regions for Fiscal Year 2003 and 2004.

On Thursday, April 25, the Committee will meet in plenary session to discuss subcommittee reports and to conduct Committee business.

The meetings are open to the public. Approximately 30 visitors can be accommodated on a first-come-first-served basis at the plenary session.

A copy of the agenda may be requested from MMS by calling Ms. Julie Reynolds at (703) 787–1211. Other inquiries concerning the OCS Scientific Committee meeting should be addressed to Mr. Robert LaBelle, Executive Secretary to the OCS Scientific Committee, Minerals Management Service, 381 Elden Street, Mail Stop 4040, Herndon, Virginia 20170–4817 or by calling (703) 787–1656.

Authority: Federal Advisory Committee Act, Pub. L. 92–463, 5 U.S.C., Appendix I, and the Office of Management and Budget's Circular A–63, Revised.

Dated: February 21, 2002.

Thomas A. Readinger,

Associate Director for Offshore Minerals Management.

[FR Doc. 02–7800 Filed 3–29–02; 8:45 am]

BILLING CODE 4043–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Padre Island National Seashore, Corpus Christi, TX

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability of a Plan of Operations, Environmental Assessment, and Floodplains and Wetlands Statement of Findings for a 30-day public review at Padre Island National Seashore, Kleberg and Kenedy Counties, Texas.

SUMMARY: The National Park Service (NPS), in accordance with Section 9.52(b) of Title 36 of the Code of Federal Regulations, Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands has received from BNP Petroleum Corporation a Plan of Operations for drilling and production of the Lemon/Lemon Seed Unit Wells, No. 1–1000S and No. 1–1008S from a surface location 12.5 miles south along the Gulf beach, from the end of Park Road 22, within Padre Island National Seashore. Additionally, the NPS has prepared an Environmental Assessment and Floodplains and Wetlands Statement of Findings for the site of the proposed well.

DATES: The above documents are available for public review and comment for a period of 30 days from the publication date of this notice in the **Federal Register**.

ADDRESSES: The Plan of Operations, Environmental Assessment, and Floodplain and Wetlands Statement of Findings are available for public review and comment in the Office of the Superintendent, Padre Island National Seashore, 20301 Park Road 22, Corpus Christi, Texas. Copies of the Plan of Operations are available, for a duplication fee, from the Superintendent, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300.

FOR FURTHER INFORMATION CONTACT: Arlene Wimer, Environmental Protection Specialist, Padre Island National Seashore, P.O. Box 181300, Corpus Christi, Texas 78480–1300, Telephone: 361–949–8173 x 224, e-mail at *Arlene_Wimer@nps.gov.*

SUPPLEMENTARY INFORMATION: If you wish to submit comments about this document within the 30 days; mail them to the post office address provided above, hand-deliver them to the park at the street address provided above, or electronically file them to the e-mail address provided above. Our practice is to make comments, including names and home addresses of responders, available for public review during regular business hours.

Dated: March 4, 2002.

R. Everhart,

Acting Regional Director, Intermountain Region.

[FR Doc. 02–7816 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 16, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed

comments should be submitted by April 16, 2002.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

CALIFORNIA

Orange County

Fullerton Odd Fellows Temple, 112 E. Commonwealth Ave., Fullerton, 02000383

Santa Clara County

Free, Arthur Monroe, House, 66 S. 14th St., San Jose, 02000384

COLORADO

Jefferson County

Deaton Sculpted House, 24501 Ski Hill Dr., Golden, 02000385

HAWAII

Hawaii County

Waiakea Mission Station—Hilo Station, 211 Haili St., Hilo, 02000387

Honolulu County

Boettcher Estate, 248 North Kalaheo, Kailua, 02000388

Hawaii Shingon Mission, 915 Sheridan St., Honolulu, 02000386

KANSAS

Butler County

Butler County Courthouse (County Courthouses of Kansas MPS), 205 W. Central Ave., El Dorado, 02000390

Cheyenne County

Cheyenne County Courthouse (County Courthouses of Kansas MPS), 212 E. Washington St., St. Francis, 02000391

Comanche County

Comanche County Courthouse (County Courthouses of Kansas MPS), 201 S. New York Ave., Coldwater, 02000395

Grant County

Grant County Courthouse District (County Courthouses of Kansas MPS), 108 S. Glenn St., Ulysses, 02000396

Jewell County

Jewell County Courthouse (County Courthouses of Kansas MPS), 307 N. Commercial St., Mankato, 02000397

Leavenworth County

Leavenworth County Courthouse (County Courthouses of Kansas MPS), 300 Walnut St., Leavenworth, 02000394

Leavenworth Downtown Historic District, Roughly Cherokee St., Delaware St., S. Fifth St., and Shawnee St., Leavenworth, 02000389

Leavenworth Historic Industrial District, Roughly Third St. Choctaw St., Second St. and Cherokee St., Leavenworth, 02000406

Osborne County

Osborne County Courthouse (County Courthouses of Kansas MPS), 423 W. Main St., Osborne, 02000392

Republic County

Republic County Courthouse (County Courthouses of Kansas MPS), Bounded by ''M'' St., Eighteenth St., ''N'' St., and Nineteenth St., Belleville, 02000393

Rice County

Rice County Courthouse (County Courthouses of Kansas MPS), 101 W. Commercial St., Lyons, 02000401

Rooks County

Rooks County Courthouse (County Courthouses of Kansas MPS), 115 N. Walnut St., Stockton, 02000400

Wabaunsee County

Wabaunsee County Courthouse (County Courthouses of Kansas MPS), 215 Kansas Ave., Alma, 02000399

Wyandotte County

Wyandotte County Courthouse (County Courthouses of Kansas MPS), 710 N. 7th St., Kansas City, 02000398

MISSISSIPPI

Tishomingo County

Brinkley, R.C., House (Iuka MPS), 605 E. Eastport St., Iuka, 02000407

MISSOURI

Macon County

Gardner and Tinsley Filling Station, Old US 36, near jct. with MO 149, New Cambria, 02000408

NEBRASKA

Lancaster County

Calhoun, James D., House, 1130 Plum St., Lincoln, 02000411

Federal Trust Building, 134 S. 13th St., Lincoln, 02000409

Yost, John H. and Christina, House, 1900 S. 25th St., Lincoln, 02000410

RHODE ISLAND

Providence County

Norwood Avenue Historic District, Roughly along Norwood Ave. bet. Roger Williams to Broad St., Cranston, 02000412

TEXAS

Hidalgo County

Cine El Rey (County Courthouses of Kansas MPS), 311 S. 17th St., McAllen, 02000402

Kerr County

Woolls Building, 318 San Antonio, Center Point, 02000403

Lampasas County

Lampasas Colored School, 514 College St., Lampasas, 02000404

Tarrant County

Near Southeast Historic District, Roughly bounded by New York Ave., E. Terrell Ave., former I&GN Railway, Verbena St., and N side of E. Terrell Ave, Fort Worth, 02000405

VERMONT

Rutland County

Gifford Woods State Park (Historic Park Landscapes in National and State Parks MPS) VT 100, Killington, 02000414

Washington County

Jones Brothers Granite Shed, 720 N. Main St., VT 302, Barre, 02000413

WISCONSIN

Fond Du Lac County

Linden Street Historic District, 253–295 and 274–304 Linden St., Fond du Lac, 02000418

Wallace—Jagdfield Octagon House, 171 Forest Ave., Fond du Lac, 02000416

Marinette County

Kena Road School, N2155 US 141, Pound, 02000415

Milwaukee County

Lindsay—Brostrom Building, 133 W. Oregon St., Milwaukee, 02000417

A request for *move* has been made for the following resources:

MISSOURI

Callaway County

Pitcher Store, 8513 Pitcher Rd., Fulton vicinity, 01000235

Richland Christian Church, 5301 Callaway Cty. Rd. 220, Kingdom City vicinity, 01000122

Macon County

Gardner and Tinsley Filling Station, US 36, near jct. with MO 149, New Cambria vicinity, 02000408

[FR Doc. 02–7817 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 9, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW, Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed

comments should be submitted by April 16, 2002.

Carol D. Shull,

Keeper of the National Register Of Historic Places.

CALIFORNIA

San Francisco County

Fairmont Hotel, 950 Mason St., San Francisco, 02000373
San Francisco Fire Department Engine Co. Number 2, 460 Bush St., San Francisco, 02000371

Tehama County

State Theatre, 333 Oak St., Red Bluff, 02000372

IOWA

Dallas County

Adel Bridge, (Highway Bridges of Iowa MPS) River St., Adel, 02000374

Lee County

Weber, Alois and Annie, House, 802 Orleans Ave., Keokuk, 02000375

MASSACHUSETTS

Berkshire County

Housatonic Congregational Church, 1089 Main St., Great Barrington, 02000377

Essex County

Amesbury Friends Meeting House, 120 Friend St., Amesbury, 02000376

Middlesex County

Groton Leatherboard Company, 6 W. Main St., Groton, 02000378

MISSOURI

Greene County

Oberman, D.M., Manufacturing Co. Building, 600 N. Boonville Ave., Springfield, 02000379

PENNSYLVANIA

Chester County

Barclay House, 535 and 539 N. Church St., West Chester, 02000380

WISCONSIN

Fond du Lac County

Kendall—Blankenburg House, 14 Sixth St., Fond du Lac, 02000381
Tallmadge, Montgomery and Nancy, House, 225 Sheboygan St., Fond du Lac, 02000382
A request for a *move* has been made for the following resource

SOUTH CAROLINA

Horry County

Quattlebaum, C.P., Office (Conway MRA) 903 Third Ave, Conway, 86002235.

[FR Doc. 02–7818 Filed 3–29–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–02–008]

Sunshine Act Meeting

Agency Holding the Meeting: United States International Trade Commission.

Time and Date: April 8, 2002 at 2:00 p.m.

Place: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

Status: Open to the public.

Matters to be Considered:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv. No. 731–TA–990 (Preliminary)(Non-Malleable Cast Iron Pipe Fittings from China)—briefing and vote. (The Commission is currently scheduled to transmit its determination to the Secretary of Commerce on or before April 8, 2002; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before April 15, 2002.)
5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: March 27, 2002.

By order of the Commission:

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–7904 Filed 3–28–02; 12:46 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; annual survey of jails.

The Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, has submitted the following information collection requires for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed collection was previously published in the **Federal Register** on January 4, 2002, Volume 67, page 609, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 1, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Overview of this information collection:

(1) *Type of information Collection:* Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Annual Survey of Jails.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Forms:* CJ–5, CJ–5A, CJ–5B. Correction Statistics, Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* County and City jail authorities and Tribal authorities. The ''Annual Survey of Jails'' (ASJ) is the only collection effort that provides an ability to maintain important jail statistics in years between jail censuses.

The ASJ enables the Bureau; Federal, State, and local correctional administrators; legislators; researchers; and planners to track growth in the number of jails and their capacities nationally; as well as, track changes in the demographic and supervision status of jail population and the prevalence of crowding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 946 respondents at 1.25 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* Total annual burden hours are 1,183.

If additional information is required, please contact Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 26, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–7755 Filed 3–29–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: 30-day notice of information collection under review, new collection, data collection from grantees to reduce violent crimes against women on campus program.

The Department of Justice, Office of Justice Programs, Violence Against Women office, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 4, 2002 Volume 67, page 608, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 1, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* Data Collection from Grants to Reduce Violent Crimes Against Women on Campus Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* There is no agency form number. The component is the Violence Against Women Office, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Institutions of Higher Education. The Grants to Reduce Violent Crimes Against Women on Campus Program was authorized through Section 826 of the Higher Education Amendments of 1998 to make funds available to institutions of higher education to combat domestic violence, dating violence, sexual assault and stalking crimes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 45 respondents will complete a 1-hour data collection form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total annual hour burden to complete the data collection forms is 45 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: March 26, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–7756 Filed 3–29–02; 8:45 am]

BILLING CODE 4410–18–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 2002–4 CARP NCBRA]

Noncommercial Educational Broadcasting Compulsory License

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of voluntary negotiation period, precontroversy discovery schedule, and request for Notices of Intent to Participate.

SUMMARY: The Copyright Office of the Library of Congress is announcing a voluntary negotiation period for the 17 U.S.C. 118 noncommercial educational broadcasting compulsory license, along with a precontroversy discovery schedule, a request for Notices of Intent to Participate, and the initiation date should arbitration proceedings be necessary.

DATES: Notices of Intent to Participate are due on or before April 25, 2002.

ADDRESSES: If sent by mail, an original and five copies of Notices of Intent to Participate should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If hand delivered, an original and five copies of Notices of Intent to Participate should be brought to: Office of the Copyright General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, SE., Washington, DC 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney for Compulsory Licenses, Copyright Arbitration Royalty Panel (CARP), P.O.

Box 70977, Southwest Station, Washington, DC 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five year intervals. The last adjustment of the terms and rates for the section 118 license occurred in 1997, thus, making 2002 a window year for the adjustment of these terms and rates.

Section 118(b) provides that copyright owners and public broadcasting entities may voluntarily negotiate licensing agreements at any time, and that such licensing agreements will be ''given effect in lieu of any determination by the Librarian of Congress; Provided, That copies of such agreements are filed in the Copyright Office within thirty days of execution in accordance with regulations that the Register of Copyrights shall prescribe.'' 17 U.S.C. 118(b)(2).

Those parties not subject to a negotiated license must follow the terms and rates adopted through arbitration proceedings conducted under chapter 8 of the Copyright Act. Section 118(b)(3) provides:

> In the absence of license agreements negotiated under paragraph (2), the Librarian of Congress shall, pursuant to chapter 8, convene a copyright arbitration royalty panel to determine and publish in the **Federal Register** a schedule of rates and terms which, subject to paragraph (2), shall be binding on all owners of copyright in works specified by this subsection and public broadcasting entities, regardless of whether such copyright owners have submitted proposals to the Librarian of Congress. . . .

In order to commence the adjustment process described in section 118, the Copyright Office of the Library of Congress is publishing today's notice. With respect to private licenses, we note that the statute provides that they may be negotiated at any time and must be submitted to the Copyright Office in order to be effective. However, in keeping with tradition, we believe that it is appropriate and efficient to designate a negotiation period, prior to copyright arbitration royalty panel (CARP) proceedings, in order to encourage private agreements and, possibly, avoid the need for a CARP. Consequently, we are announcing a voluntary negotiation period commencing today and running to May 15, 2002. Any agreements entered into during this period should be deposited with the Copyright Office in accordance with the regulations established in 37 CFR 201.9. Of course, license agreements may still be negotiated and deposited prior to, and after, the designated negotiation period.

The Library notes that while many of the terms and rates of the section 118 license typically have been subject to private negotiation, certain terms and rates have not. These terms and rates affect the works of unknown copyright owners and owners not affiliated with one or more of the performing rights societies and/or artists organizations. *See, e.g.* 37 CFR 253.5(c)(4) and 253.6(c)(4). The Library recognizes that it is difficult, if not impossible, for noncommercial educational broadcasting entities to identify these copyright owners in order to negotiate terms and rates of licenses. Consequently, in these limited circumstances where negotiated licenses are not practicable, the Library is willing to accept proposals for terms and rates from noncommercial educational broadcasting entities and subject them to the public notice and comment provisions of § 251.63(b) of the Library's rules. The Librarian will adopt the proposed rates and terms, unless a copyright owner, with a significant interest in the proposal and an intent to participate fully in a CARP proceeding, files comment opposing the proposed terms and rates.

For all other terms and rates for the section 118 license, in the absence of negotiated licenses, the Librarian of Congress will convene a CARP. The proceeding will be conducted according to the following schedule.

Notices of Intent to Participate

Any party wishing to appear before the CARP, and to present evidence, in this proceeding must file a Notice of Intent to Participate by April 25, 2002. Failure to file a timely Notice of Intent to Participate will preclude a party from participating in this proceeding.

Precontroversy Discovery Schedule

The Library of Congress is announcing the scheduling of the precontroversy discovery period, and other procedural matters, for the establishment of rates and terms for the section 118 compulsory license. In addition, the Library is announcing the date on which arbitration proceedings will be initiated before a CARP, thereby commencing the 180-day arbitration period. Once a CARP has been convened, the scheduling of the arbitration period is within the discretion of the CARP and will be announced at that time.

A. Commencement of the Proceeding

A rate adjustment proceeding under part 251 of 37 CFR is divided into two essential phases. The first is the 45-day precontroversy discovery phase, during which the parties exchange their written direct cases, exchange their documentation and evidence in support of their written direct cases, and engage in the pre-CARP motions practice described in § 251.45. The other phase is the proceeding before the CARP itself, including the presentation of evidence and the submission of proposed findings by all of the participating parties. The proceeding before the CARP may be in the form of hearings or, in accordance with the requirements of § 251.41(b) of the rules, the proceeding may be conducted solely on the basis of written pleadings.

Both of these phases to a rate adjustment proceeding require significant amounts of work, not just for the parties, but for the Librarian, the Copyright Office, and the arbitrators as well. The rates and terms proceeding for section 118 is not the only CARP proceeding likely to take place during 2002. Other proceedings will include distribution of cable, satellite, and digital audio royalties, as well as rate adjustment proceedings for the digital performance license (section 114) and the mechanical license (section 115). It would be extremely difficult for the Office to conduct the precontroversy discovery phase of more than one of these proceedings simultaneously, therefore, the Library must conduct them sequentially.

Because of the number of CARP proceedings to be conducted in 2002, and the attending workload, selection of a date to initiate a section 118 rate setting proceeding is not dependent on the schedules of one or more of the participating parties, but must be weighed against the interests of all involved. The parties affected by section 118 are most likely aware that 2002 is a window year for the adjustment of terms and rates, and as described above, are being given a formal negotiation period to reach agreements. Because of the other proceedings which must be scheduled, the attending workload, and the need to manage the interests of all involved, the Library is announcing the precontroversy discovery schedule and arbitration period in this proceeding without seeking further comment from the participating parties.

B. Precontroversy Discovery Schedule and Procedures

Any party that has filed a Notice of Intent to Participate in the section 118 adjustment proceeding is entitled to participate in the precontroversy discovery period. Each party may request of an opposing party non-privileged documents underlying facts asserted in the opposing party's written direct case. The precontroversy discovery period is limited to discovery of documents related to written direct cases and any amendments made during the period.

The following is the precontroversy discovery procedural schedule with corresponding deadlines:

Action	Deadline
Filing of Written Direct Cases	July 1, 2002.
Requests for Underlying Documents Related to Written Direct Cases	July 11, 2002.
Responses to Requests for Underlying Documents	July 17, 2002.
Completion of Document Production	July 22, 2002.
Follow-up Requests for Underlying Documents	July 29, 2002.
Responses to Follow-up Requests	August 5, 2002.
Motions Related to Document Production	August 8, 2002.
Production of Documents in Response to Follow-up Requests	August 12, 2002.
All Other Motions, Petitions, and Objections	August 14, 2002.

The precontroversy discovery period, as specified by § 251.45(b) of the rules, begins on July 1, 2002, with the filing of written direct cases by each party. Each party in this proceeding who has filed a Notice of Intent to Participate must file a written direct case on the date prescribed above. Failure to submit a timely filed written direct case will result in dismissal of that party's case. Parties must comply with the form and content of written direct cases as prescribed in 37 CFR 251.43. Each party to the proceeding must deliver a complete copy of its written direct case to each of the other parties to the proceeding, as well as file a complete copy with the Copyright Office by close of business on July 1, 2002, the first day of the 45-day period.

After the filing of the written direct cases, document production will proceed according to the above-described schedule. Each party may request underlying documents related to each of the other parties' written direct cases by July 11, 2002, and responses to those requests are due by July 17, 2002. Documents which are produced as a result of the requests must be exchanged by July 22, 2002. It is important to note that all initial document requests must be made by the July 11, 2002 deadline. Thus, for example, if one party asserts facts that expressly rely on the results of a particular study that was not included in the written direct case, another party desiring production of that study must make its request by July 11, 2002; otherwise, the party is not entitled to production of the study.

The precontroversy discovery schedule also establishes deadlines for follow-up discovery requests. Follow-up requests are due by July 29, 2002, and responses to those requests are due by August 5, 2002. Any documentation produced as a result of a follow-up request must be exchanged by August 12, 2002. An example of a follow-up request would be as follows. In the above example, one party expressly relies on the results of a particular study which is not included in its written direct case. As noted above, a party desiring production of that study or survey must make its request by July 11, 2002. If, after receiving a copy of the study the reviewing party determines that the study heavily relies on the results of a statistical survey, it would be appropriate for that party to make a follow-up request for production of the statistical survey by the July 29, 2002, deadline. Again, failure to make a timely follow-up request would waive that party's right to request production of the survey.

In addition to the deadlines for document requests and production, there are two deadlines for the filing of precontroversy motions. Motions related to document production must be filed by August 8, 2002. Typically, these motions are motions to compel production of requested documents for failure to produce them, but they may also be motions for protective orders. Finally, all other motions, petitions and objections must be filed by August 14, 2002, the final day of the 45-day precontroversy discovery period. These motions, petitions, and objections include, but are not limited to, objections to arbitrators appearing on the arbitrator list under 37 CFR 251.4, and petitions to dispense with formal hearings under § 251.41(b).

Due to the time limitations between the procedural steps of the precontroversy discovery schedule, we are requiring that all discovery requests and responses to such requests be served by hand or fax on the party to whom such response or request is directed. Filing of requests and responses with the Copyright Office is not required.

Filing and service of all precontroversy motions, petitions, objections, oppositions, and replies shall be as follows. In order to be considered properly filed with the Librarian and/or Copyright Office, all pleadings must be brought to the Copyright Office at the following address no later than 5 p.m. of the filing deadline date: Office of the Register of Copyrights, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540. The form and content of all motions, petitions, objections, oppositions, and replies filed with the Office must be in compliance with §§ 251.44(b)–(e). As provided in § 251.45(b), oppositions to any motions or petitions must be filed with the Office no later than seven business days from the date of filing of such motion or petition. Replies are due five business days from the date of filing of such oppositions. Service of all motions, petitions, objections, oppositions, and replies must be made on counsel or the parties by means no slower than overnight express mail on the same day the pleading is filed.

C. Initiation of Arbitration

Initiation of the proceedings before the CARP will commence on October 7, 2002, the first day of the 180-day arbitration specified in Chapter 8 of the Copyright Act. The schedule of the arbitration proceeding will be established by the CARP after the three arbitrators have been selected.

Dated: March 27, 2002.

David O. Carson,

General Counsel.

[FR Doc. 02–7809 Filed 3–29–02; 8:45 am]

BILLING CODE 1410–33–P

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 97–5D]

Copyright Restoration of Works in Accordance With the Uruguay Round Agreements Act; Notification Pertaining to Notices of Intent To Enforce Restored Copyrights

AGENCY: Copyright Office, Library of Congress.

ACTION: Notification of request to retract prior filings of notices of intent to enforce restored copyrights; correction.

SUMMARY: On December 3, 2001, the Copyright Office published a public notice that the Copyright Office received a notification of a request to retract the filing of certain notices of intent to enforce restored copyrights under the Uruguay Round Agreements Act. This document makes non-substantial corrections to that notice.

EFFECTIVE DATE: April 1, 2002.

FOR FURTHER INFORMATION CONTACT: Charlotte Douglass, Principal Legal Advisor to the General Counsel, or Marilyn Kretsinger, Assistant General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington DC 20024–0400. Telephone (202) 707–8380. Fax (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Copyright Office published a notice, RM 97–5C, in the **Federal Register** of December 3, 2001 (66 FR 60223), addressing the receipt of a notification from the Authors Rights Restoration Corporation retracting all of its filings in the Copyright Office of notices of intention to enforce restored copyrights under the Uruguay Round Agreements Act. This document makes non-substantial corrections to the table of titles published in that notice.

In notice RM 97–5C published on December 3, 2001 (66 FR 60223), correct the table that begins in column 1 on page 60223 to read as follows:

U.S. Copyright Owner	Film title	Translated title
Alameda Films, S.A.	El Baron del Terror	The Baron of Terror.
Alameda Films, S.A.	El Grito de la Muerte	Cry of Death.
Alameda Films, S.A.	El Hombre y El Monstruo	The Man and the Monster.
Alameda Films, S.A.	La Cabeza Viviente	The Living Head.
Cima Films, S.A. de C.V.	Dios Los Cria	Made by God.
Cima Films, S.A. de C.V.	Juan Armenta el Repatriado	Juan Armeta the Repatriated.
Cima Films, S.A. de C.V.	La Ley del Monte	The Law of the Mountain.
Cima Films, S.A. de C.V.	La Valentina	The Valentina.
Cinematografic Filmex S.A. de C.A.	Tacos Al Carbon	Tacos Al Carbon.
Cinematografic Filmex S.A. de C.A.	Diamantes, Oro y Amor	Diamonds, Gold and Love.
Cinematografica Jalisco, S.A. de C.V.	El Desconocido	The Unknown.
Cinamatograficia Sol, S.A. de C.V.	Carceria Humana	Human Hunter.
Cinematografica Sol. S.A. de C.V.	En Peligro de Muerte	In Danger of Dying.
Cinematografica Sol. S.A. de C.V.	El Ansia de Matar	The Longing of Kill, The Longing of Death, Eager to Kill.
Cinematografica Sol. S.A. de C.V.	El Hombre Violento	The Violent Man.
Cineproduccioine Internacionales, S.A. de C.V.	El Trinquetero	The Cheater.
Cineproducciiones Internacionales, S.A. de C.V	El Sargento Perez	The Sargent Perez.
Cineproducciones Internacionales, S.A. de C.V.	El Arte de Enganar	The Art of Fooling.
Cineproducciones Internacionales, S.A. de C.V.	El Deseo En Otono	The Autumn Desire.
Cinevision, S.A. de C.V.	La Gatita	The Pussy Cat.
Cumbre Films, S.A. de C.V.	Acorralado	Corraled.
Cumbre Films, S.A. de C.V.	El Cuatrero	The Cattle Thief.
Cumbre Films, S.A. de C.V.	El Diablo El Santo, y El Tonto	The Devil, the Saint, and the Idiot.
Cumbre Films, S.A. de C.V.	El Embustero	The Lying.
Cumbre Films, S.A. de C.V.	El Macho	The Macho Man.
Cumbre Films, S.A. de C.V.	Entre Compadres Tu Veas	Seen Between Godfathers.
Cumbre Films, S.A. de C.V.	Por Tu Maldito Amor	For Your Dammed Love.
Cumbre Films, S.A. de C.V.	Sinverguenza Pero Honrado	Brazen But Honest.
Cumbre Films, S.A. de C.V.	Mi Querido Viejo	My Dear Old Man.
Cumbre Films, S.A. de C.V.	Matar O Morir	To Kill Or To Die.
Cumbre Films, S.A. de C.V.	El Sinverguenza	The Scoundrel.
Diana Films Internacionales, S.A. de C.V.	Cartas Marcadas	Marked Cards.
Diana Films Internacionales, S.A. de C.V.	Duro Pero Seguro	Hard But Sure.
Diana Films Internacionales, S.A. de C.V.	La Presidenta Municipal	The Town President.
Filmadora Mexicana, S.A. de C.V.	Medianoche	Middle Night.
Filmadora Mexicana, S.A. de C.V.	La Esquina de Mi Barrio	My Neighborhood Corner.
Filmadora Mexicana, S.A. de C.V.	Duena y Senora	Owner and Lady.
Filmadora Mexicana, S.A. de C.V.	La Casa Chica	The Other House.
Gazcon Films, S.A. de C.V.	Dos de Abajo	Two From Below.
Gazcon Films, S.A. de C.V.	Perro Callerjero I	Wild Dog I.
Grupo Galindo, S.A. de C.V.	El Rey dc Los Albures	The King of Double Meaning.
Grupo Galindo, S.A. de C.V.	Amaneci en Tus Brazos	I Woke Up In Your Arms.
Grupo Galindo, S.A. de C.V.	Carabina 30–30	30–30 Carbine.
F. Mier, S.A.	Vivo O Muerto	Dead or Alive.
F. Mier, S.A.	La Hermana Blanca	The White Sister.
F. Mier, S.A.	El Nino Perdido	The Lost Boy.
Oro Films, S.A. de C.V.	El Martir de Calvario	The Martyr Of The Calvary.
Oro Films, S.A. de C.V.	El Hombre Sin Rostro	The Man Without A Face.
Oro Films, S.A. de C.V.	El Aviso y Inoportuno	The Unexpected Announcement.
Oro Films, S.A. de C.V.	Vivillo Desde Chiquillo	Smart Since Childhood.
Oro Films, S.A. de C.V.	Casa De Vecindad	House Of The Neighborhood.

U.S. Copyright Owner	Film title	Translated title
Peliculas y Video Internacioinale, S.A. de C.V.	Ay Amor Como Me Has Puesto	Oh Love, What Has Become of Me.
Peliculas y Videos Internacionale, S.A. de C.V.	El Cielo y la Tierra	The Sky and the Earth.
Peliculas y Videos Internacionale, S.A. de C.V.	El Tesoro del Rey Salomon	The Treasury Of King Solomon.
Peliculas y Videos Internacionale, S.A. de C.V.	Esposa O Amante	Wife Or Lover.
Peliculas y Videos Internacionale, S.A. de C.V.	Lagrimas de Amor	Tears Of Love.
Procinema, S.A. de C.V.	Un Par a Todo Dar	A Great Pair.
Producciones EGA, S.A. de C.V.	El Bronco	The Bronco.
Producciones Galubi, S.A. de C.V.	La Golfa Del Barrio	The Woman.
Producciones Galubi, S.A. de C.V.	El Hijo del Palenque	Palenque's Son.
Producciones Galubi, S.A. de C.V.	Santos vs. Los Asesinos De Ortros Mundos	Santo Verus the Assassins from Other Worlds.
Producciones Galubi, S.A. de C.V.	El Agentc Viajero	The Traveling Agent.
Producciones Matouk, S.A. de C.V.	Las Aventuras de Juliancito	The Adventures of Juliancito.
Producciones Matouk, S.A. de C.V.	Chico Ramos	Young Ramos.
Producciones Matouk, S.A. de C.V.	Primera Comunion	First Communion.
Producciones Rosas Priego, S.A. de C.V.	Quinceanera	She's Fifteen.
Producciones Rosas Priego, S.A. de C.V.	Azahares Rojos	Red Blossom.
Producciones Rosas Priego, S.A. de C.V.	Crucifijo de Piedra	The Stone Cross.
Producciones Rosas Priego, S.A. de C.V.	El Aguila Negra	The Black Eagle.
Producciones Torrente, S.A. de C.V.	Narcoterror	Narcoterror.
Producciones Torrente, S.A. de C.V.	Pandilla de Criminales	Gang of Criminals.
Producciones Torrenta, S.A. de C.V.	Ladrones de Tumbas	Thieves Of The Tombs.
Producciones Virgo, S.A. de C.V.	Andante	Walker.
Producciones Virgo, S.A. de C.V.	El Sexo Sentido	The Sex Sense.
Producciones Virgo, S.A. de C.V.	No Hay Cruces en el Mar	There Are No Crosses In The Sea.
Produciones, Vigo, S.A. de C.V.	El Sexo Me da Risa	Sex Makes Me Laugh.
Secine, S.A. de C.V.	El Gallo de Oro	The Golden Rooster.
Video Universal, S.A. de C.V.	Thaimi, La Hija del Pescador	Thaima, Daughter of the Fisherman.
Video Universal, S.A. de C.V.	La Tortola del Ajusco	The Turtledove Of Ajusco.
Video Universal, S.A. de C.V.	El Fantastico Mundo del los Hippies	The Fantastic World of the Hippies.
Video Universal, S.A. de C.V.	El Reino de los Gangsters	Reign of the Gangsters.

Dated: March 27, 2002.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 02–7808 Filed 3–29–02; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–044)]

Notice of Prospective Patent and Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent and copyright license.

SUMMARY: NASA hereby gives notice that American Remote Vision Company of Titusville, Florida has applied for an exclusive license to practice the invention described and claimed in U.S. Patent 5,970,798 entitled ''Ultrasonic Bolt Gage.'' This technology is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, and John F. Kennedy Space Center.

DATES: Responses to this Notice must be received by May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: March 25, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–7788 Filed 3–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–046)]

Notice of Prospective Patent and Copyright License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Prospective Patent License.

SUMMARY: NASA hereby gives notice that Circuit Avenue Netrepreneurs of Philadelphia, PA, has applied for an exclusive license to practice the invention described and claimed in KSC–12301 entitled ''Advanced Self-Healing, Self-Calibrating Data Acquisition System.'' This technology is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Randall M. Heald, Assistant Chief Counsel/Patent Counsel, at John F. Kennedy Space Center.

DATES: Responses to this Notice must be received on or before April 16, 2002.

FOR FURTHER INFORMATION CONTACT: Randall M. Heald, Assistant Chief Counsel/Patent Counsel, John F. Kennedy Space Center, Mail Code: CC–A, Kennedy Space Center, FL 32899, telephone (321) 867–7214.

Dated: March 25, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–7790 Filed 3–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–045)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Triton Systems, Inc. of 200 Turnpike Road, Chelmsford, MA 01824 has applied for an exclusive license to

practice the invention described in NASA Case Number LAR–16176–1 entitled ''Space Environmentally Durable Polyimides and Copolyimides'' for which a U.S. Patent Application was filed and assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Langley Research Center.

DATES: Responses to this notice must be received by (15) days from date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patrick F. Roughen, Jr., Patent Attorney, Langley Research Center, Mail Stop 212, Hampton, VA 23681–2199. Telephone (757) 864–9340; Fax (757) 864–9190.

Dated: March 25, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–7789 Filed 3–29–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL COMMUNICATIONS SYSTEM

Telecommunications Service Priority System Oversight Committee

AGENCY: National Communications System (NCS).

ACTION: Notice of meeting.

A meeting of the Telecommunications Service Priority (TSP) System Oversight Committee will convene Wednesday, May 8, 2002 from 9 a.m. to 12 p.m. The meeting will be held at 701 South Court House Road, Arlington, VA in the NCS conference room on the 2nd floor.

—TSP Program Update

—Report on TSP Working Group Activities

—Review/Renewal of TSP OC Charter

Anyone interested in attending or presenting additional information to the Committee, please contact Deborah Bea, Office of Priority Telecommunications, (703) 607–4933.

Peter M. Fonash,

Certifying Officer, National Communications System.

[FR Doc. 02–7743 Filed 3–29–02; 8:45 am]

BILLING CODE 5001–08–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: 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:* 10 CFR part 52, ''Early Site Permits (EP); Standard Design Certifications; and Combined Licenses for Nuclear Power Plants''.

3. *The form number if applicable:* N/A.

4. *How often the collection is required:* On occasion and every 10 to 20 years for applications for renewal.

5. *Who will be required or asked to report:* Designers of commercial nuclear power plants, electric power companies, and any person eligible under the Atomic Energy Act to apply for a construction permit for a nuclear power plant.

6. *An estimate of the number of responses:* 10.

7. *The estimated number of annual respondents:* 5 (3 applications for early site permits, 1 combined license application, and 1 design certification application).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 211,820.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* 10 CFR part 52 establishes requirements for the granting of early site permits, certifications of standard nuclear power plant designs, and licenses which combine in a single license a construction permit, and an operating license with conditions (combined licenses), manufacturing licenses, duplicate plant licenses, standard design approvals, and pre-application reviews of site suitability issues. Part 52 also establishes requirements for renewal of these approvals, permits, certifications, and licenses; amendments to them; exemptions from certifications; and variances from early site permits.

NRC uses the information collected to assess the adequacy and suitability of an applicant's site, plant design, construction, training and experience, and plans and procedures for the protection of public health and safety. The NRC review of such information and the findings derived from that information form the basis of NRC decisions and actions concerning the issuance, modification, or revocation of site permits, design certifications, and combined licenses for nuclear power plants.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC worldwide web site: *http://www.nrc.gov/public-involve/doc-comment/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 listed below by May 1, 2002. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Bryon Allen, Office of Information and Regulatory Affairs (3150–0151), 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 26th day of March, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–7798 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–02384–CivP, ASLBP No. 02–797–01–CivP, EA 99–290]

Atomic Safety and Licensing Board; Before Administrative Judges: Charles Bechhoefer, Chairman, G. Paul Bollwerk, III, Dr. Richard F. Cole; In the Matter of Earthline Technologies (Previously RMI Environmental Services), Ashtabula, OH, License No. SMB–00602; Order Imposing Civil Monetary Penalty

March 26, 2002.

Notice of Hearing

This proceeding involves a proposed civil penalty of $17,600 sought to be imposed by the NRC Staff on Earthline Technologies, previously RMI Environmental Services, Ashtabula, OH (Earthline or Licensee) for an alleged violation of NRC's employee protection regulations, based upon the asserted discrimination by an Earthline management official against an employee for engaging in protected activities (i.e., contacting the NRC concerning safety matters. In response to an Order Imposing Civil Monetary Penalty, dated January 15, 2002 and published at 67 FR 3917 (Jan. 28, 2002), Earthline on February 6, 2002 filed a timely request for an enforcement hearing. On March 6, 2002, an Atomic Safety and Licensing Board, consisting of G. Paul Bollwerk, III, Dr. Richard F. Cole, and Charles Bechhoefer, who serves as Chairman, was established to preside over this proceeding. 67 FR 11,147 (March 12, 2002).

Notice is hereby given that, by Memorandum and Order dated March 26, 2002, the Atomic Safety and Licensing Board has granted the request for a hearing submitted by Earthline. This proceeding will be conducted under the Commission's hearing procedures set forth in 10 CFR part 2, subparts B and G. Parties to this proceeding are Earthline and the NRC Staff. The issues to be considered, as set forth in the Order Imposing Civil Monetary Penalty, are (a) whether the Licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalty, served on the Licensee by letter dated September 24, 2001; and (b) whether, on the basis of such violation, the Order Imposing Civil Monetary Penalty should be sustained.

Documents related to this proceeding issued prior to December 1, 1999, are available in microfiche form (with print form available on one-day recall) for public inspection at the Commission's Public Document Room (PDR), Room O–1 F21, NRC One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. Documents issued subsequent to November 1, 1999, are available electronically through the Agencywide Documents Access and Management System (ADAMS), with access to the public through NRC's Internet Web site (Public Electronic Reading Room Link, <*http://www.nrc.gov/NRC/ADAMS/index.html*>). The PDR and many public libraries have terminals for public access to the Internet.

As set forth at 10 CFR 2.205(g) and 2.203, the Commission urges the parties in proceedings such as this one to attempt to settle or compromise the matters at issue. Except to the extent an early settlement or other circumstance renders them unnecessary, the Licensing Board may, during the course of this proceeding, conduct one or more prehearing conferences and evidentiary hearing sessions. The time and place of these sessions will be announced in Licensing Board Orders. Except as limited by the parameters of telephone conferences (which are in any event to be transcribed), members of the public are invited to attend such sessions.

For the Atomic Safety and Licensing Board.

Dated in Rockville, Maryland, on March 26, 2002.

Charles Bechhoefer,

Chairman, Administrative Judge.

[FR Doc. 02–7796 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–260 and 50–296]

Tennessee Valley Authority; Browns Ferry Plant, Units 2 and 3; Exemption

1.0 Background

The Tennessee Valley Authority (TVA, the licensee) is the holder of Facility Operating License Nos. DPR–52 and DPR–68 which authorize operation of the Browns Ferry Plant, Units 2 and 3 (BFN 2 and 3), respectively. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

The facility consists of a three boiling-water reactors located in Limestone County in the State of Alabama.

2.0 Request/Action

Title 10 of the *Code of Federal Regulations* (10 CFR), part 50, 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, appendix G to 10 CFR part 50 states that ''[t]he appropriate requirements on . . . the pressure-temperature limits and minimum permissible temperature must be met for all conditions.'' Further, appendix G of 10 CFR part 50 specifies that the requirements for these limits are based on the application of evaluation procedures given in Appendix G to Section XI of the American Society of Mechanical Engineers (ASME) Code. In this exemption, consistent with the current provisions of 10 CFR 50.55(a), all references are to the ASME Code denote the 1995 Edition of the ASME Code, including the 1996 Addenda.

In order to address the provisions of amendments to the BFN 2 and 3 Technical Specifications (TS) P–T limit curves, TVA requested in its submittal dated August 17, 2001, as supplemented December 14, 2001, and February 6, 2002, that the staff exempt the BFN 2 and 3 from the application of the specific requirements of appendix G to 10 CFR part 50, and substitute use of ASME Code Case N–640. ASME Code Case N–640 permits the use of an alternate reference fracture toughness curve for RPV materials for use in determining the P–T limits. The proposed exemption request is consistent with, and is needed to support, the BFN 2 and 3 TS amendments that were contained in the same submittals. The proposed BFN 2 and 3 TS amendments will establish revised P–T limits for heatup, cooldown, and inservice test limitations for the reactor coolant system (RCS) through 17.2 effective full-power years (EFPY) of operation for BFN 2 and through 13.1 EFPY of operation for BFN 3.

ASME Code Case N–640

The licensee has proposed an exemption to allow the use of ASME Code Case N–640 in conjunction with ASME Section XI, 10 CFR 50.60(a) and 10 CFR part 50, appendix G, to establish P–T limits for the BFN 2 and 3 RPVs.

The proposed TS amendments to revise the P–T limits for BFN 2 and 3 rely in part on the requested exemption and the application of ASME Code Case N–640. These revised P–T limits have been developed using the lower bound K_{IC} fracture toughness curve shown in ASME Section XI, Appendix A, Figure

A–2200–1, in lieu of the lower bound K_{IA} fracture toughness curve of ASME Section XI, Appendix G, Figure G–2210–1, as the basis fracture toughness curve for defining the BFN 2 and 3 P–T limits.

Use of the K_{IC} curve as the basis fracture toughness curve for the development of P–T operating limits is more technically correct than the use of the K_{IA} curve. The K_{IC} curve appropriately implements the use of a relationship based on static initiation fracture toughness behavior to evaluate the controlled heatup and cooldown process of an RPV, whereas the K_{IA} fracture toughness curve codified into Appendix G to Section XI of the ASME Code was developed from the more conservative crack arrest and dynamic fracture toughness test data. The application of the K_{IA} fracture toughness curve was initially codified in Appendix G to Section XI of the ASME Code in 1974 to provide a conservative representation of RPV material fracture toughness. This initial conservatism was necessary due to the limited knowledge of RPV material behavior in 1974. However, additional knowledge has been gained about RPV materials which demonstrates that the lower bound on fracture toughness provided by the K_{IA} fracture toughness curve is well beyond the margin of safety required to protect the public health and safety from potential RPV failure. In addition, the P–T limit curves based on the K_{IC} fracture toughness curve will enhance overall plant safety by minimizing challenges to operators since requirements for maintaining a high vessel temperature during pressure testing would be lessened. Personnel safety would also be enhanced because of the corresponding lower temperatures which would exist inside containment as leakage walkdown inspections are conducted.

In summary, the ASME Section XI, Appendix G, procedure was conservatively developed based on the level of knowledge existing in 1974 concerning RPV materials and the estimated effects of operation. Since 1974, the level of knowledge about these topics has been greatly expanded. The NRC staff has determined that this increased knowledge permits relaxation of the ASME Section XI, Appendix G, requirements by application of ASME Code Case N–640, while maintaining, pursuant to 10 CFR 50.12(a)(2)(ii), the underlying purpose of the NRC regulations to ensure an acceptable margin of safety.

The NRC staff has reviewed the exemption request submitted by TVA and has concluded that the application of the technical provisions of the ASME Code Case N–640 provides sufficient margin in the development of RPV P–T limit curves for BFN 2 and 3 such that the underlying purpose of the NRC regulations continues to be met to ensure an acceptable margin of safety.

3.0 Discussion

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50, when (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) when special circumstances are present.

The staff has determined that an exemption would be required to approve the use of Code Case N–640. The staff examined the licensee's rationale to support the exemption request and concurred that the use of the Code Case would meet the underlying purpose of the regulations. Based upon a consideration of the conservatism that is explicitly incorporated into the methodologies of 10 CFR part 50, appendix G, appendix G of the Code, and Regulatory Guide 1.99, Revision 2, the staff concludes that application of the Code Case as described would provide an adequate margin of safety against brittle failure of the RPV. This conclusion is also consistent with the determinations that the staff has reached for other licensees under similar conditions based on the same considerations.

The staff has examined the licensee's rationale to support the exemption request and concludes that the exemption under the special circumstances of 10 CFR 50.12(a)(2)(ii) is appropriate and that the methodology of Code Case N–640 may be used to revise the P–T limits for the BFN 2 and 3 RPVs such that the underlying purpose of 10 CFR part 50, appendix G, continues to be met to ensure an acceptable margin of safety.

4.0 Conclusion

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants the Tennessee Valley Authority an exemption from the requirements of 10 CFR 50, appendix G, for Browns Ferry Plant, Units 2 and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (67 FR 11721).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 21st day of March, 2002.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–7797 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Notice of Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 134th meeting on April 16–18, 2002, at 11545 Rockville Pike, Rockville, Maryland, Room T–2B3.

The entire meeting will be open to public attendance.

The schedule for this meeting is as follows:

Tuesday, April 16, 2002

A. *12:30—12:40 P.M.: Opening Statement* (Open)—The Chairman will open the meeting with brief opening remarks, outline the topics to be discussed, and indicate several items of interest.

B. *12:40—3:30 P.M.: High-Level Waste Risk Insights Initiative* (Open)—The Committee will hear a presentation by the NRC staff on the preliminary results of its risk insights initiative.

C. *3:45—4:45 P.M.: Amendment to 10 CFR part 63* (Open)—The NRC staff will provide a briefing on its final rulemaking amendment to Part 63 on the probability for ''Unlikely Events'' at the proposed Yucca Mountain high-level waste repository site.

D. *4:45—6:00 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics.

- High-Level Waste Risk Insights Initiative
- Amendment to 10 CFR part 63 ''Unlikely Events''—Final Rule
- Update on Igneous Activity including Performance Assessment Analyses
- HLW Performance Assessment Sensitivity Studies

Wednesday, April 17, 2002

E. *8:30—8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The

ACNW Chairman will make opening remarks regarding the conduct of the meeting.

F. *8:35—10:00 A.M.: Final Radionuclide Transport Research Plan* (Open)—Representatives from the Office of Nuclear Regulatory Research will brief the Committee on its final research plan on Radionuclide Transport in the Environment.

G. *10:15—12:00 Noon: ACNW 2002 Action Plan* (Open)—The Committee will discuss a draft of its 2002 Action Plan.

H. *1:00—2:45 P.M.: Site Recommendation—License Application: Path Forward* (Open)—The Committee will hear a presentation from the DOE on its proposed plans to move forward from the submission of the Yucca Mountain Site Recommendation.

I. 3:00—4:30 P.M.: Yucca Mountain Review Plan, Revision 2 (Open)—The Committee will discuss its template to conduct an audit of the Yucca Mountain Review Plan, Revision 2.

J. *4:30—6:00 P.M.: Preparation of ACNW Reports* (Open)—The Committee will discuss proposed reports on the following topics:

- High-Level Waste Risk Insights Initiative
- Amendment to 10 CFR part 63 ''Unlikely Events''—Final Rule
- Update on Igneous Activity including Performance Assessment Analyses
- HLW Performance Assessment Sensitivity Studies
- Final Research Plan on Radionuclide Transport in the Environment

Thursday, April 18, 2002

K. *8:30—8:35 A.M.: Opening Remarks by the ACNW Chairman* (Open)—The ACNW Chairman will make opening remarks regarding the conduct of the meeting.

L. *8:35—11:45 A.M.: Preparation of ACNW Reports* (Open)—The Committee will continue its discussion of proposed ACNW reports.

M. *11:45—12:00 Noon: Miscellaneous* (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on October 3, 2001 (66 FR 50461). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Howard J. Larson, ACNW (Telephone 301/415–6805), between 8:00 A.M. and 4:00 P.M. EST, as far in advance as practicable so that appropriate arrangements can be made to schedule the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting will be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for taking pictures may be obtained by contacting the ACNW office, prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should notify Mr. Howard J. Larson as to their particular needs.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting Mr. Howard J. Larson.

ACNW meeting notices, meeting transcripts, and letter reports are now available for downloading or viewing on the internet at *http://www.nrc.gov/ACRSACNW.*

Videoteleconferencing service is available for observing open sessions of ACNW meetings. Those wishing to use this service for observing ACNW meetings should contact Mr. Theron Brown, ACNW Audiovisual Technician (301/415–8066), between 7:30 a.m. and 3:45 p.m. EST at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment and facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 26, 2002.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 02–7794 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting on Planning and Procedures; Notice of Meeting

The ACNW will hold a Planning and Procedures meeting on April 16, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACNW, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Tuesday, April 16, 2002–8:30 a.m.–10:30 p.m.

The Committee will discuss proposed ACNW activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Howard J. Larson (telephone: 301/415–6805) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: March 26, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–7795 Filed 3–29–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

Board Votes to Close March 26, 2002, Meeting

By telephone vote on March 26, 2002, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting held in Washington, DC, vie teleconference. The Board determined that prior public notice was not possible.

ITEM CONSIDERED: 1. Strategic Planning.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Requests for information about the meeting should be addressed to the Secretary of the Board, William T. Johnstone, at (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–7934 Filed 3–28–02; 2:30 pm]

BILLING CODE 7710–12–M

POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting

TIMES AND DATES: 12:00 p.m., Monday, April 8, 2002; 8:30 a.m., Tuesday, April 9, 2002.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: April 8—12:00 p.m. (Closed); April 9—8:30 a.m. (Open).

MATTERS TO BE CONSIDERED:

Monday, April 8—12:00 p.m. (Closed)

1. Financial Performance.
2. Confirm.
3. Postal Rate Commission Opinion and Recommended Decision in Docket No. R2001–1, Omnibus Rate Case.
4. Strategic Planning.
5. Personnel Matters and Compensation Issues.

Tuesday, April 9—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 4–5, 2002.
2. Remarks of the Postmaster General and CEO.
3. Fiscal Year 2001 Comprehensive Statement on Postal Operations.
4. Quarterly Report on Financial Results.
5. Quarterly Report on Service Performance.
6. Alternate Dispute Resolution.
7. Capital Investment.

a. Postal Automated Redirection System (PARS), Phase 1.

8. Tentative Agenda for the May 6–7, 2002, meeting in Washington, DC.

CONTACT PERSON FOR MORE INFORMATION: William T. Johnstone, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

William T. Johnstone,

Secretary.

[FR Doc. 02–7935 Filed 3–28–02; 2:30 pm]

BILLING CODE 7710–12–M

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 15g–2; SEC File No. 270–381; OMB Control No. 3235–0434

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.

The ''Penny Stock Disclosure Rules'' (Rule 15g–2, 17 CFR 240.15g–2) require broker-dealers to provide their customers with a risk disclosure document, as set forth in Schedule 15G, prior to their first non-exempt transaction in a ''penny stock''. As amended, the rule requires broker-dealers to obtain written acknowledgement from the customer that he or she has received the required risk disclosure document. The amended rule also requires broker-dealers to maintain a copy of the customer's written acknowledgement for at least three years following the date on which the risk disclosure document was provided to the customer, the first two years in an accessible place.

The risk disclosure documents are for the benefit of the customers, to assure that they are aware of the risks of trading in ''penny stocks'' before they enter into a transaction. The risk disclosure documents are maintained by the broker-dealers and may be reviewed during the course of an examination by the Commission. The Commission estimates that there are approximately 270 broker-dealers subject to Rule 15g–2, and that each one of these firms will process an average of three new customers for ''penny stocks'' per week. Thus each respondent will process approximately 156 risk disclosure documents per year. The staff calculates that (a) the copying and mailing of the risk disclosure document should take no more than two minutes per customer, and (b) each customer should take no more than eight minutes to review, sign, and return the risk disclosure document. Thus, the total ongoing respondent burden is approximately 10 minutes per response, or an aggregate total of 1,560 minutes per respondent. Since there are 270 respondents, the annual burden is 421,200 minutes (1,560 minutes per each of the 270 respondents), or 7,020 hours. In addition, broker-dealers will incur a recordkeeping burden of approximately two minutes per response. Thus each respondent will incur a recordkeeping burden of 312 (156×2) minutes per year, and respondents as a group will incur an aggregate annual recordkeeping burden of 1,404 hours ($270 \times 312/60$). Accordingly, the aggregate annual hour burden associated with Rule 15g–2 is 8,424 hours (7,020 + 1,404).

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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of

Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7753 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extensions

Regulation D and Form D; OMB Control No. 3235–0076; SEC File No. 270–72

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Form D sets forth rules governing the limited offer and sale of securities without Securities Act registration. Those relying on Regulation D must file Form D. The purpose of the Form D notice is to collect empirical data, which provides a continuing basis for action by the Commission either in terms of amending existing rules and regulations or proposing new ones. In addition, the form allows the Commission to elicit information necessary in assessing the effectiveness of Regulation D and Section 4(6) as capital-raising devices for all businesses. Form D information is required to obtain or retain benefits under Regulation D. Approximately 13,518 issuers file Form D and it takes approximately 16 hours to prepare. It is estimated that 90% of the 216,288 burden hours (194,659 hours) is prepared by the company. Finally, persons who respond to the collection of information contained in Form D are not required to respond unless the collection of information displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 25, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7751 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension

Rule 15c2–11; SEC File No. 270–196; OMB Control No. 3235–0202

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget request for extension of the previously approved collection of information discussed below.

The Commission adopted Rule 15c2–11 [1] (Rule 15c2–11 or Rule) in 1971 under the Securities Exchange Act of 1934 [2] (Exchange Act) to regulate the initiation or resumption of quotations in a quotation medium by a broker-dealer for over-the-counter (OTC) securities. The Rule was designed primarily to prevent certain manipulative and fraudulent trading schemes that had arisen in connection with the distribution and trading of unregistered securities issued by shell companies or other companies having outstanding but infrequently traded securities. Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer.

In February 1998, the Commission proposed amendments to strengthen the Rule's focus on abuses associated with microcap securities.[3] In response to comments on the proposal, the Commission reproposed amendments to Rule 15c2–11 to tailor its provisions to cover those kinds of quotations and securities that we believe are more likely to be the subject of microcap abuses.[4]

Under these reproposed amendments, the Rule will no longer apply to securities of larger issuers or those securities that have a substantial trading price or value of average daily trading volume. In addition, the Rule will only cover priced quotations, except in the case of the first quotation for a covered OTC security. The Commission has also proposed several revisions that require broker-dealers to obtain more information about non-reporting issuers, ease the Rule's recordkeeping requirements when broker-dealers can electronically access information about reporting issuers, and promote greater access to issuer information by customers and other broker-dealers. Because these proposed refinements will significantly revise the Rule's scope, we are publishing them to give interested persons an opportunity to provide us with their comments and views.

The information required to be reviewed is submitted by the respondents to the National Association of Securities Dealers Regulation (''NASDR'') on Form 211 for review and approval. Based on information provided by the NASDR and the Pink Sheets LLC, it is estimated that as of January 4, 2002, there were approximately 1,876 covered OTC securities quoted exclusively in the OTC Bulletin Board, 3,942 quoted exclusively in the Pink Sheets, and 1,889 dually quoted on both for a total of 7,707 covered OTC securities.[5] However, we believe that approximately 10% (771) of these securities would not be subject to the Rule, based on the exceptions that are included in this reproposing Release and therefore approximately 6,936 securities would be subject to the Rule.[6]

According to NASDR estimates, we also believe that approximately 1,271 new applications from broker-dealers to initiate or resume publication of covered OTC securities in the OTC Bulletin Board and/or the Pink Sheets or

[1] 17 CFR 240.15c2–11.

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Exchange Act Release No. 39670 (February 17, 1998) (Proposing Release).

[4] Securities Exchange Act Release No. 41110 (March 2, 1999) (Reproposing Release).

[5] Although there may be covered OTC securities quoted in other quotation mediums, the empirical data to include them in these estimations is not readily available.

[6] Because the reproposal excludes debt securities, there is no need to include the debt securities quoted in the Yellow Sheets in these burden estimates.

other quotation mediums were approved by the NASDR for the 2001 calendar year. We estimate that 75% of the covered OTC securities were issued by reporting issuers, while the other 25% were issued by non-reporting issuers. We also estimate that broker-dealers publish priced quotations for approximately 90% of the covered OTC securities quoted in the OTC Bulletin Board and publish priced quotes for about 43% of the covered OTC securities quoted in the Pink Sheets. According to NASDR and Pink Sheets estimates, we believe that, on average, there are approximately 4.3 broker-dealers publishing priced quotations for each covered OTC security, and that at any given time there are approximately 400 broker-dealers that submit priced quotations for covered OTC securities. Finally, the Reproposed Rule's transition provision would not subject the broker-dealers quoting the securities of the estimated 6,936 potentially covered securities currently quoted to the Rule until the annual review requirement is triggered. Therefore, only those new applications that are submitted after the reproposals become effective would be subject to the initial review requirement.

Because the reproposed amendments would require the first broker-dealer publishing a quotation (priced or unpriced) for a particular security to collect issuer information, we believe that during the first year after the reproposed amendments are effective, broker-dealers that are publishing the first quotations (whether priced or unpriced) for covered OTC securities in the aggregate would have to conduct approximately 1,143 initial reviews of issuer information. This estimate is based on the assumption that the NASDR will, in the first year after the reproposals become effective, approve approximately 10% fewer Form 211 filings than the 1,271 approved in 2001. We believe that it will take a broker-dealer about 4 hours to collect, review, record, retain, and supply to the NASDR the information pertaining to a reporting issuer, and about 8 hours to collect, review, record, retain, and supply to the NASDR the information pertaining to a non-reporting issuer.

We therefore estimate that broker-dealers who are the first to publish the first quote for a covered OTC security of a reporting issuer will require 3,813 hours ($1{,}271 \times 75\% \times 4$) to collect, review, record, retain, and supply to the NASDR the information required by the Rule as reproposed. We estimate that after the reproposals have become effective the broker-dealers who are the first to publish the first quote for a covered OTC security of a non-reporting issuer (priced or unpriced) will require 2,542 hours ($1{,}271 \times 25\% \times 8$) to collect, review, record, retain, and supply to the NASDR the information required by the Rule. We therefore estimate the total annual burden hours for the first broker-dealers to be 6,355 hours (3,813 + 2,542).

The Rule also would require an annual review for broker-dealers publishing priced quotations for covered OTC securities. We have estimated that each issuer is quoted by about 4.3 broker-dealers. We are assuming that of the universe of approximately 6,936 potentially affected covered OTC securities, broker-dealers would publish priced quotations for approximately 90% of the OTC Bulletin Board securities or 3,049 securities ($(3{,}765 \times 90\%) \times 90\%$) and for 43% of the Pink Sheet securities or 1525 securities ($(3{,}942 \times 90\%) \times 43\%$). [7] Therefore, we estimate that priced quotations will be published for approximately 4,574 (3,049 + 1,525) covered OTC securities. Given that about 75% of OTC stocks are issued by reporting issuers and the other 25% by non-reporting issuers, and that it would take a broker-dealer 4 and 8 hours, respectively, to meet the requirements of the reproposed Rule for these issuers, we estimate the burden hours as follows: for reporting issuers we estimate approximately 58,996 hours ($3{,}430 \times 4.3 \times 4$), and for non-reporting issuers we estimate approximately 39,319 hours ($1{,}143 \times 4.3 \times 8$). Therefore, we estimate the total annual paperwork burden hours for all broker-dealers to be 104,670 hours (6,355 + 58,996 + 39,319).

Regarding the burden on issuers to provide broker-dealers with the required information, we believe that the 2,202 issuers of covered OTC securities (based on our estimate that 75% of the 6,936 potentially covered OTC securities are reporting issuers) will not bear any additional hourly burdens under the reproposed amendments because these issuers already report the required information to the Commission through mandated periodic filings. Further, reporting issuer information is widely available to broker-dealers through a variety of media. However, non-reporting issuer information is not widely available. Consequently, these issuers must provide the information required by the reproposed amendments to requesting broker-dealers before quotations in their securities can be published. We believe that the 1,734 issuers of non-reporting covered OTC securities (based on an estimate that 25% of the 6,936 potentially covered OTC securities are non-reporting) will spend an average of 9 hours each to collect, prepare, and supply the information required by the proposal to the first broker-dealer that requests this information. Thereafter, we estimate that it will take an average of 1 hour for an issuer to provide the same information to the remaining 3.3 broker-dealers that request the information. Accordingly, we estimate that 1,734 non-reporting issuers annually will incur 15,606 hours ($1{,}734 \times 9 \times 1$) to comply with the first broker-dealer's request for information, and 5,722 hours ($1{,}734 \times 1 \times 3.3$) to comply with the subsequent 3.3 broker-dealer requests for an annual total of 21,328 burden hours (15,606 + 5,722). On average, therefore, each non-reporting issuer would spend approximately 12.3 burden hours (21,328/1,734) per year to comply with these requests.

We estimate the collection of information will require approximately 125,998 burden hours annually (104,670 + 21,328) from approximately 2,134 respondents (400 broker-dealers and 1,734 issuers).

Subject to certain exceptions, the Rule prohibits brokers-dealers from publishing a quotation for a security, or submitting a quotation for publication, in a quotation medium unless they have reviewed specified information concerning the security and the issuer. The broker-dealer is required to retain the information for three years, the first two years in an easily accessible place. The broker-dealer must also make the information reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer. The collection of information that is submitted to the NASDR for review and approval is currently not available to the public from the NASDR.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology,

[7] Some securities have priced quotations published in both of these quotation systems. To avoid double counting, such securities are counted as OTC Bulletin Board securities.

Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: January 31, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7752 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27511]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

March 26, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 16, 2002 to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 16, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Pepco Holdings Inc., *et al.* (70–9913)

Pepco Holdings, Inc. (''PHI''), a Delaware corporation and its parent company, Potomac Electric Power Company (''Pepco''), a public utility company; POM Holdings, Inc. (''POM''), a holding company subsidiary of Pepco; Pepco Energy Services, a service company subsidiary of Pepco; Pepco's direct and indirect nonutility subsidiaries (''Pepco Nonutilities''), all located at 1900 Pennsylvania Avenue NW, Washington, DC 20068; and Conectiv, a Delaware corporation and a registered public utility holding company, Conectiv Resource Partners, Inc. (''CRP''), a service company subsidiary of Conectiv and Conectiv's direct and indirect nonutility subsidiaries (''Conectiv Nonutilities'') located at 800 King Street, Wilmington, Delaware 19801, (collectively, ''Applicants''), have filed a joint application-declaration (''Application'') under sections 5, 6(a), 7, 9(a), 10, 12(b), 12(c), 13(b), 32 and 33 of the Act, and rules 42, 43, 45, 46, 52, 53, 54, 80–88, 90 and 91.

I. Introduction

Applicants request authority for transactions associated with the acquisition of Conectiv and Pepco by PHI (''Transaction''). Applicants propose that upon the satisfaction of certain conditions, including receipt of all necessary regulatory approvals, Pepco and Conectiv will become subsidiaries of PHI. PHI was incorporated under the laws of Delaware on February 9, 2001, as a direct, wholly owned subsidiary of Pepco to become the parent company of Pepco and Conectiv. After consummation of the Transaction, PHI will register as a public utility holding company under section 5 of the Act and maintain its headquarters in Washington, DC.

II. Summary of Requests

Applicants request authorization in the Merger Application for PHI to form two wholly owned subsidiaries that will merge with and into Pepco and Conectiv (''Mergers''). Pepco stockholders will receive one share of PHI's common stock for each share of Pepco common stock held prior to the Mergers. Conectiv common stockholders and Class A common stockholders will receive either cash or PHI common stock, subject to proration, in order that the aggregate consideration paid to all Conectiv stockholders will be fifty percent cash and fifty percent stock. As a result of the Transaction, all of the outstanding shares of common stock of PHI will be held by the former stockholders of Conectiv and Pepco and each share of each other class of capital stock of Conectiv and Pepco shall be unaffected and remain outstanding.

Upon completion of the Merger, PHI will own, directly or indirectly, all of the issued and outstanding common stock of six public utility subsidiary companies: Pepco, Atlantic City Electric Company (''ACE''), Delmarva Power & Light Company (''Delmarva''), Conectiv Delmarva Generation, Inc. (''CDG''), Conectiv Pennsylvania Generation, Inc. (''CPGI'') and Conectiv Atlantic Generation, LLC (''CAG''). PHI also will hold, directly or indirectly, all of the nonutility subsidiaries and investments currently owned by Pepco and Conectiv (''PHI Nonutilities'').

In addition, Applicants request: (i) To retain the nonutility businesses and subsidiaries of Pepco and Conectiv; (ii) to retain Conectiv's gas operations (''Conectiv Gas System''); (iii) following a transition period, to either (a) extend the role of CRP as a system service company to provide services to all associate companies in the PHI system or (b) form a new system service company as a direct subsidiary of PHI; (iv) to deviate from the ''at cost'' standards of the Act with respect to services provided to certain subsidiaries; (v) to reorganize PHI's direct and indirect, wholly owned, nonutility subsidiaries without the need to seek further Commission authorization, (vi) to enter into a tax allocation agreement and (vii) to engage in energy-related activities outside of the United States.

III. Parties to the Transaction

A. Pepco

Pepco is a public utility company within the meaning of the Act. Pepco transmits and distributes electric energy to 1.9 million people in Washington DC and major portions of Prince George's and Montgomery counties in suburban Maryland. Pepco is regulated as a public utility in Washington DC, Maryland, and, to a limited extent, in Pennsylvania and Virginia where it owns transmission lines and other jurisdictional assets.

Pepco's transmission facilities are interconnected with those of other transmission owners that are members of PJM, an Independent System Operator (''ISO'') approved by the Federal Energy Regulatory Commission (''FERC''). PJM administers all transmission service within the PJM region. Pepco has an investment in the Keystone-Conemaugh 500kV system (''EHV'') that traverses most of Pennsylvania.

Pepco is also engaged in the sale of electricity, natural gas and telecommunications in markets throughout the mid-Atlantic region through its wholly owned nonutility subsidiary, POM. In May 1999, Pepco reorganized its nonutility subsidiaries into two major operating groups to compete for market share in deregulated markets. As part of the reorganization, POM was created as the parent company of its two wholly owned subsidiaries,

Potomac Capital Investment Corporation (''PCI'') and Pepco Energy Services, Inc. (''Energy Services'').

Potomac Electric Power Company Trust I (''Trust''), a Delaware statutory business trust, and Edison Capital Reserves Corporation (''Edison''), a Delaware investment holding company, are also wholly owned subsidiaries of Pepco.[1]

For its utility operations, Pepco reported total assets of $5,010.0 million, utility operating revenues of $1,723.5 million (excluding $29.3 million gain on divestiture of generation assets during the year) and net income of $194.2 million for the year ended December 31, 2001. PCI reported total assets of $1,298.8 million, operating revenues of $112.2 million and net loss of $(36.1) million for the year ended December 31, 2001. Energy Services reported total assets of $211.8 million, operating revenues of $643.9 million and net income of $10.3 million for the year ended December 31, 2001.

B. Conectiv

Conectiv is a registered holding company under the Act and a Delaware corporation.[2] Conectiv owns all of the outstanding common stock of Delmarva, a Delaware and Virginia corporation, and of ACE, a New Jersey corporation. Delmarva and ACE are Conectiv's largest public utility subsidiaries and deliver electricity to customers under the trade name Conectiv Power Delivery. Delmarva provides electric service in Delaware, Maryland, and Virginia and natural gas service in northern Delaware. Delmarva's regulated electric service area has a population of approximately 1.2 million and covers an area of about 6,000 square miles on the Delmarva Peninsula. Delmarva delivers natural gas through its gas transmission and distribution systems to approximately 110,800 customers in a service territory that covers about 275 square miles in northern Delaware and has a population of approximately 500,000. ACE provides regulated electric service in an area in the southern one-third of New Jersey, which covers approximately 2,700 square miles and has a population of approximately 900,000. Delmarva and ACE deliver electricity within their service areas to approximately 973,600 customers through their respective transmission and distribution systems and also supply electricity to most of their electricity delivery customers.

ACE is subject to regulation as a public utility in New Jersey and Delmarva is subject to regulation as a public utility in Delaware, Maryland, and Virginia. Pennsylvania has jurisdiction over both ACE and Delmarva to a limited extent.

Conectiv formed Conectiv Energy Holding Company (''CEH'') in 2000. CEH and its subsidiaries are engaged in electricity production and sales, energy trading, and marketing. CEH owns 100 percent of the stock of ACE REIT, Inc. (''ACE REIT''), CESI, CPGI and CDG. ACE REIT owns 100 percent of the interests in CAG, a generation company. CDG, CAG and CPGI are utilities within the meaning of the Act.

In addition, Conectiv is changing the types of electric generation plants it owns by selling the majority of its baseload plants and increasing its mid-merit generation portfolio. Based on megawatts of generating capacity, approximately twenty-five percent (739.70 MW) of the electric generating plants owned by Conectiv as of December 31, 2001 (2,963.70 MW) were under agreements for sale. Conectiv is building new mid-merit electric generating plants, which Conectiv's management expects will provide a better strategic fit with Conectiv's energy trading activities and have more profitable operating characteristics than the plants to be sold.

In addition, as of December 31, 2001, Conectiv's subsidiaries had long-term purchased power contracts which provided 3,100 MW of capacity and varying amounts of firm electricity per hour during each month of a given year. Also, Delmarva agreed to purchase back 500 MW/hr of firm electricity per hour from the buyer of its generating plants beginning upon completion of the sale and continuing through December 31, 2005.

As a member of PJM, the generation and transmission facilities of Conectiv are operated on an integrated basis with other electricity suppliers and transmission owners in Pennsylvania, New Jersey, Maryland and the District of Columbia, and are interconnected with other major utilities in the eastern half of the United States. In addition to having an investment in EHV, ACE and Delmarva each have investments in two other 500kV systems in the PJM region.

In addition, Conectiv owns interests in various nonutility companies authorized by rule 58 under the Act or Commission order.

C. PHI

PHI was incorporated under the laws of Delaware on February 9, 2001, as a direct, wholly owned subsidiary of Pepco. PHI has issued 100 shares of common stock, all of which are owned by Pepco. PHI was created to become the parent company of Pepco and Conectiv and after the consummation of the Transaction, will register as a public utility holding company under section 5 of the Act.

For the year ended December 31, 2001, Pepco and Conectiv had the following financial results individually, and on a pro forma combined basis: [3]

	Pepco ($ millions)	Conectiv ($ millions)	Pro forma combined ($ millions)
Total assets	5,285.9	6,280.7	12,289.8
Total operating revenues	2,502.9	5,790.0	8,292.9
Operating income	366.4	759.2	1,125.6
Net income	168.4	382.9	551.3

[1] Trust was established in April 1998 and exists for the exclusive purposes of (i) issuing Trust securities representing undivided beneficial interests in the assets of the Trust; (ii) investing the gross proceeds from the sale of Trust securities in junior subordinated deferrable interest debentures issued by Pepco and (iii) engaging only in other activities as necessary or incidental to the foregoing. Edison was established in 2000 and exists for the purposes of managing and investing a significant portion of the proceeds received from the divestiture of certain of Pepco's generation assets.

[2] Conectiv was formed on March 1, 1998, through a series of merger transactions and an exchange of common stock with Delmarva and Atlantic Energy, Inc. *See* HCAR No. 26832 (February 25, 1998) (''Conectiv Merger Order'').

[3] In December 2000, Pepco divested substantially all of its generation assets. This divestiture resulted in the recognition of a pre-tax gain of approximately $423.8 million ($182 million net of income taxes).

D. The Mergers

Under the merger agreement (''Merger Agreement''), PHI will form two new wholly owned subsidiaries (''Merger Sub A'' and ''Merger Sub B,'' and together, ''Merger Subs''). Merger Sub A will be a corporation organized under the laws of the District of Columbia and Virginia. Merger Sub B will be a corporation organized under the laws of Delaware. PHI will designate the officers of Merger Sub A and Merger Sub B. After the formation, the Merger Subs will become parties to the Merger Agreement. Merger Sub A will merge with and into Pepco, in accordance with the applicable provisions of the laws of Virginia and the District of Columbia (''Pepco Merger''). Pepco will be the surviving corporation and will continue its existence under the laws of the District of Columbia and Virginia. As a result of the Pepco Merger, Pepco will become a subsidiary of PHI. The parties currently intend that shortly after the consummation of the Transaction, Pepco will dividend the stock of POM to PHI so that POM will become a first tier subsidiary of PHI.

Merger Sub B will merge with and into Conectiv, in accordance with the laws of Delaware (''Conectiv Merger''). Conectiv will be the surviving corporation in the Conectiv Merger and will continue its existence under the laws of Delaware. As a result of the Conectiv Merger, Conectiv will become a subsidiary of PHI. The officers of Merger Sub A and Merger Sub B will become, respectively, the officers of Pepco and Conectiv.

By virtue of the Mergers, each share of common stock, par value $1.00 per share of Pepco (''Pepco Common Stock''), each share of common stock, par value $.01 per share, of Conectiv (''Conectiv Common Stock''), and each share of class A common stock, par value $.01 per share of Conectiv (''Conectiv Class A Stock'' and together with the Conectiv Common Stock, ''Conectiv Stock'') that are owned by Pepco, Conectiv, or any of their subsidiaries, will be canceled and no consideration will be delivered in exchange (''Canceled Stock''). Shares of Pepco Common Stock (other than the Canceled Stock and shares with respect to which the owner duly exercises the right to dissent under applicable law) will be converted into the right to receive one share of common stock, par value $.01 per share, of PHI (''PHI Common Stock'' or ''Pepco Merger Consideration'').

Shares of Conectiv Common Stock (other than the Canceled Stock and shares with respect to which the owner duly exercises the right to dissent under applicable law) will be converted into the right to receive: (a) $25 in cash (''Conectiv Common Stock Cash Consideration'') or (b) the number of validly issued, fully paid and nonassessable shares of PHI Common Stock (''Conectiv Common Stock Share Consideration'') determined by dividing $25 by the average final price [4] (''Conectiv Common Stock Exchange Ratio''). The Conectiv Common Stock Exchange Ratio may vary in accordance with the Average Final Price within minimum and maximum exchange ratios established the Merger Agreement. Shares of Conectiv Class A Stock other than Canceled Stock and shares with respect to which the owner duly exercises the right to dissent under applicable law will be converted into the right to receive (a) $21.69 in cash (''Class A Cash Consideration'' and together with the Conectiv Common Stock Cash Consideration, ''Conectiv Cash Consideration'') or (b) the number of validly issued, fully paid and nonassessable shares of PHI Common Stock (''Class A Share Consideration'' and together with the Conectiv Common Stock Share Consideration, ''Conectiv Share Consideration'') determined by dividing $21.69 by the Average Final Price (''Class A Stock Exchange Ratio''). The Class A Stock Exchange Ratio may also vary in accordance with the Average Final Price within minimum and maximum exchange ratios established in the Merger Agreement.

Each record holder of Conectiv Stock immediately prior to the consummation of the Transaction will be entitled to elect to receive shares of PHI Common Stock or cash for all or any part of that holder's shares of Conectiv Stock. As described in the Merger Agreement, this election is subject to the requirement that, in the aggregate, fifty percent of the consideration to be paid to Conectiv stockholders consists of cash and fifty percent consists of PHI common stock. Each share of common stock, without par value, of Merger Sub A that is issued and outstanding immediately prior to the consummation of the Transaction will be converted into one share of common stock, without par value, of Pepco. Each share of common stock, par value $.01 per share, of Merger Sub B that is issued and outstanding immediately prior to the consummation of the Transaction will be converted into one share of common stock, par value $.01 per share, of Conectiv.

PHI will account for the Transaction as an acquisition of Conectiv by Pepco using the purchase method of accounting for a business combination in accordance with generally accepted accounting principles (''GAAP''). Under GAAP, the assets and liabilities of Conectiv will be recorded at their fair values and, if necessary, any excess of the merger consideration over those amounts will be recorded as goodwill. The results of operations and cash flows of Conectiv will be included in PHI's financial statements prospectively as of the effective time of the transaction. Staff Accounting Bulletin No. 54 (''SAB 54''), generally requires that the premium paid in an acquisition using the purchase method of accounting be ''pushed down'' to the books of the acquired company, which in this case would be Conectiv. However, Applicants state that, under applicable exceptions to the general rule, the premium paid in the Transaction is not required to be ''pushed down'' to Conectiv. Specifically under SAB 54, application of push down accounting is not required when the acquired company will continue to have public debt after a merger. Conectiv has and will have publicly held debt in the form of medium-term notes after the Transaction.

Before completing the Transaction, the management of Pepco and PHI will evaluate various sources and methods of financing the amount necessary to fund a portion of the cash consideration to be paid (the total amount of cash consideration is approximately $1.098 billion). Applicants may use up to approximately $400 million of the proceeds that Pepco has received from the recent sale of its generation assets to fund a portion of the Conectiv Cash Consideration, and anticipate that all other funds required for the Transaction will be financed at the PHI level through external sources. Sources of financing that PHI is arranging include commercial and investment banks, institutional lenders and public securities markets. Methods of financing initially will include commercial paper and bank lines of credit, which will be refinanced following completion of the Transaction in the public and/or private markets with debt and preferred securities of various maturities and types to be determined after the closing of the Transaction. The financing for the Transaction by PHI will not be recourse to any system companies other than PHI.

[4] The average final price (''Average Final Price'') consists of a volume-weighted average of the closing trading prices of Pepco common stock during a certain period of time prior to the closing of the Transaction.

IV. Intrasystem Provision of Services

After consummation of the Transaction, and during the transition period described below, both CRP and Pepco will provide Pepco Holdings, Conectiv, Pepco and other system companies with certain system wide administrative, management and support services. All services provided to Pepco Holdings or to both Pepco or any of its current subsidiaries (''Pepco Subsidiaries'') and Conectiv or any of its current subsidiaries (''Conectiv Subsidiaries'') by either CRP or Pepco will be billed and allocated through CRP in accordance with a revised service agreement (''CRP Service Agreement'').[5] As a result, during the transition period not all services will be provided on a system-wide basis and CRP will continue to provide certain services solely to Conectiv companies, while Pepco companies will continue to provide services solely to Pepco companies. The Applicants have not yet completed their analysis of how best to accomplish the goal of centralizing the service functions in the combined company. Once this analysis is completed, Pepco Holdings will consolidate the provision of services in a first tier system service company as appropriate and subject to Commission approval.

Applicants propose to have CRP function as an interim service company through January 1, 2003 (''Transition Period''). CRP will provide services to PHI as well as both Pepco Subsidiaries and Conectiv Subsidiaries and these services will be allocated and billed in accordance with the CRP Service Agreement. In addition, Applicants propose that some Pepco employees provide services to PHI, Pepco Subsidiaries and Conectiv Subsidiaries. Pepco will bill these services to CRP at cost, determined in accordance with rules 90 and 91 under the Act, and CRP will then allocate and bill the costs to the appropriate system companies in accordance with the CRP Service Agreement. During the transition period, CRP will either be a direct or indirect subsidiary of PHI.

Applicants commit to file, within six months of the consummation of the Transaction, a revised service agreement, service company policy and procedures that address the final service company arrangements to be proposed. At this time, Applicants state that any new service company will have been formed.

Applicants request an exemption from the at-cost requirements of rules 90 and 91 for services rendered by PHI's nonutility subsidiaries to certain other PHI nonutility subsidiaries, if one or more of the following conditions apply:

(i) The purchasing nonutility subsidiary is a FUCO or an EWG that derives no part of its income, directly or indirectly, from the generation and sale of electric energy within the United States;

(ii) The purchasing nonutility subsidiary is an EWG that sells electricity at market-based rates that have been approved by the FERC or the relevant state public utility commission, provided that the purchaser is not one of PHI's regulated public utility subsidiaries;

(iii) The purchasing nonutility subsidiary is a ''qualifying facility'' (''QF'') under the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively at rates negotiated at arm's length to one or more industrial or commercial customers purchasing the electricity for their own use and not for resale, or to an electric utility company (other than one of PHI's regulated public utility subsidiaries) at the purchaser's ''avoided costs'' as determined under the regulations under PURPA; and

(iv) The purchasing nonutility subsidiary is an EWG or QF that sells electricity at rates based upon its cost of service, as approved by the FERC or any state public utility commission having jurisdiction, provided that the purchaser of the electricity is not one of PHI's regulated public utility subsidiaries.

The nonutility subsidiaries described in clauses (i)–(iv) are referred to collectively below as ''Exempt Nonutility Companies.'' To the extent not exempt or otherwise authorized, Applicants request an exemption from the at-cost requirements of rules 90 and 91 for services rendered to any Exempt Nonutility Company that (a) is partially owned, provided that the ultimate purchaser of the services is not a regulated public utility subsidiary of PHI, (b) is engaged solely in the business of developing, owning, operating and/or providing services to Exempt Nonutility Companies or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

Pepco's indirect wholly owned subsidiaries W.A. Chester LLC and W.A. Chester Corporation are in the business of installing and maintaining utility cable systems. These companies currently provide services to Pepco at market rates under contracts entered into before they became part of a registered system and Applicants request that they continue to operate under these contracts for the existing term of the contracts. Upon consummation of the Transaction, Applicants commit that any new service arrangements between these companies and Pepco will be priced at cost.

Pepco entered into a lease arrangement with Edison Place, LLC (''Edison Place''), a subsidiary of Pepco, under which it will rent office space in the new headquarters building from Edison Place. This fifteen year lease was entered into before Pepco and Edison Place were part of a registered system and contains rent arrangements that Pepco believes are more favorable to it than other available options in the market. The rent arrangements were not determined in accordance with the provisions of rules 90 and 91 of the Act but were an integral part of the property sale between Pepco and Edison Place. Pepco and Edison Place request authorization to leave the existing lease in place until the expiration of its terms.

V. Nonutility Subsidiary Reorganizations

Applicants propose to restructure the PHI Nonutilities from time to time as may be necessary or appropriate in the furtherance of the PHI authorized nonutility activities. PHI requests authorization to acquire, directly or indirectly, the equity securities of one or more intermediate subsidiaries (''Intermediate Subsidiaries'') organized exclusively for the purpose of acquiring, financing, and holding the securities of one or more existing or future nonutility subsidiaries. Intermediate Subsidiaries may also provide management, administrative, project development and operating services to future PHI Nonutilities.

Reorganizations could involve the acquisition of one or more new subsidiaries formed to acquire and hold direct or indirect interests in any or all of PHI's existing or future authorized nonutility businesses. Restructuring could also involve the transfer of existing subsidiaries, or portions of existing businesses, to PHI or among the PHI Nonutilities and/or the re-incorporation of existing PHI Nonutilities in a different jurisdiction. Following any reorganization, PHI will continue to hold, directly or indirectly, the same interest in the voting securities of any PHI Nonutility as immediately prior to the reorganization. This would enable PHI to consolidate similar businesses and to participate effectively in authorized nonutility activities,

[5] The CRP Service Agreement is filed as an exhibit to this Application.

without the need to apply for or receive additional Commission approval.

The direct or indirect newly created nonutility holding company subsidiaries referred to above might be corporations, partnerships, limited liability companies or other entities in which PHI, directly or indirectly, will have a 100 percent voting equity interest. These subsidiaries would engage only in businesses to the extent PHI is authorized to engage in those businesses by statute, rule, regulation or order. Applicants state that reorganizations will not result in PHI entering into any new, unauthorized line of business.

VI. Energy Related Activities

Applicants request authority for PHI existing and future nonutility subsidiaries to engage in certain ''energy-related'' activities outside the United States. These activities may include:

(i) The brokering and marketing of electricity, natural gas and other energy commodities (''Energy Marketing'');

(ii) Energy management services (''Energy Management Services''), including the marketing, sale, installation, operation, and maintenance of various products and services related to energy management and demand-side management, including energy and efficiency audits; facility design and process control and enhancements; construction, installation, testing, sales, and maintenance of (and training client personnel to operate) energy conservation equipment; design, implementation, monitoring, and evaluation of energy conservation programs; development and review of architectural, structural, and engineering drawings for energy efficiencies, design and specification of energy consuming equipment; general advice on programs; the design, construction, installation, testing, sales and maintenance of new and retrofit heating, ventilating, and air conditioning; electrical and power systems; alarm and warning systems; motors, pumps, lighting, water, water-purification and plumbing systems, and related structures, in connection with energy-related needs; and the provision of services and products designed to prevent, control, or mitigate adverse effects of power disturbances on a customer's electrical systems; and

(iii) Engineering, consulting, and other technical support services (''Consulting Services'') with respect to energy-related businesses, as well as for individuals. Consulting Services would include technology assessments, power factor correction, and harmonics mitigation analysis; meter reading and repair; rate schedule design and analysis; environmental, engineering, risk management, and billing services (including consolidation billing and bill disaggregation tools); communications and information systems/data processing; system and strategic planning; finance; feasibility studies; and other similar services.

Applicants request that the Commission (i) authorize nonutility subsidiaries to engage in Energy Marketing activities in Canada and reserve jurisdiction over Energy Marketing activities outside of Canada pending completion of the record in this proceeding; (ii) authorize nonutility subsidiaries to provide Energy Management Services and Consulting Services anywhere outside the United States and (iii) reserve jurisdiction over other activities of nonutility subsidiaries outside the United States, pending completion of the record.

Applicants note that the Commission has previously granted or reserved jurisdiction over Conectiv Nonutilities' provision of the type of services described above through its Rule 58 Subsidiaries.[6] Applicants request that this authorization and reservation of jurisdiction be extended to the Pepco Nonutilities as well.

VII. Tax Allocation Agreement

Applicants propose to enter into an agreement for the allocation of consolidated tax among the companies within the PHI system (''Tax Allocation Agreement''). The Tax Allocation Agreement provides for the retention by PHI of payments for tax losses that it will incur in connection with financing or refinancing approximately $700 million of the cash consideration to be paid in the Transaction, rather than the allocation of these losses to its subsidiaries without payment as would otherwise be required by rule 45(c)(5).

VIII. Retention of Nonutility Subsidiaries and Additional Gas System

Applicants request that PHI be authorized to retain the Pepco Nonutilities, specifically listed in Appendix A to this notice.[7] Additionally, Applicants request that PHI be authorized to retain the Conectiv Gas System, which was found retainable in the Conectiv Merger Order.

[6] *See* HCAR No. 27464 (November 8, 2001).

[7] The Commission found the Conectiv Nonutilities to be retainable in the Conectiv Merger Order.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7769 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–25500; File No. 812–12630]

Northbrook Life Insurance Company, et al.; Notice of Application

March 26, 2002.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an amended order pursuant to section 11(a) of the Investment Company Act of 1940, as amended (the ''Act'') approving the proposed offer of a new Longevity Reward Rider (''new LRR''), as set forth below.

Applicants: Northbrook Life Insurance Company (''Northbrook''), Northbrook Variable Annuity Account II (''Account II''), Allstate Life Insurance Company of New York (''Allstate New York''), Allstate Life of New York Variable Annuity Account II (''ALNY Account II'') and Morgan Stanley DW Inc. (formerly known as Dean Witter Reynolds Inc.) (''Morgan Stanley'') (collectively, the ''Applicants'').

Summary of Application: Applicants seek an order to amend an Existing Order (described below) approving the offer by the Applicants of the new LRR upon the terms and subject to the conditions described herein and in the Prior Application (described below).

Filing Date: The application was filed on September 4, 2001, amended on January 23, 2002, and amended and restated on March 19, 2002.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests must be received by the Commission by 5:30 p.m. on April 22, 2002, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requester's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Charles Smith, Esq., Assistant Counsel, Allstate Life Insurance Company, 3100 Sanders Road, Northbrook, Illinois 60062; with a copy to Richard T. Choi, Esq., Foley & Lardner, 3000 K Street, NW, Suite 500, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT: Alison Toledo, Senior Counsel, or Lorna MacLeod, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102, (202) 942–8090.

Applicant's Representations

1. Northbrook is a wholly-owned subsidiary of Allstate Life Insurance Company (''Allstate Life''). Allstate Life is an indirect subsidiary of The Allstate Corporation, a publicly-traded insurance holding company. Northbrook is Account II's depositor within the meaning of the Act.

2. Morgan Stanley is a wholly-owned subsidiary of Morgan Stanley Dean Witter & Co., a publicly-traded financial services company. Morgan Stanley is the principal underwriter of Account II. Morgan Stanley is registered as a broker-dealer under the Securities Exchange Act of 1934 (File No. 8–14172).

3. Account II is registered under the Act as a unit investment trust (File No. 811–6116). Account II funds the Morgan Stanley Dean Witter Variable Annuity II Contracts (the ''VA II Contracts'') that Northbrook and Morgan Stanley have offered and sold for a number of years.

4. The VA II Contracts, which are registered under the Securities Act of 1933 (File No. 033–35412), are deferred annuity contracts under which Contract owners may make one or more purchase payments over a period of time (called the ''accumulation phase''). During the accumulation phase, the Contract owner's purchase payments, after deduction of certain charges, earn (at the owner's election) a ''variable'' return based on the investment performance of one or more of Account II's subaccounts and/or a fixed rate of return that Northbrook declares from time to time.

5. At the end of the accumulation phase, the Contract owner elects whether to receive a ''lump sum'' payment of the VA II Contract's accumulated value, or to receive that value under one of several payment options. Payment options are available on a variable and/or fixed basis. The VA II Contracts incorporate many other features, including ''death benefit'' options, partial withdrawal rights, full surrender rights, transfer privileges and other optional rider benefits.

6. The VA II Contracts currently impose a withdrawal charge of up to 6% of any amount by which purchase payments withdrawn in any year exceed 15% of the cumulative purchase payments that had been made as of the beginning of that year (the ''annual free withdrawal amount''). The withdrawal charge associated with each purchase payment declines 1% each year until it is 0% beginning in the seventh year after the payment was made. Unused portions of the annual free withdrawal amount do not carry over to future years.

7. The VA II Contracts also impose an annual Contract maintenance charge of $ 30, a $ 25 charge applicable to certain transfers in excess of twelve during a one-year period (which is currently being waived), a daily administrative charge at an annual rate of 0.10% of the Contract's value in Account II, a mortality and expense risk charge at an annual rate of 1.25% of the Contract's value in Account II (or higher if certain optional rider benefits are selected), and a charge corresponding to any applicable state premium taxes.

8. Allstate New York is a stock life insurance company organized in New York in 1967. Like Northbrook, Allstate New York is a wholly-owned subsidiary of Allstate Life.

9. ALNY Account II funds the Allstate New York Variable Annuity II Contracts (''ALNY Contracts''). The ALNY Contracts are substantially similar to the VA II Contracts (together with the ALNY Contracts, the ''Contracts'') covered by the Existing Order, and have the same withdrawal charge schedule, base mortality and expense charge, contract maintenance charge, and administrative expense charge. However, due to limitations imposed by the New York Insurance Department, the ALNY Contracts do not offer the following income and death benefit riders that are offered by the VA II Contracts: Death Benefit Combination Option, Income Benefit Combination Option 2, Income and Death Benefit Combination Option 2 and Enhanced Earnings Death Benefit Option. Other than the optional riders, there are no material differences between the ALNY Contracts and the VA II Contracts.

10. By order dated June 8, 2000 (the ''Existing Order''),[1] the Commission approved, pursuant to Section 11 of the Act, the offer by Northbrook, Account II, and Morgan Stanley of a Longevity Reward Rider to owners of certain variable products as described in the application for the Existing Order (''Prior Application'').[2] Applicants are seeking to amend the Existing Order to approve the offer by Applicants of the new LRR. The new LLR is identical to the LRR currently offered through the VA II Contracts (''existing LRR''), with the modifications described below. Both the ALNY Contracts and the VA II Contracts are distributed exclusively by Morgan Stanley.

11. The existing LRR provides the following benefits: (a) An option whereby a deceased owner's surviving spouse may continue the Contract using the then-current death benefit value as the new Contract value, if higher, rather than the current Contract value; (b) a reduced mortality and expense risk charge (*i.e.,* at an annual rate that is .07% less than the rate that otherwise would apply); (c) a permanent waiver of the $30 annual Contract maintenance charge if the Contract's value exceeds $40,000 at any time; and (d) a reduction in the withdrawal charge that will apply to the withdrawal of any purchase payments that are made after the existing LRR is added to the Contract.

12. Contract owners who elect the existing LRR have a new three-year withdrawal charge schedule that applies to withdrawals made after the rider's issue date (the ''Rider Date''). The new schedule applies to any amount of such a subsequent withdrawal of purchase payments that exceeds the 15% annual free withdrawal amount, regardless of whether such withdrawn purchase payments were made before or after the Rider Date.

13. The withdrawal charge under the new withdrawal charge schedule begins at 3% and declines by 1% per year over three years to 0% by the end of the third year. For purchase payments made prior to the Rider Date, the three-year period runs from the Rider Date. For any purchase payment made subsequent to the Rider Date, the three-year period runs from the date of that payment.

14. The same exceptions to imposing the existing LRR withdrawal charge apply as apply to the Contract's basic withdrawal charge. Specifically, no existing LRR withdrawal charge is

[1] *Northbrook Life Insurance Company,* Investment Company Act Release No. 24493 (June 8, 2000) (File No. 812–12092).

[2] *Northbrook Life Insurance Company,* Investment Company Act Release No. 24456 (May 16, 2000) (File No. 812–12092).

imposed at the time a payment option commences, upon the death of a Contract owner or annuitant, upon amounts withdrawn to satisfy any applicable minimum distribution requirements under the Internal Revenue Code, or upon amounts withdrawn that are within the 15% annual free withdrawal amount. These are the same exceptions as would apply to the Contracts without the existing LRR.

15. Contract owners are not permitted to elect for the existing LRR to apply to part of a contract and not to the rest. Any election of the existing LRR must apply to the whole contract.

16. The new LRR is identical to the existing LRR, except that the new LRR will be available to an expanded class of eligible Contract owners. The existing LRR is available only to Contract owners whose entire Contract value is no longer subject to a withdrawal charge. By contrast, the new LRR would be available to any Contract owner if on the date of application for the new LRR (''Application Date''):

- the Contract owner's initial purchase payment is no longer subject to a withdrawal charge; and
- the Contract owner's additional purchase payments, if any, would be subject to total withdrawal charges (assuming a current surrender of the Contract) equal to an amount not greater than 0.25% of the current Contract value.

The following example illustrates the operation of the new eligibility criteria: In 1990, an individual purchases a Contract with an initial purchase payment of $150,000. On January 1, 1997, the Contract owner makes an additional purchase payment of $20,000. In 2001, the Contract owner applies to add the new LRR. At that time, the Contract value is $200,000, and the additional purchase payment is subject to the Year 4 surrender charge of 2%:

(A) Contract value = $200,000

(B) Hypothetical withdrawal charge (assuming full surrender) = $20,000 x .02 = $400

(C) Eligibility Calculation (< .25%) = (B) / (A) = 400 / 200,000 = 0.20%

Because the withdrawal charge upon surrender on the Application Date is less than .25% of the Contract value, the Contract owner is eligible to add the LRR.

17. The principal purpose of the new LRR is the same as that of the existing LRR, namely, to reward eligible Contract owners for their persistency. However, the broader eligibility criteria for the new LRR is intended to meet the demands of Contract owners for such additional flexibility. Specifically, many Contract owners have expressed the desire that additional purchase payments, especially where small compared to the initial purchase payment, should not defeat eligibility for the LRR. In addition, the new LRR, like the existing LRR, will better allow Northbrook and Allstate New York to maintain the Contracts on a competitive footing with other newer variable annuity contracts in the marketplace that offer the same or similar benefits.

Applicants' Legal Analysis

1. Section 11(a) of the Act makes it unlawful for any registered open-end company, or any principal underwriter for such a company, to make or cause to be made an offer to the holder of a security of such company, or of any other open-end investment company, to exchange that security for a security in the same or another such company on any basis other than the relative net asset values of the respective securities, unless the terms of the offer have first been submitted to and approved by the Commission.

2. Section 11(c) of the Act, in pertinent part, requires, in effect, that any offer of exchange of the securities of a registered unit investment trust for the securities of any other investment company be approved by the Commission regardless of the basis of the exchange.

3. Standing alone, Section 11(a) by its terms applies only to exchanges of securities issued by ''open-end'' investment companies, which, under section 5(a)(1) of the Act, includes only management-type investment companies. ALNY Account II and Account II are unit investment trust-type (rather than a management-type) investment companies under section 4(2) of the Act. It would appear, therefore, that Section 11 could require Commission approval for Applicants' offer of the new LRR only if that offer falls within the ambit of Section 11(c).

4. Applicants do not concede that their offer of the new LRR to existing Contract owners necessarily constitutes an offer of securities of a registered unit investment trust in exchange for securities of any other investment company within the purview of Section 11(c). Nor do Applicants concede that, for purposes of Section 11, a Contract with the new LRR is a different security than a Contract without the new LRR. Nevertheless, Applicants request an exemption pursuant to Section 11(a) of the Act to the extent deemed necessary to permit the offer of the new LRR as described herein.

5. Applicants have considered whether they could rely on Rule 11a-2 under the Act. Applicants believe and represent that the only provision in Rule 11a-2 that could prevent such reliance would be the so-called ''tacking'' requirement in Rule 11a-2(d)(1). Applicants state that since the new LRR withdrawal charge continues for only three years, and since the new LRR is only available to a Contract owner if on the Application Date (a) the Contract owner's initial purchase payment was made at least six years prior to the date the new LRR is added to the Contract (''Rider Date''); and (b) the Contract owner's additional purchase payments, if any, would be subject to total withdrawal charges (assuming a current surrender of the Contract) equal to an amount not greater than 0.25% of the current Contract value, the tacking requirement effectively would prohibit the imposition of some or all of the new LRR's withdrawal charge with respect to purchase payments made prior to the Rider Date. For that reason, Applicants have concluded that Rule 11a-2 is unavailable to them.

6. Congress enacted Section 11 to prevent ''switching,'' *i.e.,* the practice of inducing security holders of one investment company to exchange their securities for those of a different investment company solely for the purpose of exacting additional selling charges. Applicants assert that the new LRR would not involve ''switching.'' Applicants maintain, to the contrary, that the purpose of the new LRR is to enable Contract owners to enhance their Contracts through the rider without having to buy a new variable annuity contract. Applicants represent that because the new LRR provides clear benefits, as described above, the new LRR's sole purpose is not to exact additional selling charges (or any other type of charge).

7. Applicants state that the new LRR would not result in any duplicative charges. Applicants represent that the limited withdrawal charge provided under the new LRR is reasonable in relation to the benefits that the rider provides and the costs that Applicants will incur in providing those benefits. Those costs will include costs of developing and administering the new LRR, the direct dollar costs of the charges that will be waived or reduced and the benefits that will be paid under the new LRR, and the costs of distributing the new LRR to Contract owners and educating them about it.

8. Applicants represent that any possible withdrawal charge under the new LRR is modest in amount. For Contract owners with additional purchase payments subject to withdrawal charges, the new LRR waives all outstanding withdrawal charges applicable under the Contract's existing withdrawal schedule and applies instead the withdrawal charge under the new withdrawal schedule,

which may result in a lower withdrawal charge. Applicants state that, if the Contract owner makes no withdrawals during the three years after the Rider Date, there is no possibility that any withdrawal charge will ever be deducted that exceeds what would have been deducted absent the new LRR. Applicants also state that even if purchase payments are withdrawn during that three-year period, the new LRR withdrawal charge will apply only if more than the 15% annual free withdrawal amount is withdrawn in any year.

9. The new LRR will be offered only to Contract owners who already have demonstrated an inclination to maintain their Contracts for substantial periods of time. Applicants believe that the income taxes that are generally payable when earnings are withdrawn from a Contract, as well as the tax penalties that may apply if those withdrawals are made prior to the owner's reaching age 59 1/2, serve as additional motivations that cause most owners to hold their Contracts for a substantial number of years (and often until retirement).

10. Applicants state that any withdrawal charge will be waived for withdrawals of any amounts necessary to meet any federal tax law minimum distribution requirements applicable to a Contract.

11. Under all these circumstances, Applicants believe that, as a practical matter, few owners that add the new LRR to their Contracts will ever actually pay any additional withdrawal charges as a result; and to the extent that the new LRR succeeds in its purpose of maintaining the Contracts on a competitive footing in the marketplace, withdrawals should be even further reduced.

12. Applicants state that except for the withdrawal charge as described above, the new LRR will not result in any increase in or imposition of any charge. Accordingly, Applicants assert that except for the potential imposition of the new LRR withdrawal charge on certain withdrawals that occur within three years after the Rider Date, every aspect of a Contract will be at least as favorable after the new LRR is added as it was before. Applicants maintain that adding the new LRR to a Contract will have no adverse tax consequences to a Contract's owner.

13. In light of these considerations, Applicants do not believe there is any public policy or purpose under Section 11 (or otherwise) that would preclude offering the new LRR on the terms and subject to the conditions stated herein.

Applicants' Conditions

1. The Offering Document will contain concise, plain English statements that: (a) the new LRR is suitable only for Contract owners who expect to hold their Contracts as long term investments; and (b) if a significant amount of the Contract's value is surrendered or withdrawn during the first three years after the Rider Date, the new LRR's benefits may be more than offset by that charge, and a Contract owner may be worse off than if he or she had rejected the new LRR.

2. The Offering Document will disclose in concise plain English the only aspect in which adding the new LRR rider could disadvantage a Contract owner (*i.e.,* through the possible imposition of the new LRR withdrawal charge).

3. A Contract owner choosing to add the new LRR will complete and sign the election form, which will prominently restate in concise, plain English the statements required in Condition No. 1, and will return it to Northbrook or Allstate New York, as appropriate. If the election form is more than two pages long, Northbrook or Allstate New York, as appropriate, will use a separate document to obtain the Contract owner's acknowledgment of the statements referred to in Condition No. 1 above.

4. Applicants will maintain and make available the following separately identifiable records, for the time periods specified below, for review by the Commission upon request: (a) Northbrook or Allstate New York, as appropriate, will maintain records showing the level of new LRR purchases and how it relates to the total number of Contract owners eligible to acquire the new LRR (at least quarterly as a percentage of the number eligible); (b)(i) Northbrook or Allstate New York, as appropriate, will maintain copies of any form of Offering Document, prospectus disclosure, election form, acknowledgment form, or offering letter, regarding the offering of the new LRR, including the dates(s) used, and (ii) Morgan Stanley will maintain copies of any other written materials or scripts for presentations used by registered representatives regarding the new LRR, including the dates used; (c) records showing information about each new LRR purchase that occurs, including (i) the following information to be maintained by Northbrook or Allstate New York, as appropriate: the name of the Contract owner; the Contract number; the election form (and separate acknowledgment form, if any, used to obtain the Contract owner's acknowledgment of the statements required in Condition No. 1 above), including the date such election or acknowledgment form was signed; the date of birth, address and telephone number of the Contract owner; the issue date of the new LRR; the amount of the Contract's value on that date; and persistency information relating to the Contract (date of any subsequent withdrawals and withdrawal charges paid); and (ii) the following information to be maintained by Morgan Stanley: the name of the Contract owner, the Contract number, the registered representative's name, CRD number, firm affiliation, branch office address and telephone number; the name of the registered representative's broker-dealer; and the amount of commissions paid to the registered representative that relates to the new LRR; and (d) each of Northbrook or Allstate New York, as appropriate, and Morgan Stanley will maintain logs showing any Contract owner complaints received by it about the new LRR, state insurance department inquiries to it about the new LRR, or litigation, arbitration or other proceedings to which it is a party regarding the new LRR.

5. Applicants will include the following information on the logs referred to in Condition No. 4(d) above: date of complaint or commencement of proceeding; name and address of the person making the complaint or commencing the proceeding; nature of the complaint or proceeding; and persons named or involved in the complaint or proceeding.

6. Applicants will retain (a) the records specified in Condition Nos. 4(a) and (d) above for six years from creation of the record; (b) the records specified in Condition No. 4(b) above for six years after the date of last use; and (c) the records specified in Condition No. 4(c) for five years from the Rider Date. The records referred to in these conditions will be prepared and retained, for the periods specified herein, by Northbrook or Allstate New York, as appropriate, and Morgan Stanley. Nevertheless, upon request of the Commission or its staff, Northbrook or Allstate New York, as appropriate, and Morgan Stanley shall coordinate the prompt assembly of such records for review at a single easily accessible location.

Conclusion

For the reasons discussed above, Applicants submit that the new LRR offer is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants submit

that the requested order should therefore be granted.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7778 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45643; File No. SR–Amex–2001–95]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the American Stock Exchange LLC Relating to Its Performance Evaluation Procedures for Option, Equity and ETF Specialists

March 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 19, 2001, 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 December 17, 2001, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On February 1, 2002, the Exchange submitted Amendment No. 2 to the proposed rule change.[4] On February 19, 2002, the Exchange submitted Amendment No. 3 to the proposed rule change.[5] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Amex Rule 26, and adopt Commentaries .04, .05, .06, and .07 to Amex Rule 26 to for options, equity and Exchange Traded Fund (''ETF'') specialists.

The text of the proposed rule change is available at the Office of the Secretary, the Amex, 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's Allocations Committee is responsible for allocating securities to specialists that can do a quality job with respect to the functions of a specialist. The Committee on Floor Member Performance (''Performance Committee'') reviews specialist performance and may take remedial action up to terminating a specialist's registration as such or reallocating securities when it identifies inadequate performance. The Exchange believes that these Committees protect the interests of investors, issuers and ETF sponsors by ensuring that only qualified specialists receive and retain allocations, and the institutional interests of the Exchange by ensuring that the Amex is as competitive as possible with other markets.[6]

We believe that the reallocation of a market maker's (or a specialist's) security due to poor performance is neither an action responding to a violation of an exchange rule nor an action where a sanction is sought or intended. Instead, we believe that performance-based security reallocations are instituted by exchanges to improve market maker performance and to ensure quality of markets. Accordingly, in approving rules for performance-based reallocations, we historically have taken the position that the reallocation of a specialist's or a market maker's security due to inadequate performance does not constitute a disciplinary sanction.

We believe that an SRO's need to evaluate market maker and specialist performance arises from both business and regulatory interests in ensuring adequate market making performance by its market makers and specialists that are distinct from the SRO's enforcement interests in disciplining members who violate SRO or Commission Rules. An exchange has an obligation to ensure that its market makers or specialists are contributing to the maintenance of fair and orderly markets in its securities. In addition, an exchange has an interest in ensuring that the services provided by its members attract buyers and sellers to the exchange. To effectuate both purposes, an SRO needs to be able to evaluate the performance of its market makers or specialists and transfer securities from poor performing units to the better performing units. This type of action is very different from a disciplinary proceeding where a sanction is meted out to remedy a specific rule violation. (Footnotes omitted.)

See also In re James Niehoff and Company, Administrative Proceeding File No. 3–6757, (November 30, 1986), and the other authorities cited in the Commission's *Post X–17* decision.

The Performance Committee may take remedial action on transactions that involve poor performance that are identified through Amex's surveillance or complaints. For equity securities, the Performance Committee currently reviews identified situations and ''rates'' transactions that involve inadequate

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division of Market Regulation (''Division''), Commission (December 13, 2001) (''Amendment No. 1''). Amendment No. 1 adds specialist performance evaluation procedures for equity and ETF specialists to the proposed rule text and the purpose section of the proposal.

[4] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (January 31, 2002) (''Amendment No. 2''). Amendment No. 2 changes the proposed rule text, including the proposed Commentaries, from Rule 27 (''Allocations Committee'') to Rule 26 (''Performance Committee''). In addition, Amendment No. 2 clarifies that the Exchange will assign weightings to each criterion used to evaluate specialists, and notify specialists of any changes to the criteria or the weightings used by the Exchange.

[5] *See* Letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Esq., Assistant Director, Division, Commission (February 14, 2002) (''Amendment No. 3''). Amendment No. 3 clarifies the rule text to reflect the criteria that the Exchange will initially use to evaluate specialists. In addition, Amendment No. 3 clarifies that the Exchange will allocate weightings to the criteria, and notify specialists of these relative weightings before implementation. Amendment No. 3 also adds to the proposed rule text that the Exchange may change the criteria or weightings allocated to the criteria in order to enhance competitiveness relative to other markets and/or to improve market quality. Finally, Amendment No. 3 corrects typographical errors made in the proposed rule text.

[6] *See In the Matter of the Application of Pacific Stock Exchange's Options Floor Post X–17,* Admin. Proc. File No. 3–7285, Securities Exchange Act Release No. 31666 (December 29, 1992), 51 SEC Dkt. 261. The Commission determined that performance evaluation processes fulfill a combination of business and regulatory interests at exchanges and are not disciplinary in nature. The Commission states in the *Post X–17* case:

performance. At the end of each quarter, the Amex staff calculates a quarterly performance rating for each unit based upon the unit's rated situations. According to the Exchange, a poor rating may result in a preclusion on new allocations. The Performance Committee also conducts random reviews of option and ETF specialist order tickets and assigns performance ratings based upon these reviews.

The Allocations Committee thus receives ''Performance Ratings,'' which Allocations Committee members use in making allocations decisions. The performance ratings consist of (1) a rating (from ''1'' to ''5,'' with ''1'' being the best score) for each unit based upon a questionnaire distributed to Floor brokers on a routine basis (the Committee also receives the overall average score for each unit from the Floor Broker Questionnaire); and (2) a Performance Committee rating (from ''1'' to ''5'') based upon rated situations (for equities) and order ticket reviews (for options and ETFs).

In view of the importance of allocations and reallocation decisions to investors, issuers, ETF sponsors, and the Exchange, the Amex proposes to revise the current system for evaluating option, equity, and ETF specialists by adding a number of objective criteria to the rating scheme and implementing defined consequences for poor performance. The Exchange also proposes to codify its existing market share methodology for evaluating options specialist performance. The Exchange notes that upon implementation of the new evaluation system for equity specialists, the Performance Committee will no longer assign performance ratings for specific transactions, but may take such other action as is available to the Performance Committee and appropriate in the circumstances. The Exchange will continue order ticket reviews for options and ETFs for regulatory purposes. The Exchange may incorporate the results of these reviews into the performance evaluation rating system with the criteria that measure the number of Minor Floor Violation Disciplinary actions.

Under the proposed specialist evaluation systems, specialists would be evaluated quarterly based upon data from the prior quarter with respect to various criteria. The Exchange proposes that it may change the criteria used to evaluate specialists and the weightings of these criteria from time to time as warranted by market conditions in order to enhance the Exchange's competitiveness relative to other markets and/or market quality. The Exchange would notify specialists of any changes to the criteria, and the weightings thereof, prior to implementation. The Exchange proposes to use the following performance criteria at the commencement of the specialist evaluation systems:

Option Specialist Evaluation Criteria

- Percentage of trades executed at or better than the National Best Bid and Offer (''NBBO'')
- Percentage of orders that receive price improvement
- Percentage of time at NBBO
- Average bid/offer spread
- Liquidity enhanced trades [7]
- Average execution time
- Size of orders eligible for Auto-Ex
- Timeliness of openings relative to the underlying security
- Floor Broker Questionnaire rankings
- Average number of Performance Committee actions per option, and
- Average number of Minor Floor Violation Disciplinary Committee actions [8] per option.

Equity Specialist Evaluation Criteria

- Percentage of volume executed better than the NBBO
- Percentage of volume at the NBBO
- Percentage of time at the NBBO
- Percentage of market orders executed within sixty seconds
- Percentage of manual display of better limit orders
- Number of issues opened after 9:45
- Floor Broker Questionnaire rankings
- Average response time to ITS [9] commitments

ETF Specialist Evaluation Criteria

- Percentage of orders that receive price improvement
- Percentage of time at the NBBO
- Average bid/offer spread
- Average execution time for market and marketable limit orders
- Floor Broker Questionnaire rankings
- Average response time to ITS commitments
- Average number of Performance or Minor Floor Violation Disciplinary Committee actions per ETF

The Exchange would rate all specialists from ''1'' to ''5'' on a curve based upon their scores with respect to the criteria. ETFs would be ''tiered'' and evaluated for rating purposes in separate groups based upon trading volume to ensure that comparisons between specialists are based upon securities with similar trading characteristics. The Exchange would notify specialists of their ratings following calculation. A rating of ''1'' would represent the best possible score. Ratings of ''4'' and ''5'' would have defined remedial consequences.

A specialist unit that received a ''4'' or a ''5'' rating in any quarter would be referred to the Performance Committee for consideration of a preclusion on new allocations, or other appropriate remedial action. A specialist unit that received a ''5'' rating in any two of four consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. A specialist unit that received ratings of ''4'' or ''5'' in any three of six consecutive quarters would be referred to the Performance Committee for consideration of possible reallocation of one or more securities, or other appropriate remedial action. The Exchange notes that the Performance Committee may consider any relevant information, including the Specialist Floor Broker Questionnaire, trading data, a member's regulatory history, market share, order flow statistics, level and adequacy of staffing, and other pertinent information in reviewing a specialist or unit.

In addition to the performance ratings system described above, the Exchange also proposes to codify the current program for evaluating options specialists based upon market share. Under this program, options specialists are regularly evaluated with respect to non-market maker contract volume in options that are actively traded in the United States. There may be different minimum market share criteria for (1) options that have always been multiply listed, and (2) options that were at one time exclusively awarded to only one exchange under the old ''lottery'' system.

According to the Exchange, options specialists are not evaluated on their market share in a newly listed option for the six months following listing on the Exchange. Under the program, a specialist that falls below the minimum market share criteria in one or more

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[7] The Exchange notes that liquidity enhancement is a measure of the depth of a market. The percentage of trades that receive liquidity enhancement equals the percentage of trades where an order for more than 20 contracts was executed at one price, at or between the NBBO.

[8] The Exchange represents that the term ''action'' would be defined to include any time the Committees did something other than ''no action'' the matter. For example, an admonitory letter from the Performance or Minor Floor Violation Disciplinary Committee would be considered ''action'' for the purposes of calculating specialist performance ratings.

[9] The term ''ITS'' means Intermarket Trading System.

options is referred to the Performance Committee for consideration of reallocation or other remedial action based upon poor market share in one or more options. The Exchange may change the minimum market share criteria used to evaluate specialists from time to time as warranted by market conditions. The Exchange would notify specialists of any changes to the market share criteria prior to implementation. The Exchange also would notify specialists of their market share.

The market share evaluation program for options specialists would be separate from the performance ratings system. Thus, for example, an option specialist with performance ratings that would not trigger remedial action could be referred to the Performance Committee for consideration of reallocation or other action based upon sub-standard market share in one or more options.

The Performance Committee reviews proposed transfers of specialist registrations between specialists to ensure that the institutional interests of the Exchange are protected. The Performance Committee, accordingly, will consider the performance ratings and market share of both the acquiring and transferring specialists in determining whether to approve a proposed transfer.

Under the proposed specialist evaluation procedures, performance reviews can result from (1) complaints or surveillance reviews, (2) low scores under the specialist performance ratings systems, or (3) low market share in one or more options classes. A performance review can result in a variety of possible actions, including recommendations for performance improvement, a determination not to permit a firm to seek new allocations, or a reallocation of one or more options classes from a specialist unit. The Performance Committee is not precluded from reallocating options based on a single instance of deficient performance or a single quarter or poor ratings or low market share. Conversely, the Performance Committee is not required to take such actions. Rather, the Exchange believes that the purpose of the rules and processes is to identify circumstances that warrant review by the Performance Committee. The nature of the appropriate remedial actions is necessarily a subjective matter, dependent on such matters as the options being traded, competition on other exchanges, personnel and systems changes, and other factors. Accordingly, such determinations are left to the expertise, discretion and judgment of the Performance Committee.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)(5) of the Act [10] in general, and furthers the objectives of section 6(b) of the Act [11] in particular, in that the proposal is designed to promote just and equitable principles of trade and protect investors and the public interest by encouraging good performance and competition among specialists.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition; rather, it will enhance and encourage competition both within the Exchange, and, more significantly, between and among the Exchange and other exchanges and markets by establishing incentives for superior performance and thereby ensuring the maintenance of quality markets at the Exchange. In this respect, the Exchange believes that it is critical to recognize that the most important level of competition occurs not among specialists of the same exchange to obtain a particular listing, but rather among specialists of different exchanges trading in the same security and actively competing for the business of the investing public. The Exchange notes that the Commission has expressly recognized that the procedures set forth in the proposed rule change for reviewing the performance of specialists and taking remedial action where appropriate are necessary to ensure quality markets and thereby attract buyers and sellers to the Exchange.[12]

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the 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, 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 Exchange.

All submissions should refer to File No. SR–Amex–2001–95 and should be submitted by April 22, 2002.

Margaret H. McFarland,

Deputy Secretary.

For the Commission, by the Division of Market Regulation, pursuant to the delegated authority.[13]

[FR Doc. 02–7780 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(5).

[12] *See* note 6, *supra.*

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No.34–45642; File No. SR–CSE–2002–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to Changes in Transaction Fees and Establishing a Pilot Revenue Sharing Program for Trading in Nasdaq National Market Securities

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on March 25, 2002, the Cincinnati Stock Exchange, Incorporated (''CSE'' or ''Exchange'') filed with the Securities and Exchange Commission

[1] 15 U.S.C. 78s(b)(1).

(''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CSE. The Commission is publishing this notice to solicit comment 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 hereby proposes to amend the Exchange's schedule of transaction fees and to establish a pilot revenue sharing program to reflect recent developments in competitive business strategy. The text of the proposed rule change is below. Additions are in italics, and deletions are in brackets.

The Cincinnati Stock Exchange, Incorporated

* * * * *

Chapter XI

Trading Rules

Rule 11.10 National Securities Trading System Fees

A. Trading Fees (No Change to Text)

(e) (*1*) (No Change to Text)

(2) Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged a per share fee for Nasdaq securities based upon the following schedule:

Number of shares traded (In a single day)	Fee per share
0–5 million	$0.001
5 million one+	0.000025

(1) [Tape ''C'' Transactions. Tape ''C'' Transactions are defined as transactions conducted in Nasdaq securities pursuant to unlisted trading privileges (''UTP''). Members will be charged $.001 per share per side ($1.00/1000 shares), with a maximum charge of $37.50 per firm per side, for Tape C Transactions.]

Tape ''C'' Transaction Credit. Members will receive a 75 percent pro rata credit on revenue generated by transactions in Tape ''C'' securities.

[(l)] (*m*) (No Change in Text)

[(m)] (*n*) (No Change in Text)

[(n)] (*o*) (No change in Text)

[(o)] (*p*) (No change to text)

[(p)] (*q*) (No change to text)

* * * * *

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 CSE 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 CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing two amendments to its Rules governing transaction fees and market data revenue credits in keeping with recent trends in the securities industry. The first amendment adds subsection (2) to Rule 11.10(A)(e), (''Crosses and Meets''). Subsection (2) establishes a fee schedule for transactions in The Nasdaq Stock Market, Inc. (''Nasdaq'') National Market (''NNM'') securities.

The second change filed by the Exchange creates a pilot program as an incentive to Members to trade NNM securities on the Exchange and will be codified as Rule 11.10(A)(l) (Tape ''C'' Transaction Credit). The Exchange believes the credit is a logical next step in its efforts to provide competitive exchange services to members trading NNM securities. Under the program,[2] member firms will receive a 75 percent (75%) pro rata transaction credit on all Nasdaq Tape C market data revenue generated by member trading activity. The pilot program runs for 90 days and is set to expire June 28, 2002, if not renewed.

2. Statutory Basis

The proposed rule change is generally consistent with section 6(b)[3] of the Act. The proposed rule change also furthers the objectives of Section 6(b)(5),[4] particularly, in that the proposed rule change 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, 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. The proposal also is consistent with section 6(b)(4)[5] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members by crediting members on a pro rata basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE 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 in connection with the proposed rule change.

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)[6] of the Act and paragraph (e) of Rule 19b-4[7] thereunder. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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

[2] Nasdaq securities will be traded on CSE pursuant to Section 12(f) of the Act, 15 U.S.C. 78*l*(f), as well as the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation, and Dissemination of Quotation and Transaction Information for Nasdaq-Listed Securities Traded on Exchanges on an Unlisted Trading Privilege Basis (''Nasdaq-UTP Plan'').

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(4).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e).

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–CSE–2002–03 and should be submitted by April 22, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7782 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45648; File No. 600–30]

Self-Regulatory Organizations; Emerging Markets Clearing Corporation; Notice of Filing and Order Approving a Request for an Extension of Temporary Registration as a Clearing Agency

March 26, 2002.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on February 27, 2002, the Emerging Markets Clearing Corporation (''EMCC'') filed with the Securities and Exchange Commission (''Commission'') a request that the Commission extend EMCC's temporary registration as a clearing agency.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend EMCC's temporary registration as a clearing agency through March 31, 2003.

On February 13, 1998, pursuant to sections 17A(b) and 19(a)(1) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted EMCC's application for registration as a clearing agency on a temporary basis until August 20, 1999.[5] By subsequent orders, the Commission extended EMCC's registration as a clearing agency through March 31, 2002.[6]

EMCC was created to facilitate the clearance and settlement of transactions in U.S. dollar denominated Brady Bonds.[7] Since it began operations, EMCC has added certain sovereign debt to the list of eligible securities that may be cleared and settled at EMCC.[8] EMCC began operating on April 6, 1998, with ten dealer members.

As part of EMCC's initial temporary registration, the Commission granted EMCC temporary exemption from section 17A(b)(3)(B) of the Act because EMCC did not provide for the admission of some of the categories of members required by that section.[9] To date, EMCC's rules still only provide membership criteria for U.S. broker-dealers, United Kingdom broker-dealers, U.S. banks, and non-U.S. banks. As the Commission noted in the Registration Order, the Commission believes that it is appropriate for EMCC to limit the categories of members during its initial years of operations because to date no entity in a category not covered by EMCC's rules has expressed an interest in becoming a member.[10] Accordingly, the Commission is extending EMCC's temporary exemption from section 17A(b)(3)(B).

The Commission also granted EMCC a temporary exemption from sections 17A(b)(3)(A) and 17A(b)(3)(F) of the Act to permit EMCC to use, subject to certain limitations, ten percent of its clearing fund to collateralize a line of credit at Euroclear used to finance on an intraday basis the receipt by EMCC of eligible instruments from one member that EMCC will redeliver to another member.[11] The Registration Order limited EMCC's use of clearing fund deposits for this intraday financing to the earlier of one year after EMCC commenced operations or the date on which EMCC begins its netting service. On April 2, and May 17, 1999, the Commission approved rule changes that permitted EMCC to implement a netting service and that extended EMCC's ability to use clearing fund deposits for intraday financing at Euroclear until all EMCC members are netting members.[12] Because not all of EMCC's members have become netting members, the Commission is extending EMCC's temporary exemption from Section 17A(b)(3)(A) and (F).

Interested persons are invited to submit written data, views, and arguments concerning the foregoing application. Such written data, views, and arguments will be considered by the Commission in granting registration or instituting proceedings to determine whether registration should be denied in accordance with section 19(a)(1) of the Act.[13] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Copies of the amended application for registration and all written comments will be available for inspection at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549. All submissions should refer to File No. 600–30 and should be submitted by April 22, 2002.

It is therefore ordered, pursuant to section 19(a) of the Act, that EMCC's registration as a clearing agency (File No. 600–30) be and hereby is temporarily approved through March 31, 2003.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7783 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45647; File No. SR–GSCC–2001–15]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Regarding Certain Highly Leveraged Members

March 26, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 16, 2001, the Government

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(a).

[2] Letter from Merrie Faye Witkin, Assistant Secretary, EMCC (February 27, 2002).

[3] 15 U.S.C. 78q–1(b) and 78s(a)(1).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 39661 (Feb. 13, 1998), 63 FR 8711 (Feb. 20, 1998) (''Registration Order'').

[6] Securities Exchange Act Release Nos. 41733 (Aug. 12, 1999), 64 FR 44982 (Aug. 18, 1999); 43182 (Aug. 18, 2000), 65 FR 51880 (Aug. 25, 2000); and 44707 (Aug, 15, 2001), 66 FR 43941 (Aug. 21, 2001).

[7] Brady bonds are restructured bank loans that were first issued pursuant to a plan developed by then U.S. Treasury Secretary Nicholas Brady to assist debt-ridden countries restructure their sovereign debt into commercially marketable securities. The plan provided for the exchange of bank loans for collateralized debt securities as part of an internationally supported sovereign debt restructuring. Typically, the principal and certain interest of these bonds is collateralized by U.S. Treasury zero coupon bonds and other high grade instruments.

[8] Securities Exchange Act Release Nos. 40363 (Aug. 25, 1998), 63 FR 46263 (Aug. 31, 1998) and 41618 (July 14, 1999), 64 FR 39181 (July 21, 1999).

[9] Registration Order at 8716.

[10] EMCC has represented to the staff that it will modify its rules to provide admission criteria for other entities that wish to become EMCC members.

[11] Registration Order at 8720.

[12] Securities Exchange Act Release Nos. 41247 (Apr. 2, 1999), 64 FR 17705 (Apr. 12, 1999) and 41415 (May 17, 1999), 64 FR 27841 (May 21, 1999).

[13] 15 U.S.C. 78s(a)(1).

[14] 17 CFR 200.30–3(a)(16).

[1] 15 U.S.C. 78s(b)(1).

Securities Clearing Corporation (''GSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared primarily by GSCC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change amends GSCC Rules to require certain highly leveraged GSCC members to make and maintain with GSCC additional deposits to the clearing fund. The proposed rule change also amends the definition of ''excess capital.''

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, GSCC 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. GSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On May 14, 2001, GSCC filed a proposed rule change with the Commission clarifying GSCC's rights with respect to its treatment of highly leveraged members.[3] GSCC stated that it was important for it to be able to monitor the ratio of each member's clearing fund requirement to that member's level of excess regulatory capital,[4] and wished to advise its members of specific actions that it would take pursuant to its rules with respect to any member that has a ratio in excess of 0.5. GSCC informed its members that it would require a highly leveraged member to provide it with comfort that it could fulfill its obligations to GSCC and that GSCC would be entitled to obtain or exchange margin information with respect to such member with other clearing organizations.

GSCC now proposes to take additional actions with respect to certain highly leveraged members. Specifically, GSCC proposes to require each highly leveraged member with a ratio of clearing fund requirement to excess regulatory capital greater than 1.0 to make and maintain with GSCC an additional deposit to the clearing fund. This deposit would be equal to twenty-five percent of the amount by which the member's ''excess capital differential,'' which is being defined as the amount by which a netting member's required clearing fund requirement exceeds the member's level of excess regulatory capital.[5] GSCC believes that this clearing fund premium is appropriate in view of the additional credit risk that such highly leveraged members pose to GSCC.[6] These rights are in addition to any other rights and remedies that GSCC possesses pursuant to its rules.

GSCC also proposes to make a minor change to the definition of ''excess capital'' to reflect the fact that some regulators (such as bank regulators) do not require the entities they regulate to maintain a minimum level of net liquid assets.[7]

GSCC believes that the proposed rules changes are consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because they provide protection for GSCC with respect to the additional risk that highly leveraged members pose to GSCC and therefore better enable GSCC to safeguard the securities and funds in its custody or control or for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

GSCC does not believe that the proposed rules changes will have an impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rules changes have not yet been solicited or received. Members will be notified of the rule change filing and comments will be solicited by an Important Notice. GSCC will notify the Commission of any written comments received by GSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(F).[8] Section 17A(b)(3)(F) requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible. The Commission believes that requiring each highly leveraged GSCC member with a ratio of clearing fund requirement to excess regulatory capital greater than 1.0 to make and maintain an additional deposit to the clearing fund will give GSCC additional resources to protect itself and its members' securities and funds from the additional credit risk that highly leveraged members pose. As such, the Commission believes GSCC's proposal is consistent with its obligation to assure the safeguarding of securities and funds that are in its custody or control or for which it is responsible.

GSCC has requested that the Commission approve the proposed rule change prior to the thirtieth day after publication of the notice of the filing. The Commission finds good cause for approving the rule change prior to the thirtieth day after publication because such approval will immediately allow GSCC to better protect itself with respect to highly leveraged members.

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

[2] The Commission has modified the text of the summaries prepared by GSCC.

[3] See Exchange Act Release No. 44995 (October 26, 2001), 66 FR 55724 (November 2, 2001) (File No. GSCC–2001–06).

[4] In this context, the term ''excess regulatory capital'' is used to include excess net capital, excess liquid capital, or excess adjusted net capital, as applicable, all of which are measures of an organization's net worth after adjusting for the liquidity of its balance sheet.

[5] GSCC Rule 1 and Rule 4, Section 3.

[6] GSCC will take the actions described in this rule filing against inter-dealer broker netting members as well if they have a ratio of clearing fund requirement to excess regulatory capital of greater than 1.0.

[7] GSCC Rule 1.

[8] 15 U.S.C. 78q–1(b)(3)(F).

available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of GSCC. All submissions should refer to File No. SR–GSCC–2001–15 and should be submitted by April 22, 2002.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (File No. SR–GSCC–2001–15) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7784 Filed 3–29–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45644; File No. SR–NYSE–2001–53]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment No. 1 Thereto by the New York Stock Exchange, Inc. Amending Its Rules Regarding the Transmission of Proxy and Other Shareholder Communication Material and the Proxy Reimbursement Guidelines Set Forth In Those Rules, and Requesting Permanent Approval of the Amended Proxy Reimbursement Guidelines

March 25, 2002.

I. Introduction

On December 21, 2001, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the NYSE's proxy fee schedule guidelines under its current pilot program, and to seek permanent approval of the pilot program. On January 9, 2002, the NYSE filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change and Amendment No. 1 were published in the **Federal Register** on January 16, 2002.[4] Eight comments were received on the proposed rule change, as amended.[5] The NYSE responded to the comments on March 5, 2002.[6] This order approves the proposed rule change, as amended.

II. Background

NYSE member organizations that hold securities for beneficial owners in street name[7] solicit proxies from, and deliver proxy and issuer communication materials to, beneficial owners on behalf of NYSE issuers. For this service, issuers reimburse NYSE member organizations for out-of-pocket, reasonable clerical, postage and other expenses incurred for a particular distribution, pursuant to guidelines for reimbursement of these expenses as set forth in NYSE Rules 451 and 465, and Paragraph 402.10(A) of the NYSE's *Listed Company Manual*, (collectively ''Rules'').[8]

Since the late 1960s, NYSE member firms increasingly have outsourced their proxy delivery obligations to contractors rather than handling proxy processing internally. According to the NYSE, the primary reason for this shift was that member firms believed proxy distribution was not a core broker-dealer business and that capital could be better used elsewhere. Since 1993, Automatic Data Processing, Inc. (''ADP'') has distributed close to 100 percent of all proxies sent to beneficial owners holding shares in street name.[9]

On March 14, 1997, the Commission approved an NYSE proposal that significantly revised the NYSE reimbursement guidelines set forth in the NYSE Rules and established a pilot fee structure (''Pilot Program'' or ''Pilot'').[10] Under the Pilot Program, the NYSE established guidelines for the amounts that NYSE issuers should reimburse member organizations for the distribution of proxy materials and other issuer communications to security holders whose securities are held in street name. The Pilot Program was designed to address many of the functional and technological changes that had occurred in the proxy distribution process since the NYSE Rules were last revised in 1986. The fee structure under the Pilot Program reduced certain fees, increased the fee for proxy fights, and created several new fees.[11] The Pilot Program was originally

[9] 15 U.S.C. 78s(b)(2).

[10] 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 Darla C. Stuckey, Corporate Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation (''Division''), Commission, dated January 7, 2002 (''Amendment No. 1''). In Amendment No. 1, the Exchange made some technical and clarifying corrections to the proposed rule change.

[4] *See* Securities Exchange Act Release No. 45263 (January 9, 2002), 67 FR 2264.

[5] *See* letters from Paul Conn, Executive Vice President, Computershare Limited, and Steven Rothbloom, President, Computershare Investor Services (US), to Secretary, Commission, dated February 6, 2002 (''Computershare Letter''); Rachel E. Kosmal, Senior Attorney, Intel Corporation, D. Craig Nordlund, Senior Vice President, General Counsel and Secretary, Agilent Technologies, Inc., and Keith Dolliver, Senior Attorney, Microsoft Corporation, to Secretary, Commission, dated February 6, 2002 (''Intel *et al.* Letter''); Keith G. Berkheimer, President, CTA, to Secretary, Commission, dated February 6, 2002 (''CTA Letter''); Carl T. Hagberg to Secretary, Commission, dated February 4, 2002 (''Hagberg Letter''); David W. Smith, American Society of Corporate Secretaries (''ASCS''), to Jonathan G. Katz, Secretary, Commission, dated February 7, 2002 (''ASCS Letter''); Peter C. Suhr, Executive Vice President, Alamo Direct, to Secretary, Commission, dated February 1, 2002 (''Alamo Direct Letter''); Elva Gonzalez, Corporate Manager, Shareowner Services, SBC Communications, to *rule-comments@sec.gov*, Commission, dated February 8, 2002 (''SBC Communications Letter''); and Sarah A.B. Teslik, Executive Director, Council of Institutional Investors (''CII''), to Secretary, Commission, dated February 7, 2002 (''CII Letter'') (collectively, ''Letters'').

[6] *See* letter from Darla C. Stuckey, Corporate Secretary, NYSE, to Sharon Lawson, Senior Special Counsel, Division, Commission, dated March 4, 2002 (responding to the comment letters received regarding the proposed rule change) (''NYSE Response Letter'').

[7] The ownership of shares in street name means that a shareholder, or ''beneficial owner,'' has purchased shares through a broker-dealer or bank, also known as a ''nominee.'' In contrast to direct ownership, where shares are directly registered in the name of the shareholder, shares held in street name are registered in the name of the nominee, or in the nominee name of a depository, such as the Depository Trust Company.

[8] The Commission's proxy rules, Rules 14a–13, 14b–1, and 14b–2 under the Act, impose obligations on companies and nominees to ensure that beneficial owners receive proxy materials and are given the opportunity to vote. These rules require companies to send their proxy materials to nominees, *i.e.,* broker-dealers or banks that hold securities in street name, for forwarding to beneficial owners. Under these rules, companies must pay nominees for reasonable expenses, both direct and indirect, incurred in providing proxy information to beneficial owners. The Commission's rules do not specify the fees that nominees can charge issuers for proxy distribution; rather, they state that issuers must reimburse the nominees for ''reasonable expenses'' incurred.

In adopting the direct shareholder communications rules in the early 1980s, the Commission left the determination of reasonable costs to the self-regulatory organizations (''SROs'') because they were deemed to be in the best position to make fair evaluations and allocations of costs associated with these rules. In 1997, during the initiation of the pilot on proxy fee reimbursement, *see infra* note 10, the Commission believed that ultimately market competition should determine ''reasonable expenses'' and recommended that issuers, broker-dealers, and the NYSE develop an approach that may foster competition in this area. Rather than having rates of reimbursement set by the SROs, the Commission suggested that the NYSE and other SROs explore whether reimbursement can be set by market forces, and whether this would provide a more efficient, competitive, and fair process than SRO standards.

[9] ADP is the primary distributor of proxy distribution services for a large majority of broker-dealers and collects fees from issuers based on the NYSE's Pilot Program.

[10] *See* Securities Exchange Act Release No. 38406 (March 14, 1997), 62 FR 13922 (March 24, 1997) (File No. SR–NYSE–96–36) (''Original Pilot Program'').

[11] For a more detailed description of the background and history of the proxy distribution industry, proxy fees, as well as events leading to the NYSE's proposal to revise the NYSE Rules and Guideline governing reimbursement of proxy fees, *see* the Original Pilot Program, *supra* note 10.

set to expire on May 13, 1998; however, pursuant to Commission extensions of its initial approval, the Pilot Program has remained in effect since then with some slight modifications.[12]

III. Description of the Proposed Rule Change

The NYSE's current pilot fee structure, incorporated in the NYSE's Rules and guidelines pursuant to the Pilot Program,[13] is set to expire on April 1, 2002.[14] In this proposed rule change, as amended, the Exchange proposes to amend certain reimbursement fees under the Pilot Program and has requested permanent approval. The proposed amendments seek to decrease the basic mailing fees paid by large issuers by 5¢ (from 50¢ to 45¢) and to cut in half (from 50¢ to 25¢) the incentive ''suppression'' fee that large issuers [15] pay to member organizations that succeed in reducing the number of sets of material that need to be distributed, such as by sending one set of materials to a household holding multiple positions in the issuer's securities.[16]

The following sets forth the background that led to the proposed rule change, as provided by the NYSE in its filing.

A. Permanent Approval

Over the last year, the NYSE has participated on the Proxy Voting Review Committee (the ''Committee''), a private initiative that was set up to review the proxy process. It includes SROs, representatives of the securities industry, corporate issuers, and institutional investors, as well as ADP, the largest provider of proxy intermediary services. In a letter to Richard Grasso, the Chairman of the Committee stated that the purpose of the Committee was to (i) consider the appropriateness of the current pilot proxy fee schedule, and to (ii) develop a deregulated structure that would allow for broader competition.[17]

According to the NYSE, the Committee's experience gained from the Pilot Program convinced the Committee that the guidelines have been instrumental in setting at fair and reasonable levels the costs that issuers incur in having member organizations and intermediaries transmit proxy and other materials to security holders. For that reason, the Committee unanimously voted, with one abstention,[18] to recommend that the NYSE seek permanent approval of the Pilot Program guidelines, as modified by this proposed rule change. As a result, the Exchange filed this proposed rule change, which incorporates the Committee's recommendations and requests permanent approval of the Pilot Program, which is scheduled to end on April 1, 2002.

B. Guideline Changes

In addition to seeking permanent approval of the Pilot Program guidelines, the Exchange proposes the following amendments to its Rules and guidelines:

(i) Reduce the suggested rate of reimbursement for initial mailings of each set of material (*i.e.,* proxy statement, form of proxy, and annual report when mailed as a unit) from 50¢ to 40¢.

(ii) Increase the suggested per-nominee fee for intermediaries that coordinate the proxy and mailing activities of multiple nominees. The nominee coordination fee is currently $20 per nominee. The proposal would raise it by 10¢ per set of material required for ''Small Issuers,'' defined as issuers whose shares are held in fewer than 200,000 nominee accounts, or 5¢ per set of material required for ''Large Issuers,'' defined as issuers whose shares are held in at least 200,000 nominee accounts.

(iii) Reduce from 50¢ to 25¢ the incentive fee for initial mailings of the materials of Large Issuers. As a result, the incentive fee for Large Issuers will decrease by 25¢ and the incentive fee for Small Issuers will remain at 50¢.

The Exchange represents that the net effect of clauses (i) and (ii) is to decrease the effective mailing fee by 5¢ for Large Issuers, but not for Small Issuers. ADP projected for the Committee that the combination of that decrease and the decrease in the incentive fee for Large Issuers will decrease the total fees that issuers pay to have materials distributed to shareholders by almost $11 million.[19] The NYSE relied on this projection to support its proposal.

The NYSE Rules and guidelines currently subject Small Issuers and Large Issuers to the same rates. According to the NYSE, the Committee designed the proposed revamped fee schedule to allocate more fairly the costs of distributing proxy and other material between Large Issuers and Small Issuers. The Committee's, and ultimately the NYSE's, proposal is based on the premise that economies of scale create overall per-account cost savings for Large Issuers and that those savings justify lower fees for Large Issuers. Based on this, the Exchange believes that reducing the rates applicable to Large Issuers relative to the rates

industry, proxy fees, as well as events leading to the NYSE's proposal to revise the NYSE Rules and Guideline governing reimbursement of proxy fees, *see* the Original Pilot Program, *supra* note 10.

[12] *See* Securities Exchange Act Release Nos. 39672 (February 17, 1998), 63 FR 9275 (February 24, 1998) (notice of filing and immediate effectiveness of proposal 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) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through October 31, 1998); 40621 (October 30, 1998), 63 FR 60036 (November 6, 1998) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through February 12, 1999); 41044 (February 11, 1999), 64 FR 8422 (February 19, 1999) (notice of filing and immediate effectiveness of proposal 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) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through November 1, 1999); 42086 (November 1, 1999), 64 FR 60870 (November 8, 1999) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through January 3, 2000); 42304 (December 30, 1999), 65 FR 1212 (January 7, 2000) (notice of filing and immediate effectiveness of proposal extending Pilot Fee Structure through February 15, 2000); 42433 (February 16, 2000), 65 FR 10137 (February 25, 2000) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through September 1, 2000); 43151 (August 14, 2000), 65 FR 51382 (August 23, 2000) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through October 10, 2000); 43429 (October 10, 2000), 65 FR 62781 (October 19, 2000) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through November 20, 2000); 43603 (November 21, 2000) , 65 FR 75751 (December 4, 2000) (order extending the Pilot Fee Structure through September 1, 2001, and amending the functions that an intermediary is expected to perform to recover the nominee coordination fee); and 44750 (August 29, 2001), 66 FR 46488 (September 5, 2001) (notice of filing and immediate effectiveness of proposal extending the Pilot Fee Structure through April 1, 2002).

[13] Supplementary Material .90 to Exchange Rule 451 applies the guidelines to the transmission of proxy materials to shareholders. Supplementary Material .20 to Exchange Rule 465 applies them to the transmission of other materials to shareholders. In addition, Paragraph 402.10(A) of the NYSE's *Listed Company Manual* includes the text of Supplementary Material .90 to Exchange Rule 451 and the Exchange proposes to conform Paragraph 402.10(A) to the changes described below to Exchange Rule 451.

[14] *See* Securities Exchange Act Release No. 44750 (August 29, 2001), 66 FR 46488 (September 5, 2001) (File No. SR–NYSE–2001–22).

[15] The Exchange defines large issuers as issuers whose shares are held in at least 200,000 nominee accounts.

[16] *See* Supplementary Material .95 (''Householding'' of Reports) to Exchange Rule 451 and Supplementary Material .25 (''Householding'' of Reports) to Exchange Rule 465.

[17] *See* letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Stephen P. Norman, Chairman, Committee, dated November 28, 2001 (the ''Committee Letter''). A copy of the Committee Letter is attached as Exhibit C to the Exchange's proposed rule change.

[18] The National Association of Securities Dealers, Inc., abstained from voting.

[19] *See supra* note 17.

applicable to Small Issuers is fair, reasonable, and appropriate.[20]

According to the Exchange, the difference between Large and Small Issuers is based on the recognition that a member organization typically spends less in transmitting material to the nominee account of a Large Issuer than in transmitting material to the nominee account of a Small Issuer because economies of scale apply to many of the tasks of processing material for distribution, and of collecting voting instructions. For instance, the NYSE represents that processing search dates and record dates, logging receipt of materials, coding proxies, reporting voting results, and invoicing fees payable involve costs that are essentially fixed. As a result, the NYSE believes that the per-account cost for these tasks decreases in relation to the number of accounts in which the issuer's shares are held. Consequently, the NYSE believes that the per-account cost is therefore lower with respect to a Large Issuer than with respect to a Small Issuer.

In addition, according to the NYSE, modern data processing and mailing techniques reduce the amount of human intervention involved in the process, driving down the actual per-account cost of handling mailings in large volume. The NYSE notes that the Committee found that the actual cost incurred with respect to Large Issuers in handling mailings was lower than the reimbursable amount that results from adherence to the current NYSE guidelines. On the other hand, the Committee found the actual cost of handling mailings for Small Issuers far exceeded the fees set forth in the current NYSE guidelines.[21] The Exchange believes that these factors justify reducing the incentive fee from 50¢ to 25¢ for Large Issuers, but not reducing the 50¢ fee for Small Issuers. They also justify the 5¢ difference in the per-set-of-material per-nominee fee for Large Issuers and Small Issuers.

In applying the proposed revamped fee schedules to the NYSE Rules and guidelines, the NYSE decided to establish a line of demarcation that separates Large Issuers from Small Issuers in accordance with the Committee's recommendations. Under the NYSE's proposal, an issuer having 200,000 nominee accounts would qualify as a Large Issuer. As a result, the NYSE believes only the largest issuers, currently fewer than 200 overall, fall within that definition. The NYSE represents that beneficial owners' positions in shares of those Large Issuers account for approximately 50 percent of the number of positions that all beneficial owners maintain in the shares of all issuers. The Exchange therefore adopted the 50 percent mark as an appropriate place at which to draw the line.

The Exchange further states in its proposal that it views the fee-setting process as an ongoing matter. The Exchange represents that even if the Commission grants permanent approval to the proposed fee reductions under the guidelines, the Exchange intends to continue to meet with the Committee to evaluate and fine tune the guidelines and to consider possible approaches to broader reform of the proxy distribution system.

IV. Summary of Comments

The Commission received eight comment letters in response to the propose rule change, as amended,[22] the majority of which supported the approval of the proposed rule change.[23] In general, these commenters believed that the proposed fee reductions would give some immediate relief to large issuers. One commenter stated that the proposed fee changes were a good first step.[24] Another commenter stated that the proposed rule change should be approved immediately and enacted for the 2002 proxy season.[25] Only one commenter stated that the proposed rule change should not be approved on a permanent basis because the proposed fee reductions do not address the issue of competition in the proxy process.[26]

Several commenters, although urging approval of the current proposal, were critical of the current proxy fee structure, and also raised concerns regarding the need for competition in the proxy distribution system and the issuer's ability to choose service providers.[27] These commenters urged continuing review of the proxy fee structure. Two commenters suggested a review of fees in a deregulated proxy distribution system, stating that prices might be lower if competition and market forces (rather than regulators) determined fees.[28] In addition, one commenter, while supporting approval, noted that the guidelines have not been measured against market-based rates, which are significantly lower than those being proposed.[29] In addition, one comment letter, jointly sent by three issuers, was critical of the lack of issuer control over service providers for distribution of proxy and other materials to beneficial holders whose shares are held in street name, noting that on the registered side, issuers have the right to choose service providers at a much lower cost.[30]

Concerns were also raised by three commenters about the composition of the Committee, who noted that not all parties affected by this proposed fee reduction were represented on the Committee.[31] Some commenters stated that a more independent ''formally-sanctioned'' committee with official standing and of balanced representation, rather than a private initiative, was needed to further evaluate proxy issues.[32] Other commenters wanted to participate on any future committee formed to address other concerns regarding the proxy distribution system.[33]

In addition, two commenters addressed the 200,000 nominee accounts cut-off that distinguishes

[20] The Committee expressed its support for the proposed fee changes in the Committee Letter. *See* Exhibit C to the Exchange's proposed rule change.

[21] The Exchange notes that the Committee found that handling costs for Large Issuers are lower than for Small Issuers, due primarily to economies of scale. The NYSE represents that ADP presented information to the Committee that detailed the costs that issuers pay for registered proxy processing. The Exchange notes that the information provided by ADP indicated that the per-unit costs that Small Issuers pay are, on average, more than 10 times greater than the per-unit costs that Large Issuers pay.

[22] *See* Letters, *supra* note 5.

[23] *See* Computershare Letter; Intel *et al.* Letter; CTA Letter; Hagberg Letter; ASCS Letter; SBC Communication Letter; and CII Letter, *supra* note 5. ASCS stated that it is pleased with the proposed fee reduction to the fee sharing agreement between ADP and brokers.

[24] *See* SBC Communications Letter, *supra* note 5.

[25] *See* CTA Letter, *supra* note 5.

[26] *See* Alamo Letter, *supra* note 5.

[27] *See* Computershare Letter; Intel *et al.* Letter; CTA Letter; Hagberg Letter; ASCS Letter; and Alamo Direct Letter, *supra* note 5.

[28] *See* Computershare Letter; and ASCS Letter, *supra* note 5.

[29] *See* Hagberg Letter, *supra* note 5. The Hagberg Letter also stated the NYSE's proposal fails to address the ''indirect'' income that ADP is collecting by retaining half of the savings in postage from routine bar-coding and sorting procedures. Furthermore, the Hagberg Letter commented that the proposal failed to provide a ''sunset provision'' for incentive fees, stating that the work involved to eliminate mailings is done once and done automatically through computer programs. Hagberg had previously written a letter to the NYSE in 1996 providing suggestions for a more competitive proxy system (which is attached as Exhibit I to the Hagberg Letter).

[30] *See* Intel *et al.* Letter, *supra* note 5. The *Intel et al.* Letter also stated that the impact of the proposed fee reductions on banks and brokers, which receive a portion of the fees paid by issuers to the service provider, is appropriate.

[31] *See* CTA Letter; Hagberg Letter; and Alamo Direct Letter, *supra* note 5. The Alamo Letter stated that ADP was not a ''neutral'' party and that a third party, not ADP, should have evaluated certain pricing scenarios.

[32] *See* CTA Letter; Hagberg Letter; and ASCS Letter, *supra* note 5.

[33] *See* Computershare Letter; CTA Letter; and Alamo Direct Letter, *supra* note 5.

between large and small issuers for purposes of the proposed fee reduction, stating that the cut-off was arbitrary and without any factual economic backing.[34]

One commenter suggested an overall 10¢ reduction from the basic mailing fee rather than a 5¢ reduction for large issuers.[35] The commenter also stated that the fees should not be greater than those paid by issuers on the registered side.

Finally, one commenter, while supporting the proposal, urged the Commission to require the NYSE in its ongoing review to obtain and evaluate financial information of the proxy distribution firms and review ADP's fee sharing arrangements with brokers, which suggest the fees may be too generous.[36]

Separately, certain members of the Committee submitted letters to the NYSE endorsing the Committee's recommendations and proposed fee reductions, as well as permanent approval of the NYSE's Pilot Program.[37]

V. Discussion

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[38] In particular, the Commission believes that the proposed rule change is consistent with section 6(b)(4) of the Act,[39] which provides 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 Commission believes that the proposed rule change is consistent with section 6(b)(5) of the Act,[40] which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest. Furthermore, the Commission believes that the proposed rule change is consistent with section 6(b)(8) of the Act,[41] which prohibits any exchange rule from imposing any burden on competition that is not necessary or appropriate in furtherance of the Act.

The Commission finds that the proposed amendments to NYSE Rules and guidelines governing proxy fees and permanent approval of the amended Pilot Program for the proxy fee reimbursement guidelines should help establish a more practical and organized proxy reimbursement structure. More specifically, the Commission finds that the Committee's recommended fee reductions, as reflected in the NYSE's proposal, are reasonable and should help to alleviate the burden and cost that large issuers currently bear in the proxy distribution process and more fairly allocate the cost among large issuers and small issuers. The Commission notes that the NYSE's proposed fee reductions will result in a decrease in the basic mailing fee from 50¢ to 40¢, an increase in the nominee coordination fee of 10¢ for Small Issuers, as defined by the NYSE above, and 5¢ for Large Issuers, as defined by the NYSE above, and a cut from 50¢ to 25¢ in the incentive/suppression fee that Large Issuers currently pay. Thus, fees for Small Issuers under the proposed rule change are not increased and stay the same, while fees for Large Issuers are reduced overall by 5¢ for the basic mailing fee and by 25¢ for the suppression fee. The NYSE has provided information to show that the cost to service Large Issuers is cheaper than for Small Issuers because of economies of scale. The Commission notes that the differentiation between Large and Small Issuers of 200,000 accounts is based on a 50 percent cut-off, as discussed above, and believes that this is a fair place to draw the line. The Commission therefore believes, as discussed in more detail below, that these proposed fee changes are reasonable and fairly allocated, do not discriminate among issuers, and do not impose any unnecessary burdens on competition.

A. Background

As noted above, since March 1997, NYSE member organizations have charged NYSE issuers proxy reimbursement fees in accordance with a Commission-approved Pilot Program that was recently extended until April 1, 2002.[42] At the time of adoption of the Original Pilot Program, the Commission received some negative comments regarding the proposed fees, in particular the nominee coordination fee, the incentive fee, as well as the overall impact of the new fee structure on small issuers. While the Commission recognized that the fees could have a greater impact on small issuers than large to mid-sized issuers, the Commission found that the Pilot Program proxy fee structure, which included reduced mailing costs, was, on balance, positive and provided some cost savings. However, because of concerns raised about the impact and reasonableness of the fees and the difficulty in assessing cost savings that might occur as a result of the incentive fee to reduce mailings, among other things, the new proxy fee structure was approved on a pilot basis and the NYSE committed to conduct an independent audit of the pilot fee structure.

Since then, the Pilot Program has been extended numerous times.[43] Within this time, NYSE has conducted two audits of the pilot fee structure.[44] In addition, Commission staff undertook an in-depth review, interviewing numerous proxy industry participants to gather information and views on the proxy system and pilot fee structure.[45] As a result of these reviews, the Pilot has been modified twice. The first revision was a 5¢ reduction in mailing costs for initial proxies and annual reports.[46] The second revision amended the Pilot to set forth the minimum services an intermediary must perform in order to receive the nominee coordination fee.[47]

Over the course of the Pilot Program, some issuers, while indicating that they are satisfied with the level of service for the distribution of proxies, have

[34] *See* CTA Letter and Hagberg Letter, *supra* note 5. The CTA Letter further stated that it supported a multi-tiered pricing system and that the fee structure should not only apply to NYSE issuers, but to all issuers.

[35] *See* SBC Communications Letter, *supra* note 5.

[36] *See* CII Letter, *supra* note 5. The CII Letter urged the Commission to require the NYSE to study its pricing structure on a regular basis and to publicly disclose the findings of these regular reviews. *See also* Intel *et al.* Letter, *supra* note 5.

[37] *See* letter to Richard A. Grasso, Chairman and Chief Executive Officer, NYSE, from Donald D. Kittell, Executive Vice President, SIA, dated November 29, 2001; letter to James E. Buck, Senior Vice President and Secretary, NYSE, from David W. Smith, President, ASCS, dated November 29, 2001; and letter to James E. Buck, Senior Vice President and Secretary, NYSE, from Brian T. Borders, President, APTC, dated November 29, 2001. These letters are included in Exhibit D to the Exchange's proposed rule change and are briefly discussed in the NYSE's proposal. *See supra* note 4.

[38] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[39] 15 U.S.C. 78f(b)(4).

[40] 15 U.S.C. 78f(b)(5).

[41] 15 U.S.C. 78f(b)(8).

[42] *See supra* note 14.

[43] *See supra* note 12.

[44] *See* Amendment No. 1, *supra* note 3. *See also* Securities Exchange Act Release No. 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999), for more detail on the two audits.

[45] *See* Securities Exchange Act release No. 41177 (March 16, 1999), 64 FR 14294 (March 24, 1999).

[46] *See* Securities Exchange Act Release No. 39672 (February 17, 1998), 63 FR 9275 (February 24, 1998) (lowering the rate of reimbursement for mailing each set of initial proxies and annual reports from the original Pilot fee of $.55 to $.50).

[47] *See* Securities Exchange Act Release No. 43603 (November 21, 2000) , 65 FR 75751 (December 4, 2000).

continued to raise concerns about the fees. Generally, larger issuers have objected to the proxy fee structure because they are not able to enjoy economies of scale, which could result in cost savings to them. These issuers appear to be more inclined to favor a tiered fee structure that could reduce their costs. Smaller issuers, however, could be substantially impacted by a tiered fee structure that could result in increased costs, making it difficult to pay for the proxy process.

During the course of the Pilot Program, the Commission has consistently encouraged the Exchange, issuers, and member firms to consider long-term solutions and to develop an approach that would foster competition so that market forces can determine reasonable rates of reimbursement rather than the NYSE Rules and guidelines. While the Commission today has determined to approve the Pilot Program on a permanent basis, the Commission continues to believe that ultimately market competition should determine reasonable rates and expects the NYSE to continue its ongoing review of the proxy fee process, including considering alternatives to SRO standards that would provide a more efficient, competitive, and fair process. As noted above, the NYSE has indicated its commitment to continue to meet with the Committee to consider broader reforms in this area. The Commission recognizes that the proxy distribution process raises difficult issues, and that the NYSE must balance competing concerns of the issuers who must pay for the proxy distributions and the brokers who must be assured of adequate reimbursement for making such distributions. The Commission believes that permanent approval of the current proxy fee structure will permit the NYSE and other interested parties to focus on a long-term solution that would allow market forces rather than SRO rules to set rates.

B. Specific Comments

As noted above, although the majority of commenters supported the proposal, the comment letters raised specific concerns about the proposed rule change for the pilot fee structure. The Commission believes that the NYSE has adequately responded to the comments.[48]

Commenters raised concerns, for example, over issuers' lack of control over service providers and the higher cost for distribution of proxy and other materials to beneficial holders whose shares are held in street name, compared to issuers on the registered side, which have the right to choose service providers at a lower cost.[49] The NYSE stated that, although the proposed fees will be approved on a permanent basis, it views the guideline-setting process as an ongoing matter and will continue to meet with the Committee to evaluate and fine tune the proposed fees under the guidelines. The Commission notes that, over the next year, the Committee, with the NYSE as a member, intends to consider the remaining issues, as raised by the commenters, regarding the need for more competition and to allow issuers the ability to choose among various service providers. The Committee will also consider the possibility of a deregulated proxy distribution system, which would remove the Commission from the rate-making process.

In response to concerns regarding the composition of the Committee, the NYSE stated that it did not select the members comprising the original Committee and indicated that, going forward, the Committee should be both diverse and balanced. The Commission believes that it is important that affected parties be afforded the opportunity to participate in future discussions regarding reformation of the proxy distribution system, and encourages the NYSE to ensure that the Committee has balanced representation.

Furthermore, the NYSE addressed the concerns regarding the use of 200,000 nominee accounts as a cut-off to distinguish between large and small issuers. The NYSE stated that the Committee arrived at the 200,000 figure because issuers with more than 200,000 nominee accounts accounted for approximately 50 percent of the number of positions that all beneficial owners maintain in the shares of all issuers. The NYSE further stated that, although this is an estimation, the Committee unanimously agreed with this 50 percent cut-off. While the Commission recognizes that it is difficult to draw lines, the Commission believes that the NYSE's use of 200,000 nominee accounts as a measure to distinguish between large issuers and small issuers appears reasonable and should more fairly allocate the costs associated with proxy processing and distribution among large and small issuers.

The Commission notes that the Committee, which was comprised of groups representing both large issuers and small issuers, as well as institutional shareholders, unanimously approved (with one abstention) the proposed fee reductions incorporated in the NYSE's proposal. While the Commission recognizes that some commenters voiced concerns about the composition of the Committee, the Commission believes that the NYSE's proposal is a good first step. As noted above, the NYSE has committed to establish a diversified and balanced Committee as it considers other changes. The Commission is therefore approving these changes to the NYSE Pilot Program so that they are in place by the upcoming 2002 proxy season. In addition, for the reasons stated above, the Commission is approving the Pilot Program on a permanent basis.

C. Summary

In summary, while the Commission has decided to approve the revised proxy fees under the Pilot Program on a permanent basis, the Commission stresses that permanent approval does not end the discussion of proxy fee reform. The main goal is to ensure protection of shareholder voting rights in a competitive marketplace for proxy distribution, where market forces operate freely to set competitive and reasonable rates. The Commission urges the NYSE and the Committee to identify various ways to achieve these goals. As long as the NYSE's proxy fee structure remains in place, the Commission expects the NYSE to periodically review these fees to ensure they are related to ''reasonable expenses'' of the NYSE's member brokers in accordance with the Act,[50] and propose changes where appropriate. Such monitoring of fees is essential, especially in light of technological advances such as electronic proxy delivery and voting, which should help to reduce the cost issuers will bear in the future in the proxy distribution process.

VI. Conclusion

For the foregoing reasons, the Commission finds that the NYSE's proposal to amend its Rules and guidelines for proxy fee reimbursement, as amended, is consistent with the requirements of the Act and rules and regulations thereunder. Therefore, the Commission is approving the NYSE's Pilot Program for proxy fee reimbursement, as amended by this proposed rule change, on a permanent basis.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[51] that the proposed rule change (SR–NYSE–2001–53), as amended, is approved.

[48] *See* NYSE Response Letter, *supra* note 6.

[49] *See* Intel *et al.* Letter, *supra* note 5.

[50] *See supra* note 8.

[51] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[52]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7781 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45641; File No. SR–PCX–2001–48]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change and Amendment No. 1 Thereto by the Pacific Exchange, Inc. To Increase to Two Hundred Fifty Contracts the Maximum Permissible Number of Equity and Index Option Contracts Executable Through Auto-Ex

March 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 27, 2001, the Pacific Exchange, Inc. (''PCX'' 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 PCX. The PCX filed Amendment No. 1 on December 5, 2001.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons and is approving the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to increase to 250 contracts the maximum size of equity and index option contracts that may be designated for automatic execution.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in brackets.

* * * * *

Automatic Execution System

Rule 6.87(a)–(b)(4)—No change.

(b)(5) The [Options Floor Trading Committee (''OFTC'')] *OFTC* shall determine the size of orders that are eligible to be executed on Auto-Ex. Although the order size parameter may be changed on an issue-by-issue basis by the OFTC, the maximum order size for execution through Auto-Ex is as follows:

(A) Equity Options: the maximum order size for execution through Auto-Ex for equity options is [one hundred (100)] *250* contracts;

(B) Index Options: the maximum order size for execution through Auto-Ex is [one hundred (100)] *250* contracts. [for:

(i) The PSE Technology Index;

(ii) the Wilshire Small Cap Index; and

(iii) the Morgan Stanley Emerging Growth Index.]

(6)—No change.

(c)–(p)—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 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 III below. The PCX 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's automatic execution system (''Auto-Ex'') automatically executes public customer market and marketable limit orders within certain size parameters. The Exchange represents that Auto-Ex has proven to be a credible system offering prompt and efficient automatic trade executions at the disseminated, quoted prices. PCX Rule 6.87(b) currently provides that the Exchange's Options Floor Trading Committee (''OFTC'') shall determine, on an issue-by-issue basis, the size of orders that are eligible to be executed through Auto-Ex. The maximum order size for execution through Auto-Ex is currently 100 contracts for both equity and index options.[4] The Exchange is now proposing to increase the maximum size of option orders that are eligible for automatic execution, subject to designation by the OFTC on an issue-by-issue basis, to 250 contracts.

The Exchange believes that increasing the number of option contracts executable through Auto-Ex to 250 contracts will enable the Exchange to more effectively and efficiently manage increased order flow in actively traded option issues consistent with its obligations under the Act. The Exchange believes that this increase will help it to meet the changing needs of customers in the marketplace and give the Exchange better means of competing with other options exchanges for order flow, particularly in multiply traded issues. In addition, the Exchange represents that this increase should bring the speed and efficiency of automated execution to a greater number of retail orders. The Exchange represents that it further believes that its systems capacity is sufficient to accommodate the increased number of automatic executions anticipated to result from implementation of the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)[5] of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act,[6] in particular, in that it is designed to facilitate transactions in securities, to promote just and equitable principles of trade, to enhance competition and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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

[52] 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 Mia S. Shiver, Senior Attorney, Regulatory Policy, PCX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 4, 2001 (''Amendment No. 1''). In Amendment No. 1, the PCX revised the rule text of the proposed rule change to reflect current PCX Rule 6.87.

[4] *See* Securities Exchange Act Release No. 43887 (January 25, 2001), 66 FR 8831 (February 2, 2001) (approving PCX proposal to increase the maximum size of index and equity option orders that may be automatically executed through Auto-Ex to 100 contracts).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2001–48 and should be submitted by April 22, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6 of the Act. Among other provisions, section 6(b)(5) of the Act requires that the rules of an exchange be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating securities transactions; 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.[7]

While increasing the maximum order size limit from 100 contracts to 250 contracts for automatic execution eligibility by itself does not raise concerns under the Act, the Commission believes that this increase raises collateral issues that the PCX will need to monitor and address. Increasing the maximum order size for particular option classes will make a larger number of option orders eligible for Auto-Ex. These orders may benefit from greater speed of execution, but at the same time create greater risks for market maker participants. Market makers signed on to Auto-Ex will be exposed to the financial risks associated with larger-sized orders being routed through the system for automatic execution at the displayed price. When the market for the underlying security changes rapidly, it may take a few moments for the related option's price to reflect that change. In the interim, customers may submit orders that try to capture the price differential between the underlying security and the option. The larger the orders accepted through Auto-Ex, the greater the risk market makers must be willing to accept. The Commission does not believe that, because the PCX's OFTC determines to approve orders as large as 250 contracts as eligible for Auto-Ex, the OFTC or any other PCX committee or officials should disengage Auto-Ex more frequently by, for example, declaring an ''unusual market condition.'' [8] Disengaging Auto-Ex can negatively affect investors by making it slower and less efficient to execute their orders. It is the Commission's view that the PCX, when increasing the maximum size of orders that can be sent through Auto-Ex, should not disadvantage all customers—the vast majority of whom enter orders for less than 250 contracts—by making their automatic execution systems less reliable.

In addition, pursuant to section 19(b)(2) [9] of the Act, the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**.[10] The Commission believes that granting accelerated approval will provide the PCX with flexibility to compete for order flow with other exchanges immediately.[11]

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with section 6(b)(5) of the Act.[12]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PCX–2001–48), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–7779 Filed 3–29–02; 8:45 am]

BILLING CODE 8010–01–P

[7] 15 U.S.C. 78f(b)(5).

[8] The PCX has filed a proposed rule change (File No. SR–PCX–2001–13) with the Commission that would specify the Exchange's procedures governing the disengagement of Auto-Ex for ''unusal market conditions,'' and would require documentation of the reasons for any action to disengage Auto-Ex to operate in a manner other than the usual manner. The proposed rule change was filed pursuant to the Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282) and is pending with the Commission.

[9] 15 U.S.C. 78s(b)(2).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] *See* Securities Exchange Act Release No. 45628 (March 22, 2002) (order approving an increase to 250 contracts the maximum permissible number of equity and index option contracts executable through AUTO–EX); *see also* Securities Exchange Act Release No. 45629 (March 22, 2002) (order approving an increase to 250 contracts in the maximum guarantee size for AUTO–X orders in options overlying the QQQs).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

[14] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

Office of Global Educational Programs (ECA/A/S)

[Public Notice 3967]

60-Day Notice of Proposed Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package; OMB No. 1405–0114

ACTION: Notice.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal to be submitted to OMB:

Type of Request: Reinstatement with change of a previously approved collection for which approval has expired.

Originating Office: Office of Global Educational Programs (ECA/A/S).

Title of Information Collection: Fulbright Teacher and Administrator Exchange Program Application Package.

Frequency: Annual.

Form Number:

Respondents: Educators desiring to participate in the Fulbright Teacher and Administrator Exchange Program.

Estimated Number of Respondents: 862.

Average Hours Per Response: 2.

Total Estimated Burden: 1724.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Rachel Waldstein, Program Officer, (ECA/A/S/X); Department of State, SA–44, Room 349; 301 Fourth St., SW; Washington, DC 20547 who may be reached on (202) 619–4556.

Dated: February 8, 2002.

David Whitten,

Executive Director, ECA–IIP, Department of State.

[FR Doc. 02–7806 Filed 3–29–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice: 3966]

30-Day Notice of Proposed Information Collection: Form DS–3057, Medical Clearance Update; OMB Number 1405–0131

ACTION: Notice.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement without change of a current collection.

Originating Office: Office of Medical Services, M/DGHR/MED.

Title of Information Collection: Medical Clearance Update.

Frequency: Biennially.

Form Number: DS–3057.

Respondents: Foreign Service Employees and Eligible Family Members.

Estimated Number of Respondents: 12,000.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 3,000 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Kumiko Cross, FSHP, Office of Medical Services, 2401 E Street, NW., Room 201, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, who may be reached on 202–395–3897.

Dated: January 8, 2002.

Maria C. Melchiorre,

Acting Executive Director, Office of Medical Services, Department of State.

[FR Doc. 02–7805 Filed 3–29–02; 8:45 am]

BILLING CODE 4710–36–P

DEPARTMENT OF STATE

[Public Notice 3968]

Bureau of Democracy, Human Rights and Labor Request for Grant Proposals: Human Rights and Democratization Initiatives in the Muslim World

SUMMARY: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor announces an open competition for human rights and democratization initiatives in the Muslim world. Public and private non-profit organizations meeting the provisions described in Internal Revenue Code section 26 USC 501(c)(3) may submit proposals to administer these programs. Grants should begin no earlier than Summer 2002.

Program Information: The Bureau of Democracy, Human Rights and Labor (DRL) invites applicants to submit proposals that address programs and activities that foster democracy, human rights, press freedoms, women's political development and the rule of law in countries with a significant Muslim population, and where such programs and activities would be important to United States efforts to respond to, deter, or prevent acts of international terrorism. Innovative projects in predominantly Muslim countries will be considered, in particular, those that focus on the Middle East, including the Gulf States, and Central Asia.

U.S. national interests are best served by funding human rights and democratization initiatives in countries and regions of the world that are geo-strategically critical to the United States. Economic Support Funds (ESF) through the Human Rights and Democracy Fund (HRDF) support the implementation of innovative programs, and underscore the United States Government's continued commitment to promoting and protecting human rights and democracy in its fight against terrorism. HRDF projects must not duplicate or simply add to efforts by other entities.

Strong proposals usually have the following characteristics: an active, existing partnership between a U.S. organization and in-country organization(s); a proven track record for conducting successful program activity; a convincing plan outlining exactly how the program components will be carried out and what results will be achieved as a result of the grant; take place in-country or in a third country; and a follow-on plan that extends beyond the grant period ensuring that Bureau-supported programs are not isolated events.

Proposals should reflect a practical understanding of the current political, legal, economic and social environment that is relevant to the themes addressed in the proposal. In order to avoid the duplication of activities and programs, proposals should also indicate knowledge of similar projects being conducted in the region.

Applicants are expected to identify the U.S. and in-country partner organizations and individuals with whom they are proposing to collaborate and describe in detail previous cooperative projects undertaken by the organizations. Specific information about in-country partners' activities and accomplishments is required and should be included in the section on ''Institutional Capacity.''

To be eligible for a grant award under this competition, the proposed programs must address one of the following

specific themes for regional projects or single country projects:

All Countries

- Strengthening of Political and Governing Institutions (i.e. Judiciary, Parliament).
- Supporting Advocacy NGOs.
- Promoting Respect for Human Rights and Democratic Freedoms.
- Promoting Accountability, Transparency and Balance of Authority Among State Institutions.
- Supporting Independent Media.
- Integrating Women into Public Life.
- Promoting the Rule of Law.

Pakistan

- Assistance to Support a Transparent and Fair Election Process.

Budget Guidelines

The Bureau anticipates awarding grants in amounts of $250,000–$1,000,000 to support project and administrative costs required to implement these programs. Organizations with less than four years of experience in conducting similar programs may receive smaller grants. Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

Please refer to the Proposal Submission Instructions (PSI) for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with the Bureau concerning this RFP should reference the above title and number DRL/PHD–02–01.

FOR FURTHER INFORMATION, CONTACT: The Office for the Promotion of Human Rights and Democracy of the Bureau of Democracy, Human Rights and Labor, DRL/PHD. Please specify Sondra Govatski: 202–647–9734 on all inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Bureau staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package via Internet

The Solicitation Package contains detailed award criteria, specific budget instructions, and standard guidelines for proposal preparation. The RFP and Proposal Submission Instructions (PSI) may be downloaded from the Bureau's website at *http://www.state.gov/g/drl/.*

Deadline for Proposals

All proposals must be received at the Bureau of Democracy, Human Rights and Labor by 5 p.m. Eastern Standard Time (EST) on Tuesday, April 30, 2002. Faxed documents will not be accepted at any time. Documents postmarked on the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the RFP and Proposal Submission Instructions (PSI). Two complete copies of the proposal should be sent to: U.S. Department of State, Bureau of Democracy, Human Rights and Labor, Ref: DRL/PHD–02–01, DRL/PHD, Room 7802, Washington, DC 20520.

Applicants must also submit the ''Executive Summary'' and ''Proposal Narrative'' sections of the proposal on a 3.5″ diskette, formatted for Microsoft Word. The ''Budget'' must be submitted in Microsoft Excel format.

Review Process

The Bureau will review proposals for eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by DRL's Program Unit. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements.

Review Criteria

Eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, expertise, clarity, and relevance to the Bureau's mission.

2. *Program planning and ability to achieve program objectives:* A detailed agenda and work plan should demonstrate substantive undertakings and administrative capacity. Agenda and plan should adhere to the program overview and guidelines described above. Objectives should be reasonable and feasible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

3. *Multiplier effect/impact:* Proposed programs should promote long-term institution building or have other capacity-building results.

4. *Institution's Record/Ability/Capacity:* Proposals should demonstrate an institutional record of successful programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients, the demonstrated potential of new applicants, and the strength and capacity of in-country partner organizations. Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals.

5. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any Bureau representative.

Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been allocated and committed through internal Department procedures and notified to Congress.

Dated: March 27, 2002.

Lorne W. Craner,

Assistant Secretary for Democracy, Human Rights and Labor, Department of State.

[FR Doc. 02–7807 Filed 3–29–02; 8:45 am]

BILLING CODE 4710–18–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/DS–245]

WTO Consultations Regarding Japanese Measures Affecting the Importation of Apples

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice that on March 1, 2002, the United States requested consultations with Japan under the Marrakesh Agreement Establishing the World Trade Organization (WTO), regarding measures imposed by Japan on the importation of U.S. apples to protect against the introduction of fire blight. USTR invites written comments from the public concerning the issues raised in this dispute.

DATES: Although the USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before April 30, 2002, to be assured of timely consideration by USTR.

ADDRESSES: Comments should be submitted (i) electronically to japanapples@ustr.gov or (ii) by mail to Sandy McKinzy, Attn: Japan—Measures Affecting the Importation of Apples, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, with a confirmation copy sent electronically or by fax to (202) 395–3640.

FOR FURTHER INFORMATION CONTACT: Juan A. Millán, Assistant General Counsel, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 127(b) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1)) requires that notice and opportunity for comment be provided after the United States submits or receives a request for the establishment of a WTO dispute settlement panel. Consistent with this obligation, but in an effort to provide additional opportunity for comment, USTR is providing notice that consultations have been requested pursuant to the WTO Dispute Settlement Understanding (DSU). If such consultations should fail to resolve the matter and a dispute settlement panel is established pursuant to the DSU, such panel, which would hold its meetings in Geneva, Switzerland, would be expected to issue a report on its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the United States

The United States has requested WTO consultations with Japan regarding its quarantine restrictions on U.S. apples imported into Japan to protect against the introduction of fire blight (*Erwinia amylovora).* These restrictions include, *inter alia,* the prohibition of imported apples from orchards in which any fire blight is detected, the requirement that export orchards be inspected three times yearly for the presence of fire blight, the disqualification of any orchard from exporting to Japan should fire blight be detected within a 500 meter buffer zone surrounding such orchard, and a post-harvest treatment of exported apples with chlorine. None of these restrictions is supported by scientific evidence.

The United States contends that Japan's measures are inconsistent with the obligations of Japan under Article XI of the *General Agreement on Tariffs and Trade 1994*, Articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.6, 6.1, 6.2, and 7 and Annex B of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, and Article 14 of the *Agreement on Agriculture.* Japan's measures also appear to nullify or impair the benefits accruing to the United States directly or indirectly under the cited agreements.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English. Commenters should send either one copy by U.S. mail, first class, postage prepaid, to Sandy McKinzy at the address listed above, or transmit a copy electronically to *japanapples@ustr.gov.* For documents sent by U.S. mail, USTR requests that the submitter provide a confirmation copy, either electronically or by fax to (202) 395–3640. USTR encourages the submission of documents in Adobe PDF format, as attachments to an electronic mail.

A person requesting that information contained in a comment submitted by that person be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy. For any document containing business confidential information submitted by electronic transmission, the file name of the business confidential version should begin with the characters ''BC'', and the file name of the public version should begin with the characters ''P''. The ''P'' or ''BC'' should be followed by the name of the commenter. Interested persons who make submission by electronic mail should not provide separate cover letters; information that might appear in a cover letter should be included in the submission itself. Similarly, to the extent possible, any attachments to the submission should be included in the same file as the submission itself and not as separate files.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate the information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Office of the United States Trade Representative, 1724 F Street, NW., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the dispute; if a dispute settlement panel is convened, the U.S. submissions to that panel, the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the panel; and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/DS–245, Japan—Measures Affecting the Importation of Apples) may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Christine Bliss,

Acting Assistant United States Trade Representative for Monitoring and Enforcement.

[FR Doc. 02–7736 Filed 3–29–02; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Salt Lake County, UT

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an

environmental impact statement will be prepared for a proposed highway project in Salt Lake County, Utah.

FOR FURTHER INFORMATION CONTACT: Greg Punske, Project Development Engineer, Federal Highway Administration 2520 West 400 South Suite 9a, Salt Lake City, Utah 84118–1847, Telephone: (801) 963–0182.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Utah Department of Transportation, the city of West Valley City, Utah, and the Federal Transit Administration (FTA) will prepare an environmental impact statement on a proposal to improve a portion of State Route 171 on 3500 South. The proposed improvement would involve the reconstruction of 3500 South between Redwood Road and 8400 West in West Valley City and Salt Lake County for a distance of 12.9 km (8.0 miles). Most of the proposed project lies within the corporate limits of West Valley City, Utah. The west most portion, from 7200 West for 8400 West, lies in the Magna area, an unincorporated area of Salt Lake County.

Improvements to the corridor are considered necessary to provide for the existing and projected travel demand as indicated in the long range plan developed by the Wasatch Front Regional Council. Alternatives under consideration include (1) taking no action; (2) using alternative travel modes; (3) transportation systems management strategies (TSM); (4) mass transit options, and (5) reconstruction of the existing roadway, including control of access. Also under consideration is the proposed construction of grade separated interchange type facilities located at several heavily used intersections in the project corridor.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings, including scoping meetings, will be held. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

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

Issued on March 26, 2002.

William R. Gedris,

Structural Environmental Engineer, Salt Lake City, Utah.

[FR Doc. 02–7761 Filed 3–29–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 587]

Information Quality Guidelines

Authority: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; 114 Stat. 2763).

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of guidelines and request for comments.

SUMMARY: The Surface Transportation Board (Board) is seeking comments on its draft Information Quality Guidelines (I.Q. Guidelines). The I.Q. Guidelines contain the Board's information resource management procedures for reviewing and substantiating the quality of information before it is disseminated to the public, and the procedures by which an affected person may obtain correction of information disseminated by the Board that does not comply with the I.Q. Guidelines. The Board will consider comments in developing its final I.Q. Guidelines.

DATES: Comments are due May 1, 2002.

ADDRESSES: Send comments (an original plus 10 copies) referring to Ex Parte No. 587 to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, NW., Washington, DC 20423–0001.

FOR FURTHER INFORMATION CONTACT: John M. Atkisson (202) 565–1710. [TDD for hearing impaired: (800) 877–8339.]

SUPPLEMENTARY INFORMATION: The Board's draft I.Q. Guidelines are posted on its website, www.stb.dot.gov. In addition, copies of the I.Q. Guidelines may be purchased from Da-2-Da Legal Copy Service by calling 202–293–7776 (assistance for the hearing impaired is available through TDD services at 800–877–8339) or visiting Suite 405, 1925 K Street, NW., Washington, DC 20006.

Decided: March 27, 2002.

By the Board, John M. Atkisson, Designated Official.

Vernon A. Williams,

Secretary.

[FR Doc. 02–7792 Filed 3–29–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 25, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 2002 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0089.

Form Number: ATF F 5100.24.

Type of Review: Extension.

Title: Application for Basic Permit Under the Federal Alcohol Administration Act.

Description: ATF F 5400.24 will be completed by persons intending to engage in a business involving beverage alcohol operations at distilled spirits plants, bonded wineries, or wholesaling/importing businesses. The information allows ATF to identify the applicant and the location of the business and to determine whether the applicant qualifies for a permit.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,600.

Estimated Burden Hours Per Respondent: 1 hour, 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 2,800 hours.

OMB Number: 1512–0090.

Form Number: ATF F 5100.18 (1643).

Type of Review: Extension.

Title: Application for Amended Basic Permit Under the Federal Alcohol Administration Act.

Description: ATF F 5100.18 is completed by permittees who change their operations which require a new permit to be issued or a notice to be received by ATF. The information allows ATF to identify the permittee, the changes to the permit or business and to determine whether the applicant qualifies.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 600 hours.

OMB Number: 1512–0507.

Form Number: ATF F 5300.26.

Type of Review: Extension.

Title: Federal Firearms and Ammunition Excise Tax.

Description: This information is needed to determine how much tax is owed for firearms and ammunition. ATF uses this information to verify that a taxpayer has correctly determined and paid tax liability on the sale or use of firearms and ammunition. Businesses, including small to large, and individuals may be required to use this form.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 965.

Estimated Burden Hours Per Respondent: 7 hours.

Frequency of Response: Quarterly, Other (annual if no tax is due).

Estimated Total Reporting Burden: 27,020 hours.

OMB Number: 1512–0548.

Form Number: ATF F 6410.1.

Type of Review: Extension.

Title: Gang Resistance Education and Training Funding Application.

Description: State and Local law enforcement agencies desiring financial assistance for the G.R.E.A.T. Program will submit ATF F 6410.1 to the ATF, G.R.E.A.T. Branch. The information collected will be used by ATF to evaluate the applicants funding need. The information will also be used to determine funding priorities and levels of funding, as required by law.

Respondents: State, Local or Tribal Government.

Estimated Number of Respondents: 400.

Estimated Burden Hours Per Respondent: 2 hours.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 800 hours.

Clearance Officer: Jacqueline White (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–7767 Filed 3–29–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 26, 2002.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 2002 to be assured of consideration.

INTERNAL REVENUE SERVICE (IRS)

OMB Number: 1545–1395.

Form Number: IRS Form 8838.

Type of Review: Extension.

Title: Consent to Extend the Time to Assess Tax Under Section 367-Gain Recognition Agreement.

Description: Form 8838 is used to extend the statute of limitations for U.S. persons who transfer stock or securities to a foreign corporation. The form is filed when the transferor makes a gain recognition agreement. This agreement allows the transferor to defer the payment of tax on the transfer. The IRS uses Form 8838 so that it may assess tax against the transferor after the expiration of the original statute of limitations.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—4 hr., 32 min.

Learning about the law or the form—2 hr., 9 min.

Preparing the form—3 hr., 15 min.

Copying, assembling, and sending the form to the IRS—16 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 10,220 hours.

Clearance Officer: Glenn Kirkland, Internal Revenue Service, Room 6411, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 02–7768 Filed 3–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–62–87]

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, PS–62–87 (TD 8302), Low-Income Housing Credit for Federally-assisted Buildings (sec. 1.42–2(d)).

DATES: Written comments should be received on or before May 31, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to Allan Hopkins, (202) 622–6665, or through the internet (*Allan.M.Hopkins@irs.gov*) Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION: *Title:* Low-Income Housing Credit for Federally-assisted Buildings.

OMB Number: 1545–1005.

Regulation Project Number: PS–62–87.

Abstract: The regulation provides state and local housing credit agencies and owners of qualified low-income buildings with guidance regarding compliance with the waiver requirement of section 42(d)(6) of the Internal Revenue Code. The regulation requires documentary evidence of financial distress leading to a potential claim against a Federal mortgage insurance fund in order to get a written waiver from the IRS for the acquirer of the qualified low-income building to properly claim the low-income housing credit.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 3 hrs.

Estimated Total Annual Burden Hours: 3,000.

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: March 22, 2002.

George Freeland,

IRS Reports Clearance Officer.

[FR Doc. 02–7803 Filed 3–29–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Advisory Committee for Electronic Tax Administration

AGENCY: Internal Revenue Service (IRS).

ACTION: Request for nominations.

SUMMARY: The Electronic Tax Administration Advisory Committee (ETAAC), was established to provide continued input into the development and implementation of the Internal Revenue Service (IRS) strategy for electronic tax administration. The ETAAC provides an organized public forum for discussion of electronic tax administration issues in support of the overriding goal that paperless filing should be the preferred and most convenient method of filing tax and information returns. ETAAC members convey the public's perception of IRS electronic tax administration activities, offer constructive observations about current or proposed policies, programs, and procedures, and suggest improvements. This document seeks nominations of individuals to be considered for selection as Committee members.

The Director (Electronic Tax Administration) will assure that the size and organizational representation of the ETAAC obtains balanced membership and includes representatives from various groups including: (1) Tax practitioners and preparers, (2) transmitters of electronic returns, (3) tax software developers, (4) large and small businesses, (5) employers and payroll service providers, (6) individual taxpayers, (7) financial industry (payers, payment options and best practices), (8) system integrators (technology providers), (9) academic (marketing, sales or technical perspectives), (10) trusts and estates, (11) tax exempt organizations, and (12) state and local governments. We are soliciting nominations from professional and public interest groups, IRS officials, the Department of Treasury, and Congress. Members will be limited to serving one two-year term on the ETAAC to ensure that new perspectives and ideas are generated by the members. All travel expenses within government guidelines will be reimbursed.

DATES: Written nominations must be received on or before May 1, 2002.

ADDRESSES: Nominations should be sent to Robin Marusin, W:E, Room 7331 IR, 1111 Constitution Ave., NW., Washington, DC 20224. Application forms can be obtained from Robin Marusin, who can be reached on (202) 622–8184.

FOR FURTHER INFORMATION CONTACT: Robin Marusin, 202–622–8184.

SUPPLEMENTARY INFORMATION: The ETAAC will provide continued input into the development and implementation of the IRS strategy for electronic tax administration. The ETAAC members will convey the public's observations about current or proposed policies, programs, and procedures, and suggest improvements.

This activity is based on the authority to administer the Internal Revenue laws conferred upon the Secretary of the Treasury by section 7802 of the Internal Revenue Code and delegated to the Commissioner of the Internal Revenue.

The ETAAC will research, analyze, consider, and make recommendations on a wide range of electronic tax administrations issues and will provide input into the development and implementation of the strategic plan for electronic tax administration.

Nominations should describe and document the proposed member's qualifications for membership to the Committee. Equal opportunity practices will be followed in all appointments to the Committee. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership will include, to the extent practicable, individuals, with demonstrated ability to represent minorities, women, and persons with disabilities.

Terence H. Lutes,

Director, Electronic Tax Administration.

[FR Doc. 02–7804 Filed 3–29–02; 8:45 am]

BILLING CODE 4830–01–P

Federal Register

Monday,
April 1, 2002

Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1979

Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1979

RIN 1218–AB99

Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides the text of regulations governing the employee protection (''whistleblower'') provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), a Federal Aviation Administration reauthorization bill, enacted into law April 5, 2000. This rule establishes procedures and time frames for the handling of complaints under AIR21, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (''OSHA''), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (''ALJ'') for a hearing de novo, hearings by ALJs, appeal of ALJ decisions to the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on April 1, 2002. Comments on the interim final rule are due on or before May 31, 2002.

ADDRESSES: Submit written comments to: Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience, comments may be transmitted by facsimile (''FAX'') machine to (202) 693–1681. This is not a toll-free number. If commenters transmit comments by FAX and also submit a hard copy by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: John Spear, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2187. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), Public Law No. 106–181, was enacted on April 5, 2000. Section 519 of the Act, codified at 49 U.S.C. 42121, provides protection to employees against retaliation by air carriers, their contractors and their subcontractors, because they provided information to the employer or the federal government relating to air carrier safety violations, or filed, testified, or assisted in a proceeding against the employer relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (''FAA'') or any other law relating to the safety of air carriers, or because they are about to take any of these actions. These rules establish procedures for the handling of complaints under AIR21. In drafting these regulations, consideration has been given to the whistleblower regulations of the Surface Transportation Assistance Act (''STAA''), codified at 29 CFR part 1978, and the Energy Reorganization Act (''ERA''), codified at 29 CFR part 24, where deemed appropriate.

II. Summary of Statutory Provisions

The AIR21 whistleblower provisions include procedures which allow a covered employee to file, within 90 days of the alleged discrimination, a complaint with the Secretary of Labor (''the Secretary''). [1] Upon receipt of the complaint, the Secretary must provide written notice to both the person named in the complaint who is alleged to have violated the Act (''the named person'') and the FAA of: The allegations contained in the complaint, the substance of the evidence submitted with the complaint, and the rights of the named person throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the named person an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation. However, the Secretary may conduct an investigation only if the complainant has made a *prima facie* showing that the alleged discriminatory behavior was a contributing factor in the unfavorable personnel action alleged in the complaint and the named person has not demonstrated, through clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior. This provision is similar to the 1992 amendments to the ERA, codified at 42 U.S.C. 5851.

After investigating a complaint, the Secretary shall issue a determination letter. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that discriminatory behavior has occurred, the Secretary must notify the named person of those findings along with a preliminary order which requires the named person to: Abate the violation, reinstate the complainant to his or her former position and provide make whole relief and compensatory damages to the complainant, as well as costs and fees reasonably incurred. The complainant and the named person then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record. The filing of objections under AIR21 shall stay any remedy in the preliminary order except for preliminary reinstatement. This provision for preliminary reinstatement after the investigation is similar to Section 405 of STAA, 49 U.S.C. 31105. If a hearing before an administrative law judge is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, AIR21 requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the ''conclusion of a hearing'' in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, complainant and the named person may enter into a settlement agreement which terminates this proceeding. The Secretary may assess against the named person, on the complainant's request, a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees reasonably incurred by the complainant in bringing the complaint to the Secretary or in connection with participating in the

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 3–2000, 65 FR 50017 (August 16, 2000). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. See Secretary's Order 2–96, 61 FR 19978 (May 3, 1996).

proceeding which resulted in the order on behalf of the complainant. The Secretary may also award a prevailing employer an attorney's fee, not exceeding $1,000, if she finds that the complaint is or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation. Finally, AIR21 makes persons who violate these newly created whistleblower provisions subject to a civil penalty of up to $1,000. This provision is administered by the FAA.

III. Summary and Discussion of Regulatory Provisions

Section 1979.100 Purpose and Scope

This section describes the purpose of the regulations implementing AIR21 and provides an overview of the procedures covered by these new regulations.

Section 1979.101 Definitions

In addition to the general definitions, the regulations include program-specific definitions of ''air carrier'' and ''contractor.'' The statutory definition of ''air carrier'' applicable to AIR21 is found at 49 U.S.C. 40102(a)(2), a general definitional provision applicable to air commerce and safety. The statutory definition of ''contractor'' is found in AIR21 at 49 U.S.C. 42121(e).

Section 1979.102 Obligations and Prohibited Acts

This section describes the whistleblower activity which is protected under the Act and the type of conduct which is prohibited in response to any protected activity.

Section 1979.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint. Under AIR21, to be timely a complaint must be filed within 90 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints under AIR21 do not need to be made in any particular form, and, with the consent of the employee, may be made by any person on the employee's behalf. Oral complaints will be reduced to writing by the OSHA official receiving the complaint.

Section 1979.104 Investigation

AIR21 contains a requirement similar to the requirement in the ERA that a complaint shall be dismissed if it fails to make a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the AIR21 requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the *prima facie* showing of the complainant. Under this section, the named person has the opportunity within ten days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of his or her position.

If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within ten days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments why preliminary relief is not warranted. This provision provides due process procedures in accordance with the Supreme Court decision under STAA in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987).

Section 1979.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue a finding regarding whether or not the complaint has merit. If the finding is that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief.

The letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

Section 1979.106 Objections to the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal or e-mail communication is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ.

Section 1979.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR part 18. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and/or order of the Assistant Secretary.

Section 1979.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and the public interest has not required the Department's participation. Therefore this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or *amicus curiae* at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an administrative law judge; petition for review of a decision of an administrative law judge,

including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as *amicus curiae* before the ALJ or in the Administrative Review Board proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate in AIR21 proceedings, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The FAA, at that agency's discretion, also may participate as *amicus curiae* at any time in the proceedings. The Department believes it is unlikely that its preliminary decision not to ordinarily prosecute meritorious AIR21 cases will discourage employees from making complaints about air carrier safety. The Department seeks comment regarding its preliminary decision that the Assistant Secretary should not ordinarily participate in AIR21 proceedings, but should participate in appropriate cases, or whether instead the Department should follow the STAA model under which it ordinarily participates where a complaint is found to have merit. The Department will consider these comments, as well as its experience under this program in the interim, in issuance of the final rule.

Section 1979.109 Decision of the Administrative Law Judge

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's determination as to whether to dismiss the complaint without an investigation or conduct an investigation pursuant to § 1979.104 is not subject to review by the ALJ, who hears the case on the merits.

Section 1979.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary if no timely petition for review is filed with the Administrative Review Board. Upon the issuance of the ALJ's decision, the parties have 15 days to petition the Board for review of that decision. The decision of the Board is required by the Act to be issued not later than 120 days after the date of the conclusion of the hearing before the ALJ, which is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.,* 15 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while review is conducted by the Board.

Section 1979.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigatory and judicial stages of the case.

Section 1979.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1979.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1979.114 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

IV. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1979.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

This rule is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A). Therefore publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required by these regulations, which provide procedures for the handling of discrimination complaints. Although this rule is not subject to the notice and comment procedures of the APA, persons interested in this interim final rule may submit comments within 60 days. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because AIR21 is a new program and because of the importance to FAA's airline safety program that ''whistleblowers'' be protected from retaliation. E.O. 12866 requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) as rules that may ''have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule does not have ''federalism implications.'' The 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'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of AIR21, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1979

Administrative practice and procedure, Air carrier safety, Employment, Investigations, Reporting and Recordkeeping requirements, Whistleblowing.

Signed at Washington, DC, this 22nd day of March, 2002.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble part 1979 of title 29 of the Code of Federal Regulations is promulgated as follows:

PART 1979–PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 49 U.S.C. 42121; Secretary of Labor's Order No. 3–2000, 65 FR 50017 (August 16, 2000).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1979.100 Purpose and scope.

(a) This part implements procedures under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121 (''AIR21''), which provides for employee protection from discrimination by air carriers or contractors or subcontractors of air carriers because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety.

(b) This part establishes procedures pursuant to AIR21 for the expeditious handling of complaints of discrimination made by employees, or by persons acting on their behalf. These rules, together with those rules set forth at 29 CFR part 18, set forth the procedures for submission of complaints under AIR21, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1979.101 Definitions.

Act or *AIR21* means section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181, April 5, 2000, 49 U.S.C. 42121.

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

Contractor means a company that performs safety-sensitive functions by contract for an air carrier.

Employee means an individual presently or formerly working for an air carrier or contractor or subcontractor of an air carrier, an individual applying to work for an air carrier or contractor or subcontractor of an air carrier, or an individual whose employment could be affected by an air carrier or contractor or subcontractor of an air carrier.

Named person means the person alleged to have violated the Act.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Person means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1979.102 Obligations and prohibited acts.

(a) No air carrier or contractor or subcontractor of an air carrier may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) It is a violation of the Act for any air carrier or contractor or subcontractor of an air carrier to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the air carrier or contractor or subcontractor of an air carrier or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code or under any other law of the United States;

(2) Filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code, or under any other law of the United States;

(3) Testified or is about to testify in such a proceeding; or

(4) Assisted or participated or is about to assist or participate in such a proceeding.

(c) This part shall have no application to any employee of an air carrier, contractor, or subcontractor who, acting without direction from an air carrier, contractor, or subcontractor (or such person's agent) deliberately causes a violation of any requirement relating to air carrier safety under Subtitle VII Aviation Programs of Title 49 of the United States Code or any other law of the United States.

§ 1979.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an air carrier or contractor or subcontractor of an air carrier in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any Department of Labor officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *www.osha.gov.*

(d) *Time for filing.* Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(e) *Relationship to section 11(c) complaints.* A complaint filed under AIR21 that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), shall be deemed to be a complaint filed under both AIR21 and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of AIR21 shall be deemed to be a complaint filed under both AIR21 and section 11(c).

§ 1979.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (sanitized to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section. A copy of the notice to the named person will also be provided to the Federal Aviation Administration.

(b) A complaint of alleged violation will be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew (or suspected) that the employee engaged in protected activity and that the protected activity was likely a reason for the personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint will not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within ten days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating his or her position. Within the same ten days the named person may request a meeting with the Assistant Secretary to present his or her position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, an investigation will be conducted. Investigations will be conducted in a manner that protects the confidentiality of any person, other than the complainant, who provides information on a confidential basis, in accordance with part 70 of this title.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1979.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be sanitized to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be sanitized without revealing the identity of confidential informants, summaries of their contents will be provided. The named person shall be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person shall present this evidence within ten days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1979.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of filing of the

complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act. If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. At the complainant's request the order may also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint. If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) Upon the request of the named person, the Assistant Secretary shall determine, on the basis of information gathered under the procedures of § 1979.104, whether a complaint was frivolous or was brought in bad faith. If the the Assistant Secretary determines the complaint was frivolous or was brought in bad faith, the Assistant Secretary may award to the named person a reasonable attorney's fee not exceeding $1,000. In order to support such award, the Assistant Secretary may require the named person to provide evidence of the attorney's fee it has incurred.

(c) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of the right to object to the findings and/or the order and will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the findings and order.

(d) The findings and the preliminary order shall be effective 30 days after receipt by the named person, but shall be inoperative if an objection to the findings and preliminary order has been timely filed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon receipt of the findings and preliminary order, regardless of any objections to the findings and order, and may not be stayed.

Subpart B—Litigation

§ 1979.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or of an award of attorney's fees under § 1979.105(b), must file objections and a request for a hearing on the record, within 30 days of receipt of the findings and preliminary order. The objection and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or the award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20210, and copies of the objections must be mailed at the same time to the other parties of record, the Assistant Secretary's designee who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order, except an order of preliminary reinstatement, shall be stayed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order.

(2) The findings and the preliminary order shall be effective 30 days after receipt unless an objection to the findings or preliminary order has been timely filed. If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1979.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted as hearings *de novo*, on the record.

(c) If both complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 1979.108 Role of Federal agencies.

(a)(1) The complainant and the named person shall be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or may participate as *amicus curiae* at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The FAA may participate as *amicus curiae* at any time in the proceedings, at the FAA's discretion. At the request of the FAA, copies of all pleadings in a case must be served on the FAA, whether or not the FAA is participating in the proceeding.

§ 1979.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the

unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint pursuant to § 1979.104 without completing an investigation nor the Assistant Secretary's determination not to dismiss a complaint is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge shall hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorneys' and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary shall be effective immediately upon receipt of the decision by the named person, and may not be stayed. All other portions of the judge's order shall be effective 15 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) The decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Administrative Review Board (''the Board''). Any party desiring to seek review, including judicial review, of a decision of the administrative law judge must file a written petition for review with the Board, which has been delegated the authority to act for the Secretary and issue final decisions under this part. To be effective, a petition must be received within 15 days of the date of the decision of the administrative law judge. The petition must be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed.

(b) Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(c) The final decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.,* 15 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. If the Assistant Secretary is not a party, the final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(d) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorneys' and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order shall be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1979.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether the withdrawal will be approved. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement shall be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, shall constitute

the final order of the Secretary and may be enforced pursuant to § 1979.112.

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1979.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1979.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1979.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Administrative Review Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

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Part II

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1979

Procedures for the Handling of Discrimination Complaints under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1979

RIN 1218–AB99

Procedures for the Handling of Discrimination Complaints Under Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Interim final rule; request for comments.

SUMMARY: This document provides the text of regulations governing the employee protection (''whistleblower'') provisions of Section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), a Federal Aviation Administration reauthorization bill, enacted into law April 5, 2000. This rule establishes procedures and time frames for the handling of complaints under AIR21, including procedures and time frames for employee complaints to the Occupational Safety and Health Administration (''OSHA''), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (''ALJ'') for a hearing de novo, hearings by ALJs, appeal of ALJ decisions to the Administrative Review Board (acting on behalf of the Secretary) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on April 1, 2002. Comments on the interim final rule are due on or before May 31, 2002.

ADDRESSES: Submit written comments to: Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped post card or to submit them by certified mail, return receipt requested. As a convenience, comments may be transmitted by facsimile (''FAX'') machine to (202) 693–1681. This is not a toll-free number. If commenters transmit comments by FAX and also submit a hard copy by mail, please indicate on the hard copy that it is a duplicate copy of the FAX transmission.

FOR FURTHER INFORMATION CONTACT: John Spear, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3468, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2187. This is not a toll-free number. The alternative formats available are large print, electronic file on computer disk (Word Perfect, ASCII, Mates with Duxbury Braille System) and audiotape.

SUPPLEMENTARY INFORMATION:

I. Background

The Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (''AIR21''), Public Law No. 106–181, was enacted on April 5, 2000. Section 519 of the Act, codified at 49 U.S.C. 42121, provides protection to employees against retaliation by air carriers, their contractors and their subcontractors, because they provided information to the employer or the federal government relating to air carrier safety violations, or filed, testified, or assisted in a proceeding against the employer relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration (''FAA'') or any other law relating to the safety of air carriers, or because they are about to take any of these actions. These rules establish procedures for the handling of complaints under AIR21. In drafting these regulations, consideration has been given to the whistleblower regulations of the Surface Transportation Assistance Act (''STAA''), codified at 29 CFR part 1978, and the Energy Reorganization Act (''ERA''), codified at 29 CFR part 24, where deemed appropriate.

II. Summary of Statutory Provisions

The AIR21 whistleblower provisions include procedures which allow a covered employee to file, within 90 days of the alleged discrimination, a complaint with the Secretary of Labor (''the Secretary''). [1] Upon receipt of the complaint, the Secretary must provide written notice to both the person named in the complaint who is alleged to have violated the Act (''the named person'') and the FAA of: The allegations contained in the complaint, the substance of the evidence submitted with the complaint, and the rights of the named person throughout the investigation. The Secretary must then, within 60 days of receipt of the complaint, afford the named person an opportunity to submit a response and meet with the investigator to present statements from witnesses, and conduct an investigation. However, the Secretary may conduct an investigation only if the complainant has made a *prima facie* showing that the alleged discriminatory behavior was a contributing factor in the unfavorable personnel action alleged in the complaint and the named person has not demonstrated, through clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior. This provision is similar to the 1992 amendments to the ERA, codified at 42 U.S.C. 5851.

After investigating a complaint, the Secretary shall issue a determination letter. If, as a result of the investigation, the Secretary finds there is reasonable cause to believe that discriminatory behavior has occurred, the Secretary must notify the named person of those findings along with a preliminary order which requires the named person to: Abate the violation, reinstate the complainant to his or her former position and provide make whole relief and compensatory damages to the complainant, as well as costs and fees reasonably incurred. The complainant and the named person then have 30 days after the date of the Secretary's notification in which to file objections to the findings and/or preliminary order and request a hearing on the record. The filing of objections under AIR21 shall stay any remedy in the preliminary order except for preliminary reinstatement. This provision for preliminary reinstatement after the investigation is similar to Section 405 of STAA, 49 U.S.C. 31105. If a hearing before an administrative law judge is not requested within 30 days, the preliminary order becomes final and is not subject to judicial review.

If a hearing is held, AIR21 requires the hearing to be conducted ''expeditiously.'' The Secretary then has 120 days after the ''conclusion of a hearing'' in which to issue a final order, which may provide appropriate relief or deny the complaint. Until the Secretary's final order is issued, the Secretary, complainant and the named person may enter into a settlement agreement which terminates this proceeding. The Secretary may assess against the named person, on the complainant's request, a sum equal to the total amount of all costs and expenses, including attorney's and expert witness fees reasonably incurred by the complainant in bringing the complaint to the Secretary or in connection with participating in the

[1] Responsibility for receiving and investigating these complaints has been delegated to the Assistant Secretary for OSHA. Secretary's Order 3–2000, 65 FR 50017 (August 16, 2000). Hearings on determinations by the Assistant Secretary are conducted by the Office of Administrative Law Judges, and appeals from decisions by administrative law judges are decided by the Administrative Review Board. See Secretary's Order 2–96, 61 FR 19978 (May 3, 1996).

proceeding which resulted in the order on behalf of the complainant. The Secretary may also award a prevailing employer an attorney's fee, not exceeding $1,000, if she finds that the complaint is or has been brought in bad faith. Within 60 days of the issuance of the final order, any person adversely affected or aggrieved by the Secretary's final order may file an appeal with the United States Court of Appeals for the circuit in which the violation occurred or the circuit where the complainant resided on the date of the violation. Finally, AIR21 makes persons who violate these newly created whistleblower provisions subject to a civil penalty of up to $1,000. This provision is administered by the FAA.

III. Summary and Discussion of Regulatory Provisions

Section 1979.100 Purpose and Scope

This section describes the purpose of the regulations implementing AIR21 and provides an overview of the procedures covered by these new regulations.

Section 1979.101 Definitions

In addition to the general definitions, the regulations include program-specific definitions of ''air carrier'' and ''contractor.'' The statutory definition of ''air carrier'' applicable to AIR21 is found at 49 U.S.C. 40102(a)(2), a general definitional provision applicable to air commerce and safety. The statutory definition of ''contractor'' is found in AIR21 at 49 U.S.C. 42121(e).

Section 1979.102 Obligations and Prohibited Acts

This section describes the whistleblower activity which is protected under the Act and the type of conduct which is prohibited in response to any protected activity.

Section 1979.103 Filing of Discrimination Complaint

This section explains the requirements for filing a discrimination complaint. Under AIR21, to be timely a complaint must be filed within 90 days of when the alleged violation occurs. Under *Delaware State College* v. *Ricks,* 449 U.S. 250, 258 (1980), this is considered to be when the discriminatory decision has been both made and communicated to the complainant. In other words, the limitations period commences once the employee is aware or reasonably should be aware of the employer's decision. *Equal Employment Opportunity Commission* v. *United Parcel Service,* 249 F.3d 557, 561–62 (6th Cir. 2001). Complaints under AIR21 do not need to be made in any particular form, and, with the consent of the employee, may be made by any person on the employee's behalf. Oral complaints will be reduced to writing by the OSHA official receiving the complaint.

Section 1979.104 Investigation

AIR21 contains a requirement similar to the requirement in the ERA that a complaint shall be dismissed if it fails to make a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Also included in this section is the AIR21 requirement that an investigation of the complaint will not be conducted if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct, notwithstanding the *prima facie* showing of the complainant. Under this section, the named person has the opportunity within ten days of receipt of the complaint to meet with representatives of OSHA and present evidence in support of his or her position.

If, upon investigation, OSHA has reasonable cause to believe that the named person has violated the Act and therefore that preliminary relief for the complainant is warranted, OSHA again contacts the named person with notice of this determination and provides the substance of the relevant evidence upon which that determination is based, consistent with the requirements of confidentiality of informants. The named person is afforded the opportunity, within ten days, to provide written evidence in response to the allegation of the violation, meet with the investigators, and present legal and factual arguments why preliminary relief is not warranted. This provision provides due process procedures in accordance with the Supreme Court decision under STAA in *Brock* v. *Roadway Express, Inc.,* 481 U.S. 252 (1987).

Section 1979.105 Issuance of Findings and Preliminary Orders

This section provides that, on the basis of information obtained in the investigation, the Assistant Secretary will issue a finding regarding whether or not the complaint has merit. If the finding is that the complaint has merit, the Assistant Secretary will order appropriate preliminary relief.

The letter accompanying the findings and order advises the parties of their right to file objections to the findings of the Assistant Secretary. If no objections are filed within 30 days of receipt of the findings, the findings and any preliminary order of the Assistant Secretary become the final findings and order of the Secretary. If objections are timely filed, any order of preliminary reinstatement will take effect, but the remaining provisions of the order will not take effect until administrative proceedings are completed.

Section 1979.106 Objections to the Findings and the Preliminary Order

To be effective, objections to the findings of the Assistant Secretary must be in writing and must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC within 30 days of receipt of the findings. The date of the postmark, facsimile transmittal or e-mail communication is considered the date of the filing. The filing of objections is also considered a request for a hearing before an ALJ.

Section 1979.107 Hearings

This section adopts the rules of practice of the Office of Administrative Law Judges at 29 CFR part 18. In order to assist in obtaining full development of the facts in whistleblower proceedings, formal rules of evidence do not apply. The section specifically provides for consolidation of hearings if both the complainant and the named person object to the findings and/or order of the Assistant Secretary.

Section 1979.108 Role of Federal Agencies

The ERA and STAA regulations provide two different models for agency participation in administrative proceedings. Under STAA, OSHA ordinarily prosecutes cases where a complaint has been found to be meritorious. Under ERA and the other environmental whistleblower statutes, on the other hand, OSHA does not ordinarily appear as a party in the proceeding. The Department has found that in most environmental whistleblower cases, parties have been ably represented and the public interest has not required the Department's participation. Therefore this provision utilizes the approach of the ERA regulation at 29 CFR 24.6(f)(1). The Assistant Secretary, at his or her discretion, may participate as a party or *amicus curiae* at any time in the administrative proceedings. For example, the Assistant Secretary may exercise his or her discretion to prosecute the case in the administrative proceeding before an administrative law judge; petition for review of a decision of an administrative law judge,

including a decision based on a settlement agreement between complainant and the named person, regardless of whether the Assistant Secretary participated before the ALJ; or participate as *amicus curiae* before the ALJ or in the Administrative Review Board proceeding. Although we anticipate that ordinarily the Assistant Secretary will not participate in AIR21 proceedings, the Assistant Secretary may choose to do so in appropriate cases, such as cases involving important or novel legal issues, large numbers of employees, alleged violations which appear egregious, or where the interests of justice might require participation by the Assistant Secretary. The FAA, at that agency's discretion, also may participate as *amicus curiae* at any time in the proceedings. The Department believes it is unlikely that its preliminary decision not to ordinarily prosecute meritorious AIR21 cases will discourage employees from making complaints about air carrier safety. The Department seeks comment regarding its preliminary decision that the Assistant Secretary should not ordinarily participate in AIR21 proceedings, but should participate in appropriate cases, or whether instead the Department should follow the STAA model under which it ordinarily participates where a complaint is found to have merit. The Department will consider these comments, as well as its experience under this program in the interim, in issuance of the final rule.

Section 1979.109 Decision of the Administrative Law Judge

This section sets forth the content of the decision and order of the administrative law judge, and includes the statutory standard for finding a violation. The section further provides that the Assistant Secretary's determination as to whether to dismiss the complaint without an investigation or conduct an investigation pursuant to § 1979.104 is not subject to review by the ALJ, who hears the case on the merits.

Section 1979.110 Decision of the Administrative Review Board

The decision of the ALJ is the final decision of the Secretary if no timely petition for review is filed with the Administrative Review Board. Upon the issuance of the ALJ's decision, the parties have 15 days to petition the Board for review of that decision. The decision of the Board is required by the Act to be issued not later than 120 days after the date of the conclusion of the hearing before the ALJ, which is deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.,* 15 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. If a timely petition for review is filed with the Board, any relief ordered by the ALJ, except for a preliminary order of reinstatement, is inoperative while review is conducted by the Board.

Section 1979.111 Withdrawal of Complaints, Objections, and Findings; Settlement

This section provides for the procedures and time periods for withdrawal of complaints, the withdrawal of findings by the Assistant Secretary, and the withdrawal of objections to findings. It also provides for approval of settlements at the investigatory and judicial stages of the case.

Section 1979.112 Judicial Review

This section describes the statutory provisions for judicial review of decisions of the Secretary and requires, in cases where judicial review is sought, the Administrative Review Board to submit the record of proceedings to the appropriate court pursuant to the rules of such court.

Section 1979.113 Judicial Enforcement

This section describes the Secretary's power under the statute to obtain judicial enforcement of orders and the terms of a settlement agreement. It also provides for enforcement of orders of the Secretary by the person on whose behalf the order was issued.

Section 1979.114 Special Circumstances; Waiver of Rules

This section provides that in circumstances not contemplated by these rules or for good cause the Secretary may, upon application and notice to the parties, waive any rule as justice or the administration of the Act requires.

IV. Paperwork Reduction Act

This rule contains a reporting requirement (§ 1979.103) which was previously reviewed and approved for use by the Office of Management and Budget (''OMB'') under 29 CFR 24.3 and assigned OMB control number 1218–0236 under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

V. Administrative Procedure Act

This rule is a rule of agency procedure and practice within the meaning of Section 553 of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(A). Therefore publication in the **Federal Register** of a notice of proposed rulemaking and request for comments is not required by these regulations, which provide procedures for the handling of discrimination complaints. Although this rule is not subject to the notice and comment procedures of the APA, persons interested in this interim final rule may submit comments within 60 days. A final rule will be published after the agency receives and reviews the public's comments.

Furthermore, because this rule is procedural rather than substantive, the normal requirement of 5 U.S.C. 553(d) that a rule be effective 30 days after publication in the **Federal Register** is inapplicable. The Assistant Secretary also finds good cause to provide an immediate effective date for this rule. It is in the public interest that the rule be effective immediately so that parties may know what procedures are applicable to pending cases.

VI. Executive Order 12866; Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act of 1996; Executive Order 13132

The Department has concluded that this rule should be treated as a ''significant regulatory action'' within the meaning of Section 3(f)(4) of Executive Order 12866 because AIR21 is a new program and because of the importance to FAA's airline safety program that ''whistleblowers'' be protected from retaliation. E.O. 12866 requires a full economic impact analysis only for ''economically significant'' rules, which are defined in Section 3(f)(1) as rules that may ''have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.'' Because the rule is procedural in nature, it is not expected to have a significant economic impact; therefore no economic impact analysis has been prepared. For the same reason, the rule does not require a Section 202 statement under the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*). Furthermore, because this is a rule of agency procedure or practice, it is not a ''rule'' within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), and does not require Congressional review. Finally, this rule does not have ''federalism implications.'' The 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'' and therefore is not subject to Executive Order 13132 (Federalism).

VII. Regulatory Flexibility Analysis

The Department has determined that the regulation will not have a significant economic impact on a substantial number of small entities. The regulation simply implements procedures necessitated by enactment of AIR21, in order to allow resolution of whistleblower complaints. Furthermore, no certification to this effect is required and no regulatory flexibility analysis is required because no proposed rule has been issued.

Document Preparation: This document was prepared under the direction and control of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 1979

Administrative practice and procedure, Air carrier safety, Employment, Investigations, Reporting and Recordkeeping requirements, Whistleblowing.

Signed at Washington, DC, this 22nd day of March, 2002.

John L. Henshaw,

Assistant Secretary for Occupational Safety and Health.

Accordingly, for the reasons set out in the preamble part 1979 of title 29 of the Code of Federal Regulations is promulgated as follows:

PART 1979–PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER SECTION 519 OF THE WENDELL H. FORD AVIATION INVESTMENT AND REFORM ACT FOR THE 21ST CENTURY

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

Sec.

Subpart B—Litigation

Subpart C—Miscellaneous Provisions

Authority: 49 U.S.C. 42121; Secretary of Labor's Order No. 3–2000, 65 FR 50017 (August 16, 2000).

Subpart A—Complaints, Investigations, Findings and Preliminary Orders

§ 1979.100 Purpose and scope.

(a) This part implements procedures under section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. 42121 (''AIR21''), which provides for employee protection from discrimination by air carriers or contractors or subcontractors of air carriers because the employee has engaged in protected activity pertaining to a violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety.

(b) This part establishes procedures pursuant to AIR21 for the expeditious handling of complaints of discrimination made by employees, or by persons acting on their behalf. These rules, together with those rules set forth at 29 CFR part 18, set forth the procedures for submission of complaints under AIR21, investigations, issuance of findings and preliminary orders, objections to findings and orders, litigation before administrative law judges, post-hearing administrative review, and withdrawals and settlements.

§ 1979.101 Definitions.

Act or *AIR21* means section 519 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, Public Law 106–181, April 5, 2000, 49 U.S.C. 42121.

Air carrier means a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation.

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health or the person or persons to whom he or she delegates authority under the Act.

Complainant means the employee who filed a complaint under the Act or on whose behalf a complaint was filed.

Contractor means a company that performs safety-sensitive functions by contract for an air carrier.

Employee means an individual presently or formerly working for an air carrier or contractor or subcontractor of an air carrier, an individual applying to work for an air carrier or contractor or subcontractor of an air carrier, or an individual whose employment could be affected by an air carrier or contractor or subcontractor of an air carrier.

Named person means the person alleged to have violated the Act.

OSHA means the Occupational Safety and Health Administration of the United States Department of Labor.

Person means one or more individuals, partnerships, associations, corporations, business trusts, legal representatives or any group of persons.

Secretary means the Secretary of Labor or persons to whom authority under the Act has been delegated.

§ 1979.102 Obligations and prohibited acts.

(a) No air carrier or contractor or subcontractor of an air carrier may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in paragraphs (b)(1) through (4) of this section.

(b) It is a violation of the Act for any air carrier or contractor or subcontractor of an air carrier to intimidate, threaten, restrain, coerce, blacklist, discharge or in any other manner discriminate against any employee because the employee has:

(1) Provided, caused to be provided, or is about to provide (with any knowledge of the employer) or cause to be provided to the air carrier or contractor or subcontractor of an air carrier or the Federal Government, information relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code or under any other law of the United States;

(2) Filed, caused to be filed, or is about to file (with any knowledge of the employer) or cause to be filed a proceeding relating to any violation or alleged violation of any order, regulation, or standard of the Federal Aviation Administration or any other provision of Federal law relating to air carrier safety under subtitle VII of title 49 of the United States Code, or under any other law of the United States;

(3) Testified or is about to testify in such a proceeding; or

(4) Assisted or participated or is about to assist or participate in such a proceeding.

(c) This part shall have no application to any employee of an air carrier, contractor, or subcontractor who, acting without direction from an air carrier, contractor, or subcontractor (or such person's agent) deliberately causes a violation of any requirement relating to air carrier safety under Subtitle VII Aviation Programs of Title 49 of the United States Code or any other law of the United States.

§ 1979.103 Filing of discrimination complaint.

(a) *Who may file.* An employee who believes that he or she has been discriminated against by an air carrier or contractor or subcontractor of an air carrier in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination.

(b) *Nature of filing.* No particular form of complaint is required.

(c) *Place of filing.* The complaint should be filed with the OSHA Area Director responsible for enforcement activities in the geographical area where the employee resides or was employed, but may be filed with any Department of Labor officer or employee. Addresses and telephone numbers for these officials are set forth in local directories and at the following Internet address: *www.osha.gov.*

(d) *Time for filing.* Within 90 days after an alleged violation of the Act occurs (*i.e.*, when the discriminatory decision has been both made and communicated to the complainant), an employee who believes that he or she has been discriminated against in violation of the Act may file, or have filed by any person on the employee's behalf, a complaint alleging such discrimination. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the complaint is filed in person, by hand-delivery, or other means, the complaint is filed upon receipt.

(e) *Relationship to section 11(c) complaints.* A complaint filed under AIR21 that alleges facts which would constitute a violation of section 11(c) of the Occupational Safety and Health Act, 29 U.S.C. 660(c), shall be deemed to be a complaint filed under both AIR21 and section 11(c). Similarly, a complaint filed under section 11(c) that alleges facts that would constitute a violation of AIR21 shall be deemed to be a complaint filed under both AIR21 and section 11(c).

§ 1979.104 Investigation.

(a) Upon receipt of a complaint in the investigating office, the Assistant Secretary will notify the named person of the filing of the complaint, of the allegations contained in the complaint, and of the substance of the evidence supporting the complaint (sanitized to protect the identity of any confidential informants). The Assistant Secretary will also notify the named person of his or her rights under paragraphs (b) and (c) of this section. A copy of the notice to the named person will also be provided to the Federal Aviation Administration.

(b) A complaint of alleged violation will be dismissed unless the complainant has made a *prima facie* showing that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint.

(1) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to make a *prima facie* showing as follows:

(i) The employee engaged in a protected activity or conduct;

(ii) The named person knew, actually or constructively, that the employee engaged in the protected activity;

(iii) The employee suffered an unfavorable personnel action; and

(iv) The circumstances were sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

(2) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required showing, *i.e.*, to give rise to an inference that the named person knew (or suspected) that the employee engaged in protected activity and that the protected activity was likely a reason for the personnel action. Normally the burden is satisfied, for example, if the complaint shows that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If the required showing has not been made, the complainant will be so advised and the investigation will not commence.

(c) Notwithstanding a finding that a complainant has made a *prima facie* showing, as required by this section, an investigation of the complaint will not be conducted if the named person, pursuant to the procedures provided in this paragraph, demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct. Within ten days of receipt of the notice of the filing of the complaint, the named person may submit to the Assistant Secretary a written statement and any affidavits or documents substantiating his or her position. Within the same ten days the named person may request a meeting with the Assistant Secretary to present his or her position.

(d) If the named person fails to demonstrate by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the behavior protected by the Act, an investigation will be conducted. Investigations will be conducted in a manner that protects the confidentiality of any person, other than the complainant, who provides information on a confidential basis, in accordance with part 70 of this title.

(e) Prior to the issuance of findings and a preliminary order as provided for in § 1979.105, if the Assistant Secretary has reasonable cause, on the basis of information gathered under the procedures of this part, to believe that the named person has violated the Act and that preliminary reinstatement is warranted, the Assistant Secretary will again contact the named person to give notice of the substance of the relevant evidence supporting the complainant's allegations as developed during the course of the investigation. This evidence includes any witness statements, which will be sanitized to protect the identity of confidential informants where statements were given in confidence; if the statements cannot be sanitized without revealing the identity of confidential informants, summaries of their contents will be provided. The named person shall be given the opportunity to submit a written response, to meet with the investigators to present statements from witnesses in support of his or her position, and to present legal and factual arguments. The named person shall present this evidence within ten days of the Assistant Secretary's notification pursuant to this paragraph, or as soon afterwards as the Assistant Secretary and the named person can agree, if the interests of justice so require.

§ 1979.105 Issuance of findings and preliminary orders.

(a) After considering all the relevant information collected during the investigation, the Assistant Secretary will issue, within 60 days of filing of the

complaint, written findings as to whether or not there is reasonable cause to believe that the named person has discriminated against the complainant in violation of the Act. If the Assistant Secretary concludes that there is reasonable cause to believe that a violation has occurred, he or she will accompany the findings with a preliminary order providing relief to the complainant. The preliminary order will include, where appropriate, a requirement that the named person abate the violation; reinstatement of the complainant to his or her former position, together with the compensation (including back pay), terms, conditions and privileges of the complainant's employment; and payment of compensatory damages. At the complainant's request the order may also assess against the named person the complainant's costs and expenses (including attorney's and expert witness fees) reasonably incurred in connection with the filing of the complaint. If the Assistant Secretary concludes that a violation has not occurred, the Assistant Secretary will notify the parties of that finding.

(b) Upon the request of the named person, the Assistant Secretary shall determine, on the basis of information gathered under the procedures of § 1979.104, whether a complaint was frivolous or was brought in bad faith. If the the Assistant Secretary determines the complaint was frivolous or was brought in bad faith, the Assistant Secretary may award to the named person a reasonable attorney's fee not exceeding $1,000. In order to support such award, the Assistant Secretary may require the named person to provide evidence of the attorney's fee it has incurred.

(c) The findings and the preliminary order will be sent by certified mail, return receipt requested, to all parties of record. The letter accompanying the findings and order will inform the parties of the right to object to the findings and/or the order and will give the address of the Chief Administrative Law Judge. At the same time, the Assistant Secretary will file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the findings and order.

(d) The findings and the preliminary order shall be effective 30 days after receipt by the named person, but shall be inoperative if an objection to the findings and preliminary order has been timely filed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon receipt of the findings and preliminary order, regardless of any objections to the findings and order, and may not be stayed.

Subpart B—Litigation

§ 1979.106 Objections to the findings and the preliminary order and request for a hearing.

(a) Any party who desires review, including judicial review, of the findings and preliminary order, or of an award of attorney's fees under § 1979.105(b), must file objections and a request for a hearing on the record, within 30 days of receipt of the findings and preliminary order. The objection and request for a hearing must be in writing and state whether the objection is to the findings, the preliminary order, and/or the award of attorney's fees. The date of the postmark, facsimile transmittal, or e-mail communication will be considered to be the date of filing; if the objection is filed by hand-delivery or other means, the objection is filed upon receipt. Objections must be filed with the Chief Administrative Law Judge, U.S. Department of Labor, Washington, DC 20210, and copies of the objections must be mailed at the same time to the other parties of record, the Assistant Secretary's designee who issued the findings and order, and the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b)(1) If a timely objection is filed, all provisions of the preliminary order, except an order of preliminary reinstatement, shall be stayed. However, the portion of any preliminary order requiring reinstatement shall be effective immediately upon the named person's receipt of the findings and preliminary order, regardless of any objections to the order.

(2) The findings and the preliminary order shall be effective 30 days after receipt unless an objection to the findings or preliminary order has been timely filed. If no timely objection is filed with respect to either the findings or the preliminary order, the findings or preliminary order, as the case may be, shall become the final decision of the Secretary, not subject to judicial review.

§ 1979.107 Hearings.

(a) Except as provided in this part, proceedings will be conducted in accordance with the rules of practice and procedure for administrative hearings before the Office of Administrative Law Judges, codified at part 18 of title 29 of the Code of Federal Regulations.

(b) Upon receipt of an objection and request for hearing, the Chief Administrative Law Judge will promptly assign the case to a judge who will notify the parties, by certified mail, of the day, time, and place of hearing. The hearing is to commence expeditiously, except upon a showing of good cause or unless otherwise agreed to by the parties. Hearings will be conducted as hearings *de novo*, on the record.

(c) If both complainant and the named person object to the findings and/or order, the objections will be consolidated and a single hearing will be conducted.

(d) Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.

§ 1979.108 Role of Federal agencies.

(a)(1) The complainant and the named person shall be parties in every proceeding. At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or may participate as *amicus curiae* at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a decision of an administrative law judge, including a decision based on a settlement agreement between complainant and the named person, to dismiss a complaint or to issue an order encompassing the terms of the settlement.

(2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, must be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(b) The FAA may participate as *amicus curiae* at any time in the proceedings, at the FAA's discretion. At the request of the FAA, copies of all pleadings in a case must be served on the FAA, whether or not the FAA is participating in the proceeding.

§ 1979.109 Decision and orders of the administrative law judge.

(a) The decision of the administrative law judge will contain appropriate findings, conclusions, and an order pertaining to the remedies provided in paragraph (b) of this section, as appropriate. A determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the

unfavorable personnel action alleged in the complaint. Relief may not be ordered if the named person demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of any protected behavior. Neither the Assistant Secretary's determination to dismiss a complaint pursuant to § 1979.104 without completing an investigation nor the Assistant Secretary's determination not to dismiss a complaint is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation on the basis that a determination to dismiss was made in error. Rather, if there otherwise is jurisdiction, the administrative law judge shall hear the case on the merits.

(b) If the administrative law judge concludes that the party charged has violated the law, the order shall direct the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorneys' and expert witness fees) reasonably incurred. If, upon the request of the named person, the administrative law judge determines that a complaint was frivolous or was brought in bad faith, the judge may award to the named person a reasonable attorney's fee, not exceeding $1,000.

(c) The decision will be served upon all parties to the proceeding. Any administrative law judge's decision requiring reinstatement or lifting an order of reinstatement by the Assistant Secretary shall be effective immediately upon receipt of the decision by the named person, and may not be stayed. All other portions of the judge's order shall be effective 15 days after the date of the decision unless a timely petition for review has been filed with the Administrative Review Board.

§ 1979.110 Decision and orders of the Administrative Review Board.

(a) The decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to this section, a petition for review is timely filed with the Administrative Review Board (''the Board''). Any party desiring to seek review, including judicial review, of a decision of the administrative law judge must file a written petition for review with the Board, which has been delegated the authority to act for the Secretary and issue final decisions under this part. To be effective, a petition must be received within 15 days of the date of the decision of the administrative law judge. The petition must be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the decision, except that a preliminary order of reinstatement shall be effective while review is conducted by the Board. The Board will specify the terms under which any briefs are to be filed.

(b) Copies of the petition for review and all briefs must be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(c) The final decision of the Board shall be issued within 120 days of the conclusion of the hearing, which shall be deemed to be the conclusion of all proceedings before the administrative law judge—*i.e.,* 15 days after the date of the decision of the administrative law judge unless a motion for reconsideration has been filed in the interim. The decision will be served upon all parties and the Chief Administrative Law Judge by mail to the last known address. If the Assistant Secretary is not a party, the final decision will also be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, DC 20210.

(d) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including, where appropriate, reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages. At the request of the complainant, the Board shall assess against the named person all costs and expenses (including attorneys' and expert witness fees) reasonably incurred.

(e) If the Board determines that the named person has not violated the law, an order shall be issued denying the complaint. If, upon the request of the named person, the Board determines that a complaint was frivolous or was brought in bad faith, the Board may award to the named person a reasonable attorney's fee, not exceeding $1,000.

Subpart C—Miscellaneous Provisions

§ 1979.111 Withdrawal of complaints, objections, and findings; settlement.

(a) At any time prior to the filing of objections to the findings or preliminary order, a complainant may withdraw his or her complaint under the Act by filing a written withdrawal with the Assistant Secretary. The Assistant Secretary will then determine whether the withdrawal will be approved. The Assistant Secretary will notify the named person of the approval of any withdrawal. If the complaint is withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(b) The Assistant Secretary may withdraw his or her findings or a preliminary order at any time before the expiration of the 30-day objection period, provided that no objection has yet been filed, and substitute new findings or preliminary order. The date of the receipt of the substituted findings or order will begin a new 30-day objection period.

(c) At any time before the findings or order become final, a party may withdraw his or her objections to the findings or order by filing a written withdrawal with the administrative law judge or, if the case is on review, with the Board. The judge or the Board, as the case may be, will determine whether the withdrawal will be approved. If the objections are withdrawn because of settlement, the settlement shall be approved in accordance with paragraph (d) of this section.

(d)(1) *Investigative settlements.* At any time after the filing of a complaint, and before the findings and/or order are objected to or become a final order by operation of law, the case may be settled if the Assistant Secretary, the complainant and the named person agree to a settlement.

(2) *Adjudicatory settlements.* At any time after the filing of objections to the Assistant Secretary's findings and/or order, the case may be settled if the participating parties agree to a settlement and the settlement is approved by the administrative law judge if the case is before the judge, or by the Board if a timely petition for review has been filed with the Board. A copy of the settlement shall be filed with the administrative law judge or the Board, as the case may be.

(e) Any settlement approved by the Assistant Secretary, the administrative law judge, or the Board, shall constitute

the final order of the Secretary and may be enforced pursuant to § 1979.112.

§ 1979.112 Judicial review.

(a) Within 60 days after the issuance of a final order under § 1979.110, any person adversely affected or aggrieved by the order may file a petition for review of the order in the United States Court of Appeals for the circuit in which the violation allegedly occurred or the circuit in which the person resided on the date of the violation. A final order of the Board is not subject to judicial review in any criminal or other civil proceeding.

(b) If a timely petition for review is filed, the record of a case, including the record of proceedings before the administrative law judge, will be transmitted by the Board to the appropriate court pursuant to the rules of the court.

§ 1979.113 Judicial enforcement.

Whenever any person has failed to comply with a preliminary order of reinstatement or a final order or the terms of a settlement agreement, the Secretary or a person on whose behalf the order was issued may file a civil action seeking enforcement of the order in the United States district court for the district in which the violation was found to have occurred.

§ 1979.114 Special circumstances; waiver of rules.

In special circumstances not contemplated by the provisions of this part, or for good cause shown, the administrative law judge or the Administrative Review Board on review may, upon application, after three days notice to all parties and interveners, waive any rule or issue any orders that justice or the administration of the Act requires.

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CFR PARTS AFFECTED DURING APRIL

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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.

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  - Fire suppression substitutes for ozone-depleting substances; restrictions removal; list of substitutes; correction; published 3-20-02

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  - Correction; published 9-20-00
- Video programming; video description for individuals with visual disabilities; implementation; reconsideration petitions
  - Correction; published 3-27-01

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LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''PLUS'' (Public Laws Update Service) on 202–523–6641. This list is also available online at *http://www.nara.gov/fedreg/plawcurr.html*.

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H.R. 3986/P.L. 107–154

To extend the period of availability of unemployment assistance under the Robert T. Stafford Disaster Relief and Emergency Assistance Act in the case of victims of the terrorist attacks of September 11, 2001. (Mar. 25, 2002; 116 Stat. 80)

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*1000–1199	(869–048–00015–1)	25.00	Jan. 1, 2002
1200–1599	(869–044–00016–4)	55.00	Jan. 1, 2001
1600–1899	(869–044–00017–2)	57.00	Jan. 1, 2001
1900–1939	(869–048–00018–6)	29.00	Jan. 1, 2002
1940–1949	(869–044–00019–9)	37.00	[4] Jan. 1, 2001
1950–1999	(869–048–00020–8)	47.00	Jan. 1, 2002
2000–End	(869–044–00021–1)	43.00	Jan. 1, 2001
8	(869–044–00022–9)	54.00	Jan. 1, 2001
9 Parts:			
1–199	(869–048–00023–2)	58.00	Jan. 1, 2002
200–End	(869–044–00024–5)	53.00	Jan. 1, 2001
10 Parts:			
1–50	(869–048–00025–4)	58.00	Jan. 1, 2002
51–199	(869–044–00026–1)	52.00	Jan. 1, 2001
*200–499	(869–048–00027–5)	44.00	Jan. 1, 2002
500–End	(869–048–00028–3)	58.00	Jan. 1, 2002
11	(869–048–00029–1)	34.00	Jan. 1, 2002
12 Parts:			
1–199	(869–048–00030–5)	30.00	Jan. 1, 2002
200–219	(869–048–00031–3)	36.00	Jan. 1, 2002
220–299	(869–048–00032–1)	58.00	Jan. 1, 2002
300–499	(869–048–00033–0)	45.00	Jan. 1, 2002
500–599	(869–048–00034–8)	42.00	Jan. 1, 2002
600–End	(869–048–00035–6)	61.00	Jan. 1, 2002
13	(869–048–00036–4)	47.00	Jan. 1, 2002
14 Parts:			
*1–59	(869–048–00037–2)	60.00	Jan. 1, 2002
*60–139	(869–048–00038–1)	58.00	Jan. 1, 2002
140–199	(869–048–00039–9)	29.00	Jan. 1, 2002
200–1199	(869–044–00040–7)	44.00	Jan. 1, 2001
*1200–End	(869–048–00041–1)	41.00	Jan. 1, 2002
15 Parts:			
*0–299	(869–048–00042–9)	37.00	Jan. 1, 2002
*300–799	(869–048–00043–7)	58.00	Jan. 1, 2002
*800–End	(869–048–00044–5)	40.00	Jan. 1, 2002
16 Parts:			
*0–999	(869–048–00045–3)	47.00	Jan. 1, 2002
1000–End	(869–044–00046–6)	53.00	Jan. 1, 2001
17 Parts:			
1–199	(869–044–00048–2)	45.00	Apr. 1, 2001
200–239	(869–044–00049–1)	51.00	Apr. 1, 2001
240–End	(869–044–00050–4)	55.00	Apr. 1, 2001
18 Parts:			
1–399	(869–044–00051–2)	56.00	Apr. 1, 2001
400–End	(869–044–00052–1)	23.00	Apr. 1, 2001
19 Parts:			
1–140	(869–044–00053–9)	54.00	Apr. 1, 2001
141–199	(869–044–00054–7)	53.00	Apr. 1, 2001
200–End	(869–044–00055–5)	20.00	[5] Apr. 1, 2001
20 Parts:			
1–399	(869–044–00056–3)	45.00	Apr. 1, 2001
400–499	(869–044–00057–1)	57.00	Apr. 1, 2001
500–End	(869–044–00058–0)	57.00	Apr. 1, 2001
21 Parts:			
1–99	(869–044–00059–8)	37.00	Apr. 1, 2001
100–169	(869–044–00060–1)	44.00	Apr. 1, 2001
170–199	(869–044–00061–0)	45.00	Apr. 1, 2001
200–299	(869–044–00062–8)	16.00	Apr. 1, 2001
300–499	(869–044–00063–6)	27.00	Apr. 1, 2001
500–599	(869–044–00064–4)	44.00	Apr. 1, 2001
600–799	(869–044–00065–2)	15.00	Apr. 1, 2001
800–1299	(869–044–00066–1)	52.00	Apr. 1, 2001
1300–End	(869–044–00067–9)	20.00	Apr. 1, 2001
22 Parts:			
1–299	(869–044–00068–7)	56.00	Apr. 1, 2001
300–End	(869–044–00069–5)	42.00	Apr. 1, 2001
23	(869–044–00070–9)	40.00	Apr. 1, 2001
24 Parts:			
0–199	(869–044–00071–7)	53.00	Apr. 1, 2001
200–499	(869–044–00072–5)	45.00	Apr. 1, 2001
500–699	(869–044–00073–3)	27.00	Apr. 1, 2001
700–1699	(869–044–00074–1)	55.00	Apr. 1, 2001
1700–End	(869–044–00075–0)	28.00	Apr. 1, 2001
25	(869–044–00076–8)	57.00	Apr. 1, 2001
26 Parts:			
§§ 1.0-1–1.60	(869–044–00077–6)	43.00	Apr. 1, 2001
§§ 1.61–1.169	(869–044–00078–4)	57.00	Apr. 1, 2001
§§ 1.170–1.300	(869–044–00079–2)	52.00	Apr. 1, 2001
§§ 1.301–1.400	(869–044–00080–6)	41.00	Apr. 1, 2001
§§ 1.401–1.440	(869–044–00081–4)	58.00	Apr. 1, 2001
§§ 1.441-1.500	(869-044-00082-2)	45.00	Apr. 1, 2001
§§ 1.501–1.640	(869–044–00083–1)	44.00	Apr. 1, 2001
§§ 1.641–1.850	(869–044–00084–9)	53.00	Apr. 1, 2001
§§ 1.851–1.907	(869–044–00085–7)	54.00	Apr. 1, 2001
§§ 1.908–1.1000	(869–044–00086–5)	53.00	Apr. 1, 2001
§§ 1.1001–1.1400	(869–044–00087–3)	55.00	Apr. 1, 2001
§§ 1.1401–End	(869–044–00088–1)	58.00	Apr. 1, 2001
2–29	(869–044–00089–0)	54.00	Apr. 1, 2001
30–39	(869–044–00090–3)	37.00	Apr. 1, 2001
40–49	(869–044–00091–1)	25.00	Apr. 1, 2001
50–299	(869–044–00092–0)	23.00	Apr. 1, 2001
300–499	(869–044–00093–8)	54.00	Apr. 1, 2001
500–599	(869–044–00094–6)	12.00	[5] Apr. 1, 2001
600–End	(869–044–00095–4)	15.00	Apr. 1, 2001
27 Parts:			
1–199	(869–044–00096–2)	57.00	Apr. 1, 2001

Title	Stock Number	Price	Revision Date
200–End	(869–044–00097–1)	26.00	Apr. 1, 2001
28 Parts:			
0-42	(869–044–00098–9)	55.00	July 1, 2001
43-end	(869-044-00099-7)	50.00	July 1, 2001
29 Parts:			
0–99	(869–044–00100–4)	45.00	July 1, 2001
100–499	(869–044–00101–2)	14.00	[6]July 1, 2001
500–899	(869–044–00102–1)	47.00	[6]July 1, 2001
900–1899	(869–044–00103–9)	33.00	July 1, 2001
1900–1910 (§§ 1900 to 1910.999)	(869–044–00104–7)	55.00	July 1, 2001
1910 (§§ 1910.1000 to end)	(869–044–00105–5)	42.00	July 1, 2001
1911–1925	(869–044–00106–3)	20.00	[6]July 1, 2001
1926	(869–044–00107–1)	45.00	July 1, 2001
1927–End	(869–044–00108–0)	55.00	July 1, 2001
30 Parts:			
1–199	(869–044–00109–8)	52.00	July 1, 2001
200–699	(869–044–00110–1)	45.00	July 1, 2001
700–End	(869–044–00111–7)	53.00	July 1, 2001
31 Parts:			
0–199	(869–044–00112–8)	32.00	July 1, 2001
200–End	(869–044–00113–6)	56.00	July 1, 2001
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–044–00114–4)	51.00	[6]July 1, 2001
191–399	(869–044–00115–2)	57.00	July 1, 2001
400–629	(869–044–00116–8)	35.00	[6]July 1, 2001
630–699	(869–044–00117–9)	34.00	July 1, 2001
700–799	(869–044–00118–7)	42.00	July 1, 2001
800–End	(869–044–00119–5)	44.00	July 1, 2001
33 Parts:			
1–124	(869–044–00120–9)	45.00	July 1, 2001
125–199	(869–044–00121–7)	55.00	July 1, 2001
200–End	(869–044–00122–5)	45.00	July 1, 2001
34 Parts:			
1–299	(869–044–00123–3)	43.00	July 1, 2001
300–399	(869–044–00124–1)	40.00	July 1, 2001
400–End	(869–044–00125–0)	56.00	July 1, 2001
35	(869–044–00126–8)	10.00	[6]July 1, 2001
36 Parts			
1–199	(869–044–00127–6)	34.00	July 1, 2001
200–299	(869–044–00128–4)	33.00	July 1, 2001
300–End	(869–044–00129–2)	55.00	July 1, 2001
37	(869–044–00130–6)	45.00	July 1, 2001
38 Parts:			
0–17	(869–044–00131–4)	53.00	July 1, 2001
18–End	(869–044–00132–2)	55.00	July 1, 2001
39	(869–044–00133–1)	37.00	July 1, 2001
40 Parts:			
1–49	(869–044–00134–9)	54.00	July 1, 2001
50–51	(869–044–00135–7)	38.00	July 1, 2001
52 (52.01–52.1018)	(869–044–00136–5)	50.00	July 1, 2001
52 (52.1019–End)	(869–044–00137–3)	55.00	July 1, 2001
53–59	(869–044–00138–1)	28.00	July 1, 2001
60 (60.1–End)	(869–044–00139–0)	53.00	July 1, 2001
60 (Apps)	(869–044–00140–3)	51.00	July 1, 2001
61–62	(869–044–00141–1)	35.00	July 1, 2001
63 (63.1–63.599)	(869–044–00142–0)	53.00	July 1, 2001
63 (63.600–63.1199)	(869–044–00143–8)	44.00	July 1, 2001
63 (63.1200-End)	(869–044–00144–6)	56.00	July 1, 2001
64–71	(869–044–00145–4)	26.00	July 1, 2001
72–80	(869–044–00146–2)	55.00	July 1, 2001
81–85	(869–044–00147–1)	45.00	July 1, 2001
86 (86.1–86.599–99)	(869–044–00148–9)	52.00	July 1, 2001
86 (86.600–1–End)	(869–044–00149–7)	45.00	July 1, 2001
87–99	(869–044–00150–1)	54.00	July 1, 2001
100–135	(869–044–00151–9)	38.00	July 1, 2001
136–149	(869–044–00152–7)	55.00	July 1, 2001
150–189	(869–044–00153–5)	52.00	July 1, 2001
190–259	(869–044–00154–3)	34.00	July 1, 2001
260–265	(869–044–00155–1)	45.00	July 1, 2001
266–299	(869–044–00156–0)	45.00	July 1, 2001
300–399	(869–044–00157–8)	41.00	July 1, 2001
400–424	(869–044–00158–6)	51.00	July 1, 2001
425–699	(869–044–00159–4)	55.00	July 1, 2001
700–789	(869–044–00160–8)	55.00	July 1, 2001
790–End	(869–044–00161–6)	44.00	July 1, 2001
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–044–00162–4)	22.00	July 1, 2001
101	(869–044–00163–2)	45.00	July 1, 2001
102–200	(869–044–00164–1)	33.00	July 1, 2001
201–End	(869–044–00165–9)	24.00	July 1, 2001
42 Parts:			
1–399	(869–044–00166–7)	51.00	Oct. 1, 2001
400–429	(869–044–00167–5)	59.00	Oct. 1, 2001
430–End	(869–044–00168–3)	58.00	Oct. 1, 2001
43 Parts:			
1–999	(869–044–00169–1)	45.00	Oct. 1, 2001
1000–end	(869–044–00170–5)	56.00	Oct. 1, 2001
44	(869–044–00171–3)	45.00	Oct. 1, 2001
45 Parts:			
1–199	(869–044–00172–1)	53.00	Oct. 1, 2001
200–499	(869–044–00173–0)	31.00	Oct. 1, 2001
500–1199	(869–044–00174–8)	45.00	Oct. 1, 2001
1200–End	(869–044–00175–6)	55.00	Oct. 1, 2001
46 Parts:			
1–40	(869–044–00176–4)	43.00	Oct. 1, 2001
41–69	(869–044–00177–2)	35.00	Oct. 1, 2001
70–89	(869–044–00178–1)	13.00	Oct. 1, 2001
90–139	(869–044–00179–9)	41.00	Oct. 1, 2001
140–155	(869–044–00180–2)	24.00	Oct. 1, 2001
156–165	(869–044–00181–1)	31.00	Oct. 1, 2001
166–199	(869–044–00182–9)	42.00	Oct. 1, 2001
200–499	(869–044–00183–7)	36.00	Oct. 1, 2001
500–End	(869–044–00184–5)	23.00	Oct. 1, 2001
47 Parts:			
0–19	(869–044–00185–3)	55.00	Oct. 1, 2001
20–39	(869–044–00186–1)	43.00	Oct. 1, 2001
40–69	(869–044–00187–0)	36.00	Oct. 1, 2001
70–79	(869–044–00188–8)	58.00	Oct. 1, 2001
80–End	(869–044–00189–6)	55.00	Oct. 1, 2001
48 Chapters:			
1 (Parts 1–51)	(869–044–00190–0)	60.00	Oct. 1, 2001
1 (Parts 52–99)	(869–044–00191–8)	45.00	Oct. 1, 2001
2 (Parts 201–299)	(869–044–00192–6)	53.00	Oct. 1, 2001
3–6	(869–044–00193–4)	31.00	Oct. 1, 2001
7–14	(869–044–00194–2)	51.00	Oct. 1, 2001
15–28	(869–044–00195–1)	53.00	Oct. 1, 2001
29–End	(869–044–00196–9)	38.00	Oct. 1, 2001
49 Parts:			
1–99	(869–044–00197–7)	55.00	Oct. 1, 2001
100–185	(869–044–00198–5)	60.00	Oct. 1, 2001
186–199	(869–044–00199–3)	18.00	Oct. 1, 2001
200–399	(869–044–00200–1)	60.00	Oct. 1, 2001
400–999	(869–044–00201–9)	58.00	Oct. 1, 2001
1000–1199	(869–044–00202–7)	26.00	Oct. 1, 2001

Title	Stock Number	Price	Revision Date
1200–End	(869–044–00203–5)	21.00	Oct. 1, 2001
50 Parts:			
1–199	(869–044–00204–3)	63.00	Oct. 1, 2001
200–599	(869–044–00205–1)	36.00	Oct. 1, 2001
600–End	(869–044–00206–0)	55.00	Oct. 1, 2001
CFR Index and Findings Aids	(869–044–00047–4)	56.00	Jan. 1, 2001
Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
Complete set (one-time mailing)		290.00	2000
Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2000, through January 1, 2001. The CFR volume issued as of January 1, 2000 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained..

TABLE OF EFFECTIVE DATES AND TIME PERIODS—APRIL 2002

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
April 1	April 16	May 1	May 16	May 31	July 1
April 2	April 17	May 2	May 17	June 3	July 1
April 3	April 18	May 3	May 20	June 3	July 2
April 4	April 19	May 6	May 20	June 3	July 3
April 5	April 22	May 6	May 20	June 4	July 5
April 8	April 23	May 8	May 23	June 7	July 8
April 9	April 24	May 9	May 24	June 10	July 8
April 10	April 25	May 10	May 28	June 10	July 9
April 11	April 26	May 13	May 28	June 10	July 10
April 12	April 29	May 13	May 28	June 11	July 11
April 15	April 30	May 15	May 30	June 14	July 15
April 16	May 1	May 16	May 31	June 17	July 15
April 17	May 2	May 17	June 3	June 17	July 16
April 18	May 3	May 20	June 3	June 17	July 17
April 19	May 6	May 20	June 3	June 18	July 18
April 22	May 7	May 22	June 6	June 21	July 22
April 23	May 8	May 23	June 7	June 24	July 22
April 24	May 9	May 24	June 10	June 24	July 23
April 25	May 10	May 28	June 10	June 24	July 24
April 26	May 13	May 28	June 10	June 25	July 25
April 29	May 14	May 29	June 13	June 28	July 29
April 30	May 15	May 30	June 14	July 1	July 29