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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1137

[DA–94–13]

Milk in the Eastern Colorado Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends certain performance standards of the Eastern Colorado Federal milk marketing order. The action was proposed by Mid-America Dairymen, Inc., a cooperative association that supplies milk for the market's fluid needs. The suspension will make it easier for handlers to qualify milk for pool status and prevent uneconomic milk movements that otherwise would be required to maintain pool status for milk of producers who have been historically associated with the market.

EFFECTIVE DATE: The suspension to § 1137.7 is effective from September 1, 1994 through February 28, 1995. The suspensions to § 1137.12 is effective from September 1, 1994 through August 31, 1995.

FOR FURTHER INFORMATION CONTACT: Clifford M. Carman, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–9368.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued June 23, 1994; published June 29, 1994 (59 FR 33455).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers who have been historically associated with this market will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and of the order regulating the handling of milk in the Eastern Colorado marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on June 29, 1994 (59 FR 33455) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. One comment supporting the proposed action was filed. No opposing views were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that the following provisions of the order do not tend to effectuate the declared policy of the Act:

1. For the months of September 1994 through February 1995: In the second sentence of § 1137.7(b), the words "plant which has qualified as a" and "of March through August"; and

2. For the months of September 1994 through August 1995:

In the first sentence of § 1137.12(a)(1), the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant"; and in the second sentence, the words "30 percent in the months of March, April, May, June, July, and December and 20 percent in other months of", and the word "distributing".

Statement of Consideration

This action suspends certain portions of the "pool plant" and "producer" definitions of the Eastern Colorado order (Order 137). The suspension will make it easier for handlers to qualify milk for pooling under the order.

The suspension action was requested by Mid-America Dairymen, Inc. (Mid-Am), a cooperative association that has pooled milk of dairy farmers under Order 137 for several years. Mid-Am requested the suspension to prevent the uneconomic and inefficient movement of milk for the sole purpose of pooling the milk of producers who have been historically associated with the order.

For the months of September 1994 through February 1995, the restriction on the months when automatic pool plant status applies for supply plants will be removed. For the months of September 1994 through August 1995, the touch-base requirement will not apply and the diversion allowance for cooperatives will be raised.

These provisions have been suspended in prior years to maintain the pool status of producers who have historically supplied the fluid needs of Order 137 distributing plants. The marketing conditions which justified the prior suspensions continue to exist.

Mid-Am asserts that they have made a commitment to supply the fluid milk requirements of distributing plants if their suspension request is granted. Without the suspension, to qualify certain of its milk for pooling it would be necessary for the cooperative to ship milk from distant farms to Denver-area bottling plants. The distant milk would displace milk produced on nearby farms that would then have to be shipped from the Denver area to manufacturing plants located in outlying areas.

There are ample supplies of locally-produced milk that can be delivered directly from farms to distributing plants to meet the market's fluid needs without requiring shipments from supply plants. Also, neither the elimination of the touch-base requirement for producers nor the increase in the amount of milk that may be diverted to nonpool plants by a cooperative should jeopardize the needs of the market's fluid processors.

This suspension is found to be necessary for the purpose of assuring that producers' milk will not have to be moved in an uneconomic and inefficient manner to ensure that producers whose milk has long been associated with the Eastern Colorado marketing area will continue to benefit from pooling and pricing under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area, in that such rule is necessary to permit the continued pooling of the milk of dairy farmers who have historically supplied the market without the need for making costly and inefficient movements of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. One comment supporting the suspension was filed. No opposing views were received.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1137

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in Title 7, Part 1137, are amended as follows:

PART 1137—MILK IN THE EASTERN COLORADO MARKETING AREA

1. The authority citation for 7 CFR Part 1137 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1137.7 [Suspended in part]

2. In § 1137.7(b), the second sentence is amended by suspending the words "plant which has qualified as a" and "of March through August" from September 1, 1994 through February 28, 1995.

§ 1137.12 [Suspended in part]

3. In § 1137.12(a)(1), the first sentence is amended by suspending the words "from whom at least three deliveries of milk are received during the month at a distributing pool plant" from September 1, 1994 through August 31, 1995.

4. In § 1137.12(a)(1), the second sentence is amended by suspending the words "30 percent in the months of March, April, May, June, July and December and 20 percent in other months of", and the word "distributing" are suspended from September 1, 1994 through August 31, 1995.

Dated: August 29, 1994.

Patricia Jensen,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–21881 Filed 9–6–94; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

7 CFR Part 1956

RIN 0575–AB26

Debt Settlement—Community and Business Programs

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its policies and procedures governing debt settlement of Community Programs loans. These changes are necessary to comply with Section 2384, Title XXIII, of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub. L. 101–624). This law is to establish and implement a program that is similar to the program established under Section 353 of the Consolidated Farm and Rural Development Act (7 U.S.C. 2001), except that the debt restructuring and loan servicing procedures shall apply to delinquent Community Facility hospital or health care program loans rather than Farmer Program loans. The intended effect is to keep these facilities in operation with manageable debt.

EFFECTIVE DATE: September 7, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Barton, Loan Specialist, Community Facilities Division, Farmers Home Administration, Room 6314, South Agriculture Building, Washington, D.C. 20250, telephone: (202) 720–1504.

SUPPLEMENTARY INFORMATION

Classification

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

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969 (Pub. L. 91–190), an Environmental Impact Statement is not required.

Executive Order 12778

This regulation has been reviewed in light of Executive Order 12778 and meets the applicable standards provided in sections 2(a) and (2)(b)(2) of that E.O. Provisions within this part which are inconsistent with State law are controlling. All administrative remedies pursuant to 7 CFR part 1900, subpart B, must be exhausted prior to filing suit.

Intergovernmental Review

This action affects the following FmHA program as listed in the Catalog of Federal Domestic Assistance: No. 10.766 Community Facility Loans. This program is subject to the provisions of E.O. 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V; 48 FR 29112, June 24, 1983, 49 FR 2267, May 31, 1984, 50 FR 14088, April 10, 1985.)

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control number 0575–0124 in accordance with the Paperwork Reduction Act of 1980. This final rule does not revise or impose any new information collection requirements from those approved by OMB.

Background Information

Section 2384 of the Food, Agriculture, Conservation, and Trade Act of 1990, Pub. L. 101–624, amended the Consolidated Farm and Rural Development Act and requires the Secretary of Agriculture to develop a debt restructuring and loan servicing program for FmHA hospital or health care facility borrowers. This program is similar to the loan restructuring and servicing program in effect for delinquent Farmer Program loans. This rule amends current FmHA regulations to implement this program. The program is intended to facilitate the continued operation of rural hospitals and health care facilities by implementing all possible debt restructuring options available that will result in an economically viable facility.

Given the congressional intent to provide rural hospitals and health care facilities a debt restructuring option similar to that provided Farmer Program borrowers, this regulation is modeled in a general sense on the Farmer Program restructuring scheme. Under this regulation, a hospital or health care debtor who is delinquent on its FmHA loan, and is unable to cure its delinquency through more traditional servicing methods, will be notified of the options available for debt restructuring. The debtor can apply for consideration by providing financial and operational information and proposing its own plan for curing the delinquency.

In order to be eligible for consideration for debt restructuring, the debtor's delinquency must have been caused by factors outside the debtor's control. In addition, the debtor must have acted in good faith with regard to the FmHA loan. FmHA will make these determinations based on the debtor's representation and the Agency's review of other documents relevant to these preliminary matters.

Once the debtor provides the financial and operational information required, FmHA will conduct a thorough analysis of the debtor's operations. This analysis will typically include contracting for an independent appraisal of the collateral securing the loan and contracting with an independent expert to prepare an "operations review." This review will provide FmHA with information regarding the facility's operations, its financial standing, and suggest alternatives that could be implemented to address the delinquency.

Using the information obtained from these sources and in consultation with the debtors and the experts, FmHA will calculate two values as required by the statute. First, FmHA will determine the loan's "net recovery" value. This value represents the current value of the loan if FmHA were to foreclose. Generally, the value is calculated by adding the value of assets securing the loan and subtracting the costs that would be incurred if the loan was foreclosed. Second, FmHA will determine the value of the restructured loan. This value is determined after a proposed plan is developed for the operation of the facility. That is, the operation and/or debt is modified to determine if the debtor can attain a positive cash flow and pay an adjusted debt service payment plus fund the FmHA Reserve Account.

After the restructured loan value and the net recovery value are calculated, FmHA can determine whether the debtor's request for debt restructuring can be approved. As required by the statute, FmHA can approve debt restructuring only if the value of the restructured loan is greater than, or equal to, the net recovery value. Once the Agency reaches this conclusion, the debtor will be notified of the results and given its options. If possible, the debt will be restructured and the facility will continue operations. If the net recovery value is greater than the value of the restructured loan, the debtor may choose to pay off the loan at the reduced net recovery value. If this option is not chosen, the loan likely will be accelerated.

Finally, if the debtor's debt is restructured or if the debtor elects to pay off the debt at the net recovery value, then the debtor will be required to execute an Appreciation Recapture Agreement. As explained in the statute, these Agreements allow the Agency to recoup a part or all of the debt that is written down if the debtor's underlying collateral appreciates in value over time and if the debtor sells the collateral within 10 years.

Discussion of Comments

On January 13, 1993, a proposed rule was published in the **Federal Register** (58 FR 4095) providing for a 30-day review and comment period ending February 12, 1993. Six comments were received.

Several respondents stated that the $300,000 limit on the writedown would not be enough to help many debtors and recommended that the rule be amended to remove the writedown limit. The rule is amended to remove the $300,000 limit. The writedown will be limited to the minimum amount necessary to meet the level of the facility's ability to service the debt.

One respondent recommended that the interest rate available under the Rural Rental Housing program, Section 8, which permits loans at rates as low as 1 percent, be extended to include health care facilities located in designated health professional shortage areas. Since FmHA's program regulations do not permit a reduction of interest rates below the poverty line interest rate, FmHA will not reduce the interest rate further.

Since publication of the proposed rule, the poverty line interest rate for FmHA and RDA loans changed from 5.0 percent to 4.5 percent. The final rule was changed to reference FmHA Instruction 440.1, Exhibit B, Interest Rates, for FmHA and RDA loans instead of using 5.0 percent.

The loan servicing options available through this action will result in debt restructuring packages which will provide significant benefit to all rural areas.

One respondent recommended that the definition of net recovery value be expanded to consider the potential net loss to the community if the facility were sold.

The definition of net recovery value presently emphasizes that the value of the assets should be calculated based upon the facility continuing to operate as a going concern, not merely as an empty building but as a facility continuing to offer health care services to the community it serves. This value can be based on the facility offering health care services which may, or may not, be similar to those offered by the current operators. This is the most practical and accurate method of determining the net recovery value of the facility.

One respondent recommended that we add the availability of writedown to servicing regulations without a mandate for a strict servicing regimen to be initiated as soon as a debtor reaches the delinquency time limitations. This respondent stated that a hospital could be offered net recovery buy out and not have the ability to obtain the buy out financing, at which point the Government would be forced to accelerate the loan.

FmHA is concerned about maintaining health care in rural areas. There is language in the rule which allows the Agency discretion in such cases. The program is intended to facilitate the continued operation of rural hospitals and health care facilities.

One respondent recommended a waiver of the $300,000 writedown limit when dealing with facilities in designated health professional shortage areas, those which are Medicare

waivered acute-care facilities, alternate rural health care delivery models, or facilities associated with related programs that may be approved by appropriate State licensing agencies.

As stated above, the $300,000 writedown limit has been removed.

Therefore, the final rule is changed from the proposed rule published in the **Federal Register** on January 13, 1993, as follows: *Debt writedown.* A one-time reduction of the debt owed to FmHA including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt.

List of Subjects in 7 CFR Part 1956

Accounting, Loan programs—Agricultural, Rural areas.

Accordingly, Chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1956—DEBT SETTLEMENT

1. The authority citation for part 1956 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 31 U.S.C. 3711; 7 CFR 2.23 and 2.70.

Subpart C—Debt Settlement—Community and Business Programs

2. Section 1956.102 is amended by redesignating the existing text as paragraph (a), adding a heading to newly designated paragraph (a), and by adding a new paragraph (b) to read as follows:

§ 1956.102 Application of policies.

(a) General. * * *

(b) *For hospitals and health care facilities only.* Loan servicing and debt restructuring options according to § 1956.143 of this subpart must be exhausted before the other settlement authorities of this subpart are applicable.

3. Section 1956.143 is added to read as follows:

§ 1956.143 Debt restructuring—hospitals and health care facilities.

This section pertains exclusively to delinquent Community Facility hospital and health care facility loans. Those facilities which are nonprogram (NP) loans as defined in § 1951.203 (f) of subpart E of part 1951 of this chapter are excluded. The purpose of debt restructuring is to keep the hospital or health care facility in operation with manageable debt.

(a) *Definitions.* As used in this section, the following definitions apply:

Consolidation. The combining of two or more debt instruments into one instrument, normally accompanied by reamortization.

Debt writedown. A one-time reduction of the debt owed to FmHA including principal and interest. This reduction will be the minimum amount necessary to meet the level of the facility's ability to service the debt. The writedown will be applied first to interest and then principal.

Delinquency due to circumstances beyond the control of the debtor. Includes situations such as: The debtor has less money than planned due to unexpected and uncontrollable events such as unexpected loss of service area population, unforeseeable costs incurred for compliance with State or Federal regulatory requirements, or the loss of key personnel.

Delinquent debtor. For purposes of this section, delinquency is defined as being 180 days behind schedule on the FmHA payments. That is, one full annual installment or the equivalent for monthly, quarterly, or semiannual installments.

Eligibility. Applicants must be delinquent due to circumstances beyond their control and have acted in good faith by trying to fulfill the agreements with FmHA in connection with the delinquent loans.

Interest rate reduction. Reduction of the interest rate on the restructured loan to as low as the poverty line interest rate in effect on community and business programs loans.

Loan deferral. The temporary delay of principal and interest payments for up to 6 months. The debtor must be able to demonstrate the ability to pay the debt, as restructured, at the end of this delay period.

Net recovery value. A calculation of the net value of the collateral and other assets held by the debtor. This value would be determined by adding the fair market value of FmHA's interest in any real property pledged as collateral for the loan, plus the value of any other assets pledged or otherwise available for the repayment of the debt, minus the anticipated administrative and legal expenses that would be incurred in connection with the liquidation of the loan. This value of the assets should be calculated based upon the facility continuing to operate as a going concern. Therefore, the facility should be valued not merely as an empty building but as a facility continuing to offer health care services which may, or may not, be similar to those offered by the current operators.

Operations review. A study of management and business operations of the facility by an independent expert. For example, a study of a hospital and nursing home would include such areas as: general and administrative, dietary, housekeeping, laundry, nursing, physical plant, social services, income potential, Federal, State, and insurance payments, and rate analysis. Also, recommendations and conclusions are to be included in the study which would indicate the creditworthiness of the facility and its ability to continue as a going concern. In analyzing a debtor's proposed restructuring plan, FmHA may contract for the completion of an operations review. These reviews will be developed by individuals and entities who have demonstrated an expertise in the analysis of health care facilities from an operational and administrative standpoint. FmHA will consider the following criteria for selection: past experience in health care facility analysis, a familiarity with the problems of rural health care facilities, a knowledge of the particular area currently served by the facility in question, and a willingness to work with both FmHA and the debtor in developing a final plan for restructuring.

Restructured loan. A revision of the debt instruments including any combination of the following: writing down of accumulated interest charges and principal, deferral, consolidation, and adjustment of the interest rates and terms, usually followed by reamortization.

(b) *Debtor notification.* All servicing actions permitted under subpart E of part 1951 of this chapter are to be exhausted prior to consideration for debt restructuring under this section. To this end, the servicing official must ensure that the casefile clearly documents that all servicing actions under subpart E of part 1951 of this chapter have been exhausted and that the debtor is at least 1 full year's debt service behind schedule for a minimum of 180 days. The debtor then should be informed of the debt restructuring available under this section by using language similar to that provided in Guide 1 of this subpart (available in any FmHA Office) as follows:

(1) Any introductory paragraph;

(2) A paragraph concerning prior servicing attempts;

(3) A discussion of eligibility, as defined in this section, including the provision that the debtor acted in good faith in connection with their FmHA loan and that the delinquency was caused by circumstances beyond their control;

(4) Two paragraphs that explain the goal of the debt restructuring program;

(5) A paragraph stating that debt restructuring may include a

combination of servicing actions listed in paragraph (a) of this section;

(6) Information that details what the debtor must do to apply for restructuring. A response must be received within 45 days of receipt of this letter to request consideration for debt restructuring and the request must include projected balance sheets, budgets, and cash-flow statements which include and clearly identify funding of the FmHA reserve account for the next 3 years;

(7) A discussion of FmHA's analysis and calculation process; and

(8) A paragraph identifying the FmHA official who may be contacted for assistance.

(c) *State Director's restructuring determination.* Upon receipt of the delinquent debtor's request for debt restructuring consideration, the State Director will:

(1) Within 15 days of receipt of debtor's request, if an operations review is deemed necessary, send a memorandum to the Administrator asking for program authority to contract for the review in accordance with Exhibit D of FmHA Instruction 2024–A (available in any FmHA Office). The name of the debtor involved and the projected amount of funds anticipated to be spent for the contract should also be provided. It is anticipated that an operations review will be necessary in most cases and that the only exceptions would be for smaller health care facilities or facilities that have developed a proposed plan that is comprehensive and realistic. Upon receipt of the Administrator's program contracting approval authority, a contract is to be awarded to an organization qualified to perform an operations review as defined in paragraph (a) of this section. The operations review normally will be completed and delivered to FmHA within 60 days of the award date.

(2) Contract for an appraisal to be performed by an independent, qualified fee appraiser. Note: To the extent possible, the appraisal should be scheduled for completion no later than the completion date of the operations review.

(3) Complete an analysis of the operations review, appraisal, and other documented information, and make an eligibility determination.

(i) Eligibility determination. The State Director must conclude that the debtor is eligible for debt restructuring consideration. This conclusion will be clearly documented in the casefile based on a review of the following:

(A) The debtor acted in good faith with regard to the delinquent loan. The casefile must reflect the debtor's cooperation in exploring servicing alternatives. The casefile should contain no evidence of fraud, waste, or conversion by the debtor, and no evidence that the debtor violated the loan agreement or FmHA regulations.

(B) The delinquency was caused by circumstances beyond the control of the debtor. This determination will be based on the debtor's narrative on this issue, which is a required part of the application for debt restructuring, and a separate review of the debtor's casefile and operations.

(C) As part of the application for debt restructuring, the debtor submitted a proposed operating plan that presents feasible alternatives for addressing the delinquency.

(ii) *Debtor determined eligible.* If the debtor is determined to be eligible for debt restructuring, a determination of a net recovery value and level of debt the facility will support will be made. It is anticipated that meetings with the debtor, the contractor who performed the operations review, and others, as appropriate, could be necessary to develop these values; although it should be emphasized throughout these meetings that any calculations and conclusions reached are preliminary in nature, pending final review by the Administrator. For debt restructuring calculations and computing a feasible cash-flow projection, the following order and combinations of loan servicing actions will be followed:

(A) Loan deferral for up to 6 months.

(B) Interest rate reduction to not less than the poverty line rate as determined by FmHA Instruction 440.1, exhibit B (available in any FmHA Office). Interest rate reduction will be considered only in conjunction with an extension of the term of the loan to the remaining useful life of the facility or 40 years, whichever is less.

(C) Debt writedown. Other creditors of the debtor, representing a substantial portion of the total debt, are expected to participate in the development of a restructuring plan which includes debt writedown. Debt writedown participation by other creditors should be on a pro rata basis with the FmHA writedown. However, failure of these creditors to agree to participate in the plan shall not preclude the use of principal and interest writedown by FmHA if it is determined that this option results in the least cost to the Federal Government.

(iii) *Debtor determined ineligible.* If the State Director concludes that the debtor is not eligible for debt restructuring consideration for any of the reasons listed in paragraph (c)(3)(i) of this section, then the debtor will be notified by a letter that includes the following information:

(A) The basis for the determination;

(B) The next step in servicing the loan: possible acceleration if the delinquency is not cured; and

(C) The debtor may appeal this determination in accordance with subpart B of part 1900 of this chapter.

(iv) *State Director's recommendation.* Upon completion of the determination of net recovery value and restructured debt in accordance with paragraph (c)(3)(ii) of this section, and prior to formal presentation to the borrower, the State Director will forward a recommendation to the National Office with the following documentation:

(A) That all other servicing efforts have been exhausted as required in paragraph (b) of this section.

(B) Financial statements including balance sheets, income and expense, cash-flows for the most recent actual year, and projections for the next 3 years. The amount of FmHA's restructured debt and reserve account requirements are to be clearly indicated on the projected statements. Also, operating statistics including number of beds, patient days of care, outpatient visits, occupancy percentage, etc., for the same periods of time must be included.

(C) Copies of the operations review, developed for the particular loan, and appraisal.

(D) Calculations of the net recovery value.

(E) Debt restructuring calculations including a listing of the various servicing combinations used in these calculations as contained in paragraph (c)(3)(ii) of this section. For example:

(*1*) Interest rate reduced from the applicant's current rate on all loans to the poverty line rate as determined by FmHA instruction 440.1, exhibit B (available in any FmHA Office); and

(*2*) Extension of the terms from 25 to 30 years.

(F) Information concerning discussions with the debtor and their agreement or disagreement with the calculations and recommendations.

(G) If debt restructuring is proposed:

(*1*) A draft of Form FmHA 1951–33, if applicable, and any other necessary comments or requirements that may be required by OGC and Bond Counsel in § 1951.223 (c)(3) and (4) of subpart E of part 1951 of this chapter.

(*2*) A draft of Form FmHA 1956–1, if applicable. Complete only parts I, II, VI, and VIII. Part VI, "Debtor's Offer and Certification," will be in a separate attachment and contain the adjusted unpaid principal amount for which

FmHA approval is requested. In Part VI of the form, type "see attached."

(H) If the proposed restructured debt will not cash-flow or is less than the net recovery value, omit the items in paragraph (c)(3)(iv)(G) of this section.

(d) *National Office processing of State Director's request.*

(1) After reviewing the recommendation to either debt restructure or liquidate for the net recovery value, the Administrator, after concurring, modifying, or not concurring in the recommendation, will return the submission for further processing.

(2) If a debt writedown is used in the restructuring process, the amount will be included in the National Office transmittal memorandum. The draft Form FmHA 1956–1 will not need to be finalized and returned to the Administrator for signature. The State Director's signature on the final copy will be sufficient. However, a copy of the National Office memorandum is to be attached to the form when completed.

(e) *Debtor notification of debt restructuring and net recovery value calculations.* The State Director will provide a copy of the basis for the debt restructuring or net recovery determination to the debtor.

(1) If the value of the restructured loan is equal to, or greater than, the recovery value, the debtor will be made an offer to accept the restructured debt by using language similar to that provided in Guide 2 of this subpart (available in any FmHA Office) and including the following paragraphs:

(i) An introductory paragraph indicating that FmHA has concluded its consideration of the debtor's request;

(ii) A paragraph indicating FmHA's approval of the debt restructuring request and that acceptance must be received by FmHA within 45 days from receipt of this letter; and

(iii) That the debtor's acceptance will require the execution of a Shared Appreciation Agreement similar to Guide 4 of this subpart (available in any FmHA Office) and possible new debt instruments accompanied by Bond Counsel opinions.

(2) If the debt analysis calculations indicate that a restructured debt would be less than the net recovery value of the security, a letter using language similar to that provided in Guide 3 of this subpart (available in any FmHA Office), will be sent to the debtor that includes the following paragraphs:

(i) An introductory paragraph indicating that FmHA has concluded its consideration of the debtor's request;

(ii) Paragraphs indicating that:

(A) The debtor may pay FmHA the net recovery value of the loan. The debtor will be given 30 days from receipt of this letter to inform FmHA of its intent, 90 days to finalize the payoff, and will be notified that an election to pay off FmHA would require the execution of a Net Recovery Buy Out Recapture Agreement, similar to that provided in Guide 5 of this subpart (available in any FmHA Office); or

(B) If the debt is not paid off at the net recovery value, FmHA will proceed to liquidate the loan.

(f) *Debtor responses to debt restructuring and net recovery value calculations.* Responses from the debtor will be handled as follows:

(1) *Acceptance of FmHA's restructured debt offer.* When a debtor accepts the offer for debt restructuring, processing will be in accordance with § 1951.223 (c) of subpart E of part 1951 of this chapter using the adjusted unpaid principal and outstanding accrued interest at the Administrator's approved interest rate and terms. The debtor will be required to execute a Shared Appreciation Agreement which will provide that, should the debtor sell or transfer title to the facility within the next 10 years, FmHA is entitled to a portion of any gain realized. This agreement will include language similar to that found in Guide 4 of this subpart (available in any FmHA Office). The original of Form FmHA 1956–1, with appropriate attachments signed by the State Director, and a copy of the Shared Appreciation Agreement will be sent to the Finance Office. Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package; and

(2) *Acceptance by debtor to pay off loan at the recovery value.* Processing of this transaction will be in accordance with § 1956.124 of this subpart. However, the account does not need to be accelerated. The debtor will be required to execute a Net Recovery Buy Out Recapture Agreement, similar to that found in Guide 5 of this subpart (available in any FmHA Office). The original of Form FmHA 1956–1, with appropriate attachments signed by the State Director, and a copy of the recorded Net Recovery Buy Out Recapture Agreement will be sent to the Finance Office. The executed Net Recovery Buy Out Recapture Agreement will be recorded in the county in which the facility is located. The Finance Office will credit the accounts of debtors who entered into Net Recovery Buy Out Recapture Agreements with the amount paid by the debtor (net recovery value). Note: All documents pertaining to this transaction will be sent to the Finance Office in one single complete package.

(g) *Collection and processing of recapture.*

(1) When FmHA becomes aware of the sale or transfer of title to the facility on which there is an effective Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA Office) or a Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA Office) outstanding and a determination is made that a recapture is appropriate, FmHA will notify the debtor of the following:

(i) Date and amount of recapture due; and

(ii) FmHA action to be taken if debtor does not respond within the designated timeframe with the amount of recapture due.

(2) When the recapture is received, the payment will be processed on Form FmHA 451–2 as a miscellaneous collection in accordance with subpart B of part 1951 of this chapter. The Form FmHA 451–2 along with a copy of the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA Office), as appropriate, will be forwarded to the Finance Office.

(3) When the amount of the recapture has been paid and credited to the debtor's account, the debtor will be released from liability by using Form FmHA 1965–8, "Release from Personal Liability," modified as appropriate.

(h) *No recapture due.* If FmHA determines there is no recapture due, the Net Recovery Buy Out Recapture Agreement (Guide 5 of this subpart available in any FmHA Office) or Shared Appreciation Agreement (Guide 4 of this subpart available in any FmHA Office) will be appropriately annotated, the Recapture Agreement released from the record, and the Agreement returned to the debtor.

4. Section 1956.147 is amended by revising the word "borrower" to read "debtor" in paragraphs (a)(3)(iv) and (a)(3)(v)(B).

5. Section 1956.150 is revised to read as follows:

§ 1956.150 OMB Control Number.

The reporting requirements contained in this regulation have been approved by the Office of Management and Budget and assigned OMB control number 0575–0124. Public reporting burden for this collection of information is estimated to vary from ½ hour to 30 hours per response with an average of 8.14 hours per response, including the

time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Ag Box 7630, Washington, D.C. 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Dated: August 15, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–21877 Filed 9–6–94; 8:45 am]

BILLING CODE 3410–32–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–SW–03–AD; Amendment 39–9021; AD 94–18–08]

Airworthiness Directives; McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369, 369A (OH–6A), 369D, E, F, FF, H, HE, HS, and HM Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369, 369A (OH–6A), 369D, E, F, FF, H, HE, HS, and HM series helicopters, that requires daily preflight checks and 100 hours time-in-service (TIS) inspections for tail rotor blade abrasion strip (abrasion strip) debonding until abrasion strip rivets (rivets) are installed. This amendment also supersedes a Priority Letter AD that currently requires installation of rivets, corrects tail rotor blade part numbers listed in the previous AD, and retains the daily preflight checks of the previous AD until rivets are installed to secure the abrasion strip. This AD provides a terminating action for the abrasion strip debonding and also seeks to clear up any confusion among operators caused by having a published AD and a Priority Letter that are applicable to the same helicopter part. This AD replaces both of those documents. This amendment is prompted by an accident resulting from the separation of an abrasion strip from a tail rotor blade and subsequent tail rotor separation. The actions specified by this AD are intended to prevent loss of the abrasion strip, separation of the tail rotor, and subsequent loss of control of the helicopter.

DATES: Effective September 27, 1994.

The incorporation by reference of certain publications listed in the regulations was previously approved by the Director of the Federal Register as of March 10, 1992 at 57 FR 5379 (February 14, 1992).

Comments for inclusion in the Rules Docket must be received by November 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–03–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Company, Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. This information may be examined at the FAA, Office of the Assistant Chief Counsel, Rules Docket No. 93–SW–03–AD, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brent Bandley, Aerospace Engineer, Airframe Branch, ANM–123L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5237, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On December 31, 1991, the FAA issued AD 92–02–15, Amendment 39–8151 (57 FR 5379, February 14, 1992), to require daily preflight checks and 100 hours TIS repetitive inspections for abrasion strip debonding until rivets are installed. That AD requires installation of the rivets within 300 hours TIS.

As a result of a more recent helicopter accident involving the separation of an abrasion strip, on October 16, 1992, the FAA issued Priority Letter (PL) AD 92–22–14 that superseded the existing AD 92–02–15. The PL AD corrects certain tail rotor blade part numbers as listed in AD 92–02–15 and retains the daily preflight checks of the previous AD 92–02–15 until rivets are installed. The PL AD further requires installation of the rivets within 25 hours TIS or within 7 days, whichever comes first.

Both AD 92–02–15, issued December 31, 1991 and the PL AD 92–22–14, issued October 16, 1992, require a visual check for evidence of debonding before the first flight of each day. However, AD 92–02–15 requires installation of rivets within 300 hours TIS while PL AD 92–22–14 requires installation of the rivets within 25 hours TIS or on or before 7 days after the effective date of that AD. Both of these ADs require the same corrective action but have different compliance times. Additionally, the PL AD did not specify whether the 7-day compliance time was in terms of "work" days or "calendar" days. As a result of having two ADs that require the same corrective action with only differing compliance times, and additionally failing to specifically describe the type of compliance day as that term was used in the PL AD, operators may be confused about when compliance is required. Such confusion may lead an operator to inadvertently fail to comply with the necessary safety requirements for these rotorcraft and result in an unsafe condition. Therefore, due to the criticality of the abrasion strip, the short compliance times, and the possible confusion as a result of having two effective ADs that require the same corrective action with one containing a potentially confusing compliance time, this rule must be issued immediately to correct an unsafe condition.

In addition to correcting the unsafe conditions described, this AD also provides that installation of the rivets to secure the abrasion strip constitutes terminating action for the requirements of this AD.

The checks required by this AD before the first flight of each day may be performed by an owner/operator (pilot) but must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations. This AD allows a pilot to perform this check because it involves only a visual check for debonding of the abrasion strip from the tail rotor blade and is required only until rivets are installed. This check can be performed equally well by a pilot or a mechanic. It involves checking items similar to those items that a pilot checks during a preflight. Safety does not require that this check be performed by a mechanic before the first flight of each day. The AD does require that a mechanic inspect the tail rotor blades within 25 hours TIS or within 7 calendar days, whichever occurs first.

Since an unsafe condition has been identified that is likely to exist or

develop on other helicopters of the same type design, this AD supersedes the PL, AD 92–22–14, and AD 92–02–15 to require more prompt installation of rivets, to specify that the 7 days compliance time refers to calendar days, and to correct tail rotor blade part numbers as listed in AD 92–02–15. The daily preflight checks required by paragraph (a) of AD 92–02–15 are retained until rivets are installed. The actions are required to be accomplished in accordance with Part II of McDonnell Douglas Helicopter Company Service Information Notice HN–232, DN–179, EN–70 and FN–57, dated September 27, 1991.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–03–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein 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. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8151 (57 FR 5379, February 14, 1992), and by adding a new airworthiness directive (AD), Amendment 39–9021, to read as follows:

AD 94–18–08 McDonnell Douglas Helicopter Company (MDHC) and Hughes Helicopters, Inc.: Amendment 39–9021. Docket Number 93–SW–03–AD. Supersedes Priority Letter AD 92–22–14, issued October 16, 1992, and AD 92–02–15, Amendment 39–8151.

Applicability: Model 369, 369A (OH–6A), 369D, E, F, FF, H, HE, HS, and HM series helicopters, equipped with the following tail rotor blades with bonded tail rotor abrasion strips (abrasion strips) installed, but without abrasion strip rivets (rivets) installed as described in paragraph (c) of this AD: part numbers (P/N) 421–088; 369A1613–7, –503, –505; 369D21606; 369D21613–11, –31, –41, –51; 369D21615, –21; or 369A1613–3M; and any of these P/N with a suffix (such as the letters "M" or "M–STC") added to the dash numbers, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of abrasion strips, separation of the tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before the first flight of each day, until two rivets are installed as required by paragraph (c) of this AD, visually check each abrasion strip for any evidence of debonding along the entire abrasion strip bond line. This visual check may be performed by the owner/operator holding at least a private pilot certificate and must be entered into the aircraft records showing compliance with this AD in accordance with sections 43.11 and 91.417 (a)(2)(v) of the Federal Aviation Regulations.

(b) If performance of the visual check required by paragraph (a) results in evidence of debonding, conduct the following inspections before further flight:

(1) Remove the tail rotor blade from the helicopter, and perform a dye-penetrant and a tap-test inspection in accordance with the applicable helicopter maintenance manual to ensure that the abrasion strip is secure.

Note: MDHC Service Information Notice HN–197.2, DN–130.2, EN–19.2, and FN–17.1, dated March 23, 1987, contains additional information on the inspections required by paragraph (b).

(2) If debonding is confirmed, remove the tail rotor blade from service and replace it with an airworthy blade, which has been modified by the installation of rivets.

(c) Within 25 hours time-in-service or on or before 7 calendar days after the effective date of this AD, whichever comes first:

(1) Inspect the tail rotor blades in accordance with paragraph (b)(1) of this AD, and if no evidence of debonding exists, install rivets in accordance with Part II of MDHC Service Information Notice (SIN) HN–232, DN–179, EN–70 and FN–57, dated September 27, 1991.

(2) If evidence of debonding exists, remove the blade from service and replace it with an airworthy blade, which has been modified by the installation of rivets, prior to further flight.

(d) Installation of the abrasion strip rivets in accordance with MDHC SIN HN–232, DN–

179, EN–70, and FN–57, dated September 27, 1991, constitutes a terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806–2425. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished, provided there is no evidence of debonding of the abrasion strip at any point along the entire abrasion strip bond line of the tail rotor blades.

(g) The inspection, removal, modification, and replacement, if necessary, shall be done in accordance with McDonnell Douglas Helicopter Corporation (MDHC) SIN HN–232, DN–179, EN–70, and FN–57, dated September 27, 1991. This incorporation by reference was previously approved by the Director of the Federal Register as of March 10, 1992 (57 FR 5379, February 14, 1992) in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from MDHC Technical Publications, Bldg. 530/B111, 5000 E. McDowell Road, Mesa, Arizona 85205–9797. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on September 27, 1994.

Issued in Fort Worth, Texas, on August 30, 1994.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–21906 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 94–AEA–09]

Modification of Class D Airspace and Establishment of Class E Airspace; Various Locations, State of Pennsylvania

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action modifies the Class D airspace areas at Erie, PA, Harrisburg, Capital City Airport, PA, Harrisburg International Airport, PA, North Philadelphia, PA, and Williamsport, PA, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Additionally, this action establishes Class E airspace areas at Lancaster, PA, and Reading, PA. Presently, these areas are designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control tower located at this location is closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approaches when these control towers are closed. Furthermore, minor technical amendments are being made to the Bradford, PA, and Du Bois, PA Class E airspace areas to reflect the operational hours of the associated Flight Service Station.

DATES: *EFFECTIVE DATE:* 0901 U.T.C. December 8, 1994.

Comment Date: Comments must be received on or before October 10, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA–500, Airspace Docket Number 94–AEA–09, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) modifies the Class D airspace areas at Harrisburg, Capital City Airport, PA, Harrisburg International Airport, PA, Erie, PA, North Philadelphia, PA, and Williamsport, PA, by amending the areas' effective hours to coincide with the associated control tower's hours of operation. This action also establishes Class E airspace at these areas when the associated control tower is closed. Prior to Airspace Reclassification, an airport traffic area (ATA) and a control zone (CZ) existed at these airports. However, Airspace Reclassification, effective September 16, 1993, discontinued the use of the term "airport traffic area" and "control zone," replacing them with the designation "Class D airspace." The former CZ's were continuous, while the former ATA's were contingent upon the operation of the associated air traffic control tower. The consolidation of the ATA and CZ into a single Class D airspace designation makes it necessary to modify the effective hours of the Class D airspace to coincide with the control tower's hours of operation. This action also establishes Class E airspace during the hours the control tower is closed. Additionally, this action establishes Class E airspace areas at Lancaster, PA, and Reading, PA. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Lancaster, PA, and Reading, PA, when the control towers are closed. The intended effect of this action is to clarify when two-way radio communication with these air traffic control towers is required and to provide adequate Class E airspace for instrument approach procedures when these control towers are closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645). Furthermore, the Class E airspace areas at Bradford, PA, and Du Bois, PA, are being revised to reflect the hours of the associated Flight Service Station.

The coordinates for this airspace docket are based on North American Datum 83. Class D and E airspace designations are published in Paragraphs 5000, 6002, and 6004, respectively, of FAA Order 7400.9B dated July 8, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to modify these Class D and establish these Class E airspace areas in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated June 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General.

* * * * *

AEA PA D Erie, PA [Revised]

Erie International Airport, PA
(Lat. 42°04'55" N., long. 80°10'34" W.)
Erie VORTAC
(Lat. 42°01'03" N., long. 80°17'34" W.)

That airspace extending upward from the surface to and including 3,200 feet MSL within a 4.2-mile radius of Erie International Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA D Harrisburg Capital City Airport, PA [Revised]

Capital City Airport, Harrisburg, PA
(Lat. 40°13'01" N., long. 76°51'05" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL and within a 4-mile radius of Capital City Airport, excluding the portion that coincides with the Harrisburg International Airport, PA, Class D airspace east of the direct lines described as follows: a line bearing 028° from a point at lat. 40°12'23" N., long. 76°48'37" W., extending from said point to the point of intersection with the Harrisburg Capital City, PA, 4-mile radius. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA D Harrisburg International Airport, PA [Revised]

Harrisburg International Airport, PA
(Lat. 40°11'36" N., long. 76°45'48" W.)

That airspace extending upward from the surface to and including 2,800 feet MSL within a 4.3-mile radius of the Harrisburg International Airport and within a 6.1-mile radius of the center of the airport extending clockwise from a 228° bearing to a 293° bearing from the airport and within a 5.7-mile radius of the center of the airport extending clockwise from a 005° bearing to a 033° bearing from the airport and within a 6.1-mile radius of the center of the airport extending clockwise from a 033° bearing to a 098° bearing from the airport and within 1.8 miles each side of the extended centerline of Harrisburg International Airport Runway 13 extending from the southeast end of Runway 13 to 5.3 miles southeast of the southeast end of Runway 13; excluding the portion that coincides with the Harrisburg Capital City Airport, PA, Class D airspace area west of direct lines described as follows: a line bearing 028° from a point at lat. 40°12'23" N., long. 76°48'37" W., extending from said point to the point of intersection with the Harrisburg International Airport 4.3-mile radius and a line bearing 191° from a point at lat. 40°12'23" N., long. 76°48'23" W., extending from said point to the point of intersection with the Harrisburg International Airport 4.3-mile radius.

* * * * *

AEA PA D North Philadelphia, PA [Revised]

Northeast Philadelphia Airport, Philadelphia, PA
(Lat. 40°04'55" N., long. 75°00'39" W.)
Warminster NAWC
(Lat. 40°11'57" N., long. 75°03'58" W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.2-mile radius of Northeast Philadelphia Airport extending clockwise from a 030° bearing 252° bearing from the airport and within a 5.3-mile radius of the Northeast Philadelphia Airport extending clockwise from a 252° bearing to a 030° bearing from the airport, excluding the north portion subtended by a chord drawn between the points of intersection of the 5.3-mile radius with that portion of the Willow Grove, PA, Class D airspace area centered on Warminster NAWC. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA D Williamsport, PA [Revised]

Williamsport-Lycoming County Airport, Williamsport, PA
(Lat. 41°14'31" N., long. 76°55'18" W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.2-mile radius of Williamsport-Lycoming County Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6002—Class E airspace areas designated as a surface area for an airport.

* * * * *

AEA PA E2 Bradford, PA [Revised]

Bradford Regional Airport, PA
(Lat. 41°48'11" N., long. 78°38'24" W.)
Bradford VORTAC
(Lat. 41°47'11" N., long. 78°37'10" W.)

Within a 4.3-mile radius of the Bradford Regional Airport and within 3.1 miles each side of the Bradford VORTAC 135° radial extending from the VORTAC to 8.7 miles southeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA E2 Du Bois, PA [Revised]

Du Bois-Jefferson County Airport, Du Bois, PA

(Lat. 41°10'42" N., long. 78°53'55" W.)
Du Bois-Jefferson County Airport Northeast Localizer Course OM
(Lat. 41°13'11" N., long. 78°48'08" W.)
Clarion VORTAC
(Lat. 41°08'47" N., long. 79°27'29" W.)

Within a 4-mile radius of Du Bois-Jefferson County Airport and within 2.6 miles each side of the Du Bois-Jefferson County Airport ILS localizer northeast course, extending from the 4-mile radius to 7.4 miles northeast of the OM and within 2.2 miles each side of the Clarion VORTAC 086° radial, extending from the 4-mile radius zone to 20 miles east of the VORTAC and within 2.2 miles each side of a 242° bearing from a point at lat. 41°10'30" N., long. 78°54'29" W., extending from said point to 4.8 miles southwest of said point. This class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA E2 Erie, PA [New]

Erie International Airport, PA
(Lat. 42°04'55" N., long. 80°10'34" W.)
Erie VORTAC
(Lat. 42°01'03" N., long. 80°17'34" W.)

Within a 4.2-mile radius of Erie International Airport; and that airspace extending upward from the surface extending northeast of the 4.2-mile radius from within 4 miles northwest of the Erie VORTAC 054° radial to 3.5 miles southeast of the Erie ILS localizer northeast course then extending southwest from a point located along the Erie localizer northeast course 9.2 miles NE of lat. 42°07'30" N., long. 80°05'36" W., to the 4.2-mile radius. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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AEA PA E2 Harrisburg Capital City Airport, PA [New]

Capital City Airport, Harrisburg, PA
(Lat. 40°13'01" N., long. 76°51'05" W.)

Within a 4-mile radius of Capital City Airport, excluding the portion that coincides with the Harrisburg International Airport, PA, Class D airspace west of the direct lines described as follows: a line bearing 028° from a point at lat. 40°12'23" N., long. 76°48'37" W., extending from said point to the point of intersection with the Harrisburg Capital City, PA, 4-mile radius and a line bearing 191° from a point at lat. 40°12'23" N., long. 76°48'37" W., extending from said point to the point of intersection with the Harrisburg Capital City, PA, 4-mile radius; and that airspace extending upward from the surface within 1.8 miles each side of the extended centerline of Capital City Airport Runway 26 extending from the west end of Runway 26 to 7.2 miles west of the west end of Runway 26. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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AEA PA E2 Lancaster, PA [New]

Lancaster Airport, PA
(Lat. 40°07'18" N., long. 76°17'46" W.)
Lancaster VORTAC
(Lat. 40°07'12" N., long. 76°17'29" W.)

Within a 4.1-mile radius of Lancaster Airport; and that airspace extending upward from the surface within 2.7 miles each side of Lancaster VORTAC 260° radial extending from the VORTAC to 7.4 miles west of the VORTAC and within 2.7 miles each side of the Lancaster VORTAC 128° radial extending from the VORTAC to 7.4 miles southeast of the VORTAC and within 1.8 miles each side of the Lancaster VORTAC 055° radial extending from the VORTAC to 4.4 miles northeast of the VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA E2 North Philadelphia, PA [New]

Northeast Philadelphia Airport, Philadelphia, PA
(Lat. 40°04'55" N., long. 75°00'39" W.)
Warminster NAWC
(Lat. 40°11'57" N., Long. 75°03'58" W.)

Within a 4.2-mile radius of Northeast Philadelphia Airport extending clockwise from a 030° bearing to a 252° bearing from the airport and within a 5.3-mile radius of the Northeast Philadelphia Airport extending clockwise from a 252° bearing to a 030° bearing from the airport, excluding the north portion subtended by a chord drawn between the points of intersection of the 5.3-mile radius with that portion of the Willow Grove, PA, Class D airspace area centered on Warminster NAWC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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AEA PA E2 Reading, PA [New]

Reading Regional/Carl A. Spaatz Field, Reading, PA
(Lat. 40°22'42" N., long. 75°57'55" W.)
SHAPP OM
(Lat. 40°18'23" N., long. 75°56'59" W.)

Within a 4.2-mile radius of Reading Regional/Carl A. Spaatz Field extending clockwise from a 160° bearing to a 030° bearing from the airport and within a 4.8-mile radius of Reading Regional/Carl A. Spaatz Field Airport extending clockwise from a 030° bearing to a 160° bearing from the airport; and that airspace extending upward from the surface within 4 miles each side of the Reading Regional/Carl A. Spaatz Field ILS localizer south course extending from the 4.2-mile radius and 4.8-mile radius to 7.4 miles south of the SHAPP OM and within 3.5 miles each side of a 161° bearing from a point at lat. 40°22'32" N., long. 75°57'56" W., extending from said point to 7.4 miles south and within 2.2 miles each side of a 301° bearing from a point at lat. 40°23'00" N., long. 75°58'41" W., extending from said point to 5.2 miles northwest of said point and within 1.8 miles each side of a 352° bearing from a point at lat. 40°23'06" N., long. 75°57'47" W., extending from said point to 4 miles north of said point. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

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AEA PA E2 Williamsport, PA [New]

Williamsport-Lycoming County Airport, Williamsport, PA
(Lat. 41°14'31" N., long. 76°55'18" W.)

Within a 4.2-mile radius of Williamsport-Lycoming County Airport; and that airspace extending upward from the surface within a 7-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 270° bearing to a 312° bearing from the airport and within an 11.3-mile radius of Williamsport-Lycoming Airport extending clockwise from a 312° bearing to a 350° bearing from the airport and within an 11.3-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 004° bearing to a 099° bearing from the airport and within 3.5 miles south of the Williamsport-Lycoming County Airport east localizer course extending from the 4.2-mile radius of the airport east to a 099° bearing from the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Paragraph 6004—Class E airspace areas designated as an extension to a Class D surface area

* * * * *

AEA PA E4 Erie, PA [Revised]

Erie International Airport, PA
(Lat. 42°04'55" N., long. 80°10'34" W.)
Erie VORTAC
(Lat. 42°01'03" N., long. 80°17'34" W.)

That airspace extending upward from the surface extending northeast of the Erie International Airport 4.2-mile radius from within 4 miles northwest of the Erie VORTAC 054° radial to 3.5 miles southeast of the Erie ILS localizer northeast course then extending southwest from a point located along the Erie localizer northeast course 9.2 miles NE of lat. 42°07'30" N., long. 80°05'36" W., to the 4.2-mile radius of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA E4 Harrisburg Capital City Airport, PA [Revised]

Capital City Airport, Harrisburg, PA

(Lat. 40°13'01" N., long. 76°51'05" W.)

That airspace extending upward from the surface within 1.8 miles each side of the extended centerline of Capital City Airport Runway 26 extending from the west end of Runway 26 to 7.2 miles west of the west end of Runway 26. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

AEA PA E4 Williamsport, PA [Revised]

Williamsport-Lycoming County Airport, Williamsport, PA
(Lat. 41°14'31" N., long. 76°55'18" W.)

That airspace extending upward from the surface within a 7-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 270° bearing to a 312° bearing from the airport and within an 11.3-mile radius of Williamsport-Lycoming Airport extending clockwise from a 312° bearing to a 350° bearing from the airport and within an 11.3-mile radius of Williamsport-Lycoming County Airport extending clockwise from a 004° bearing to a 099° bearing from the airport and within 3.5 miles south of the Williamsport-Lycoming County Airport east localizer course extending from the 4.2-mile radius of the airport east to a 099° bearing from the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Jamaica, New York, on August 22, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94-21976 Filed 9-6-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-AEA-07]

Establishment of Class E Airspace; Trenton, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This action establishes Class E airspace at Trenton, NJ. Presently, this area is designated as Class D airspace when the associated control tower is in operation. However, controlled airspace to the surface is needed when the control tower located at this location is closed. The intended effect of this action is to provide adequate Class E airspace for instrument flight rules (IFR) operations when the control tower is closed.

DATES: *Effective Date:* 0901 U.T.C. December 8, 1994.

Comment Date: Comments must be received on or before October 10, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AEA-500, Airspace Docket Number 94-AEA-07, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430. An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Jordan, Airspace Specialist, System Management Branch, AEA-530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553-0857.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. However, after the review of any comments, and if the FAA finds that further changes are appropriate, it will initiate rulemaking proceedings to extend the effective date of the rule or to amend the regulation.

Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the rule which might suggest the need to modify the rule.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace extending upward from the surface at Trenton, NJ. Currently, this airspace is designated as Class D when the associated control tower is in operation. Nevertheless, controlled airspace to the surface is needed for IFR operations at Mercer County Airport, Trenton, NJ when the control tower is closed. The intended effect of this action is to provide adequate Class E airspace for IFR operations at this airport when the control tower is closed. As noted in the Airspace Reclassification Final Rule, published in the **Federal Register** on December 17, 1991, airspace at an airport with a part-time control tower should be designated as a Class D airspace area when the control tower is in operation, and as a Class E airspace area when the control tower is closed (56 FR 65645).

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for airports are published in paragraph 6002 of FAA Order 7400.9B dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order. Under the circumstances presented, the FAA concludes that there is an immediate need to establish this Class E surface area in order to promote the safe and efficient handling of air traffic in these areas. Therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

Adoption of the Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; Executive Order 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective

September 16, 1994, is amended as follows:

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AEA NJ E2 Trenton, NJ [New]

Mercer County Airport, Trenton, NJ
(Lat. 40°16'36" N., long. 74°48'49" W.)
Yardley VORTAC
(Lat. 40°15'12" N., long. 74°54'27" W.)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 4.1-mile radius of Mercer County Airport and within 2.2 miles north of the Yardley VORTAC 064° radial and within 1.8 miles south of the Yardley VORTAC 070° radial extending from the 4.1-mile radius to the VORTAC. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be published continuously in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York, on August 19, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–21981 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 73

[Airspace Docket No. 92–AWP–6]

Alteration and Subdivision of Restricted Area R–2503 and Revocation of R–2533; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Restricted Area R–2503, Camp Pendleton, CA, and subdivides the area into three separate areas designated as R–2503A, R–2503B, and R–2503C. R–2503A will incorporate part of the existing Restricted Area R–2533, Oceanside, CA. R–2533 will be removed concurrent with this action. This action will allow Marine Corps Base Camp Pendleton to accomplish required training.

EFFECTIVE DATE: 0901 UTC, October 13, 1994.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–9361.

SUPPLEMENTARY INFORMATION:

History

On November 23, 1993, the FAA proposed to amend part 73 of the Federal Aviation Regulations (14 CFR part 73) by subdividing Restricted Area R–2503, Camp Pendleton, CA, into three separate areas designated as R–2503A, R–2503B, and R–2503C and by removing R–2533, Oceanside, CA (58 FR 61854). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments were received. This action also corrects an inadvertent error that was published in the notice concerning the base commander's name listed in the using agency. "Commanding Officer" should have been "Commanding General." Except for the change noted above, this amendment is the same as that proposed in the notice. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8B dated March 9, 1994.

The Rule

This amendment to part 73 of the Federal Aviation Regulations subdivides Restricted Area R–2503, Camp Pendleton, CA, into three separate areas designated as R–2503A, R–2503B, and R–2503C. Camp Pendleton has found that having two restricted areas with similar sounding, but different numbers is confusing, and has requested that R–2533 be removed and modified under the designation of R–2503A. R–2503A is smaller in size than the current R–2533. The southwestern boundary of R–2503A will be 2 miles closer to the shoreline so that the distance that nonparticipating aircraft will need to fly offshore to avoid the area will be reduced. Additionally, the boundary on the northwestern side of R–2503A will be adjusted to return airspace near San Clemente to the public. R–2503B is a slightly enlarged version of the existing R–2503. The southwestern boundary will be moved 1 mile toward the shoreline to enable the Marine Corps to provide requisite training. R–2503C is new airspace which will extend from 15,000 to 27,000 feet and will overlie approximately three-fourths of R–2503B. The Marine Corps has requested this additional airspace to accomplish required training, such as high angle, high altitude artillery firing, and has indicated that its use will typically be less than 40 hours per year. A change to the using agency to standardize format is also included in this action.

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

Environmental Review

An Environmental Assessment (EA) of this action, resulting in a Finding of No Significant Impact (FONSI), was completed by the Environmental and Natural Resources Management Office, Marine Corps Base Camp Pendleton, CA. The FAA has reviewed the EA, and adopts the EA/FONSI, as supplemented by the Marine Corps. The FAA concludes that this action will have no significant impact on the environment.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

2. §73.25 is amended as follows:

R–2503 Camp Pendleton, CA [Removed]

R–2503A Camp Pendleton, CA [New]

Boundaries. Beginning at lat. 33°22'42" N., long. 117°36'45" W.; to lat. 33°27'13" N., long. 117°34'17" W.; to lat. 33°18'41" N., long. 117°23'58" W.; to lat. 33°17'30" N., long. 117°16'43" W.; to lat. 33°14'09" N., long. 117°26'38" W.; to the point of beginning by following a line 1 NM from and parallel to the shoreline.

Designated altitudes. Surface to 2,000 feet MSL.

Time of designation. 0600–2400 local time daily; other times by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Marine Corps, Commanding General, MCB Camp Pendleton, CA.

R–2503B Camp Pendleton, CA [New]

Boundaries. Beginning at lat. 33°24'23" N., long. 117°15'18" W.; to lat. 33°18'00" N., long. 117°16'11" W.; to lat. 33°17'30" N., long. 117°16'43" W.; to lat. 33°18'41" N., long. 117°23'58" W.; to lat. 33°27'13" N., long. 117°34'17" W.; to lat. 33°30'13" N., long. 117°29'16" W.; to the point of beginning.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. 0600–2400 local time daily; other times by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Marine Corps, Commanding General, MCB Camp Pendleton, CA.

R–2503C Camp Pendleton, CA [New]

Boundaries. Beginning at lat. 33°24'23" N., long. 117°15'18" W.; to lat. 33°18'41" N., long. 117°23'58" W.; to lat. 33°27'13" N., long. 117°34'17" W.; to lat. 33°30'13" N., long. 117°29'16" W.; to the point of beginning.

Designated altitudes. 15,000 feet MSL to FL 270.

Time of designation. Intermittent by NOTAM at least 24 hours in advance, and with the concurrence of the controlling agency, not to exceed 40 hours annually.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Marine Corps, Commanding General, MCB Camp Pendleton, CA.

R–2533 Oceanside, CA [Removed]

Issued in Washington, DC, on August 29, 1994.

Nancy B. Kalinowski,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–21982 Filed 9–6–94, 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 91F–0449]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers in repeated use food-contact articles. This action is in response to a petition filed by Polysar Rubber Corp.

DATES: Effective September 7, 1994; written objections and requests for a hearing by October 7, 1994. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 177.2600(c)(4)(i), effective September 7, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of December 19, 1991 (56 FR 65907), FDA announced that a food additive petition (FAP 2B4299) had been filed by Polysar Rubber Corp., 1265 South Vidal St., Sarnia, Ontario, Canada N7T 7MI. The petition proposed that the food additive regulations be amended in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) to provide for the safe use of hydrogenated butadiene/acrylonitrile copolymers in repeated use food-contact articles.

FDA, in its evaluation of the safety of this additive, reviewed the safety of the additive and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it has been found to contain minute amounts of unreacted acrylonitrile, a carcinogenic reactant used in the manufacture of the additive. Residual amounts of reactants and manufacturing aids, such as acrylonitrile, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define "safe" as "a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use."

The anticancer or Delaney clause (section 409(c)(3)(A) of the act) further provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to the impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety clause using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive (*Scott* v. *FDA* 728 F.2d 322 (6th Cir. 1984)).

II. Safety of Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, hydrogenated butadiene/acrylonitrile copolymer, will result in exposure to the additive of no greater than 7 parts per trillion (ppt) in the daily diet (Ref. 1).

FDA does not ordinarily consider chronic toxicological testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data from acute toxicity studies on the additive. No adverse effects were reported in these studies.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limit of risk presented by acrylonitrile, a carcinogenic chemical that may be present as an impurity in the additive. This risk evaluation of acrylonitrile has two aspects: (1) Assessment of the exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Acrylonitrile

FDA has estimated the worst-case exposure to acrylonitrile from the petitioned use of the additive in the manufacture of repeated use food-contact articles to be 0.02 ppt of the daily diet (3 kilograms) or 0.06 nanogram (ng) per person per day (Ref. 1). The agency used data from two carcinogenicity studies on acrylonitrile monomer fed to rats to estimate the upper-bound limit of lifetime human risk from exposure to this chemical stemming from the proposed use of hydrogenated butadiene/acrylonitrile copolymers and the level of acrylonitrile that may be present in the additive (Ref. 3). The results of the bioassays on acrylonitrile monomer demonstrated that the material was carcinogenic for

rats under the conditions of the studies. The test material caused significantly increased incidences of carcinogenic tumors at many tissue sites.

Based on the estimated worst-case exposure of 0.06 ng per person per day, FDA estimates that the upper-bound limit of individual lifetime risk from the use of the hydrogenated butadiene/acrylonitrile copolymers is 8×10^{-11} or 8 in 100 billion (Ref. 4). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime averaged individual daily exposure to acrylonitrile is expected to be substantially less than the worst-case exposure, and therefore, the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty that no harm from exposure to acrylonitrile would result from the proposed use of hydrogenated butadiene/acrylonitrile copolymers.

B. Conclusion on Safety

FDA has evaluated data in the petition and other relevant material and concludes that the proposed use of the additive in repeated use food-contact articles is safe. Based on this information, the agency has also concluded that the additive will have the intended technical effect. Therefore, § 177.2600 should be amended as set forth below.

C. Need for Specifications

The agency has also considered whether a specification is necessary to control the amount of acrylonitrile impurity in the food additive. The agency finds that a specification is not necessary for the following reasons: (1) Because of the low level at which acrylonitrile may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely small levels; and (2) the upper-bound limit of lifetime risk from exposure to this impurity, even under worst-case assumptions, is very low, less than 8 in 100 billion.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before October 7, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch, FDA (HFS–216), concerning FAP 2B4299 (Polysar Rubber Corp.) and exposure to the food additive and its component (acrylonitrile), November 24, 1992.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp.24–33, 1985.

3. Memorandum of the Cancer Assessment Committee, Center for Food Safety and Applied Nutrition, FDA, on "Acrylonitrile Risk Assessment," dated November 24, 1981.

4. Memorandum from the Quantitative Risk Assessment Committee, Center for Food Safety and Applied Nutrition, FDA, concerning acrylonitrile (FAP 2B4299), dated April 19, 1993.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

2. Section 177.2600 is amended in paragraph (c)(4)(i) by alphabetically adding a new entry to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *

(4) * * *

(i) * * *

Hydrogenated butadiene/acrylonitrile copolymers (CAS Reg. No. 88254–10–8) produced when acrylonitrile/butadiene copolymers are modified by hydrogenation of the olefinic unsaturation to leave not more than 10 percent *trans* olefinic unsaturation and no α,β-olefinic unsaturation as determined by a method entitled "Determination of Residual α,β-Olefinic and Trans Olefinic Unsaturation Levels in HNBR," developed October 1, 1991, by Polysar Rubber Corp., 1256 South Vidal St., Sarnia, Ontario, Canada N7T 7MI, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Division of Petition Control, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

Dated: August 24, 1994.

William K. Hubbard,

Interim Deputy Commissioner for Policy.

[FR Doc. 94–21900 Filed 9–6–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–94–072]

RIN 2115–AE47

Drawbridge Operations Regulations; Pamunkey River, West Point, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Eltham drawbridge, SR 33, across Pamunkey River, mile 1.0, located in West Point, Virginia, by restricting commercial fishing and crabbing vessels and recreational vessels from opening the bridge between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m. The remaining times those vessels are restricted to opening the bridge on the hour, Monday through Friday, except Federal holidays.

This is intended to provide for regulatory scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

EFFECTIVE DATE: This rule is effective on October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Regulatory History

On May 20, 1994, the Coast Guard published a Supplemental Notice of Proposed Rulemaking entitled Pamunkey River, West Point, Virginia, in **Federal Register** (59 FR 25474). The comment period ended July 19, 1994. The Coast Guard received three letters commenting on the proposal. Prior to publishing the Supplemental Notice of Proposed Rule, the Coast Guard also published Public Notice 5–818 and the original Notice of Proposed Rulemaking entitled Pamunkey River, West Point, Virginia, in **Federal Register** (58 FR 62303). The comment period ended January 10, 1994. The Coast Guard received 66 letters commenting on the proposal.

Background and Purpose

The original Notice of Proposed Rule announced that a proposal was being considered to restrict openings of the Eltham Bridge to all vessels during morning, noon, and evening rush hours, between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday; except Federal holidays.

As a result of the proposed rule and the public notice, comments were received from the maritime community and the motoring public. The motorists all were in favor of the proposed restrictions during peak traffic hours to reduce traffic disruption, delays, congestion and minor accidents. The commercial marine industry was opposed to restricting the openings, based on economic impact concerns, safety and tidal navigational requirements.

Following further investigation by the Coast Guard, it was determined that the major cause of traffic congestion due to bridge lifts for the Eltham Bridge was contributed by commercial fisherman, crabbers and recreational boaters requesting frequent bridge lifts during rush hour traffic periods. These mariners, for the most part, could pass through without a bridge lift, by lowering their antennae. The remainder of the maritime industry, consisting of piloted vessels and large tugs and barges, passing through this bridge is very sporadic. The bridge tender's logs only reflected 4 or 5 bridge lifts per month for these vessels.

The Virginia Department of Transportation, in an effort to improve this situation, has requested these revised regulations. It agreed to changing the original request by excluding larger classes of maritime vessels from the restrictions, and to placing new restrictions on commercial fishing and crabbing vessels and recreational vessels which create most of the problem.

Discussion of Comments and Change

The three comments received as a result of the Supplemental Notice of Proposed Rule issued by the District Commander are all in favor of the new restrictions for the Eltham Bridge. No new or additional changes are being made to the regulatory language of this final rule.

Regulatory Evaluation

This action is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

This opinion is based on the fact that the regulations will not unduly cause a hardship on commercial/military vessels who will be able to plan their vessel transits around the hours of restriction.

Small Entities

No comments were received concerning small entities or on the economic impact this rule would have on small entities. Since the impact on these regulations is expected to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) of the Regulatory Flexibility Act (5 U.S.C. et seq.), that this final rule will not have a significant economic impact on a substantial number of small entities.

Even though commercial crabbers and small fishing vessel operators would be restricted under the proposed regulations, the Coast Guard believes the proposed opening schedule for these operators is not unduly restrictive. These vessel operators can still crab and fish, but they will have to time their requests for openings of the bridge to coincide with the proposed new schedule. This should not cause any economic hardship. Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically

excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard amends part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g).

2. Section 117.1023 is added to read as follows:

§ 117.1023 Pamunkey River.

(a) The draw of the Eltham Bridge (SR33/30), mile 1.0, located in West Point, Virginia, shall open on signal; except that, the bridge need not open for commercial crabbing and fishing vessels and recreational vessels on Mondays through Fridays, except Federal Holidays, from 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., at all other times, the bridge will open for these vessels only on the hour, Monday through Friday, except Federal holidays.

(b) Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: August 12, 1994.

J.E. Schwartz,

Acting Commander, Fifth Coast Guard District.

[FR Doc. 94–21910 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[COTP Los Angeles-Long Beach, 94–004]

RIN 2115–AA97

Safety Zone; Los Angeles Harbor-San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Interim final rule with request for comments.

SUMMARY: The Coast Guard is establishing a safety zone in two locations on the waters of San Pedro Bay, California. The event requiring establishment of this safety zone is the dredging and landfill activities associated with the Port of Los Angeles Pier 400 project. Duration of this project is estimated to be 33 months. There will be two separate safety zone locations covered by this rulemaking. The first location, the site of the future Pier 400, is to the east of the Los Angeles main channel, adjacent to Reservation Point. It encompasses anchorages B1–B3, B6–B8, C1–C3, and C7–C9. The second location is to the southwest of the main channel which will transform anchorages A1–A5 into a permanent shallow water habitat as a mitigation measure for the Pier 400 landfill project. Entry into, transit through, or anchoring within the safety zones by vessels other than those engaged in the construction of Pier 400 or the development of the shallow water habitat is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: The safety zones will be effective at 12:01 a.m. PDT on September 6, 1994, and will remain in effect until canceled by the Captain of the Port Los Angeles-Long Beach, CA.

Comments: Comments on this regulation must be received by November 7, 1994.

ADDRESSES: Comments should be mailed to Commanding Officer, Coast Guard Marine Safety Office, 165 N. Pico Avenue, Long Beach, CA 90802. Comments received will be available for inspection and copying within the Port Safety Division at MSO Los Angeles-Long Beach. Normal office hours are between 8 a.m. and 4 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Mike Moore, Coast Guard Marine Safety Office Los Angeles-Long Beach, California; telephone (310) 980–4454.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and it is being made effective in less than 30 days after Federal Register publication. Following normal rulemaking procedures could not be done in a timely fashion in that the Coast Guard was not approached concerning the necessity for implementation of a safety zone until later in the Pier 400 planning process. The actual stipulations of the safety zone were not finalized until a date fewer than 30 days prior to the start of the project.

Although this regulation is published as an interim final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Those providing comments should identify the docket number (COTP Los Angeles-Long Beach, CA; 94–004) for the regulation and also include their name, address, and reason(s) for each comment presented. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Based upon the comments received, the scope of the regulation may be changed.

Drafting Information

The drafters of this notice are LCDR Chris Lockwood, project officer for the Captain of the Port, and Lieutenant Commander Craig Jucknies, project attorney, Eleventh Coast Guard District legal office.

Discussion of Regulation

The construction of the Pier 400 project is scheduled to begin on September 6, 1994. Safety zones are necessary to safeguard recreational and commercial craft from the dangers of the dredging and landfill activities in the area and to prevent interference with other vessels engaged in these operations. Persons and vessels are prohibited from entering into, transiting through, or anchoring within the safety zones unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. Only minor delays to mariners is foreseen as vessel traffic is routed around the construction areas.

Collection of Information

This regulation contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this regulation under the principles and

criteria contained in Executive Order 12612 and has determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Enviromental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2. of Commandant Instruction M16475.1B it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, Subpart F of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for 33 CFR Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A new section 165.1110 is added to read as follows:

§ 165.1110 Safety Zone: Los Angeles Harbor-San Pedro Bay, CA

(a) *Location.* All waters within the following boundaries are established as a safety zone.

(1) *Pier 400.* The waters of Los Angeles Harbor encompassing the rock dike and landfill for the construction of Pier 400 as defined by the line connecting the following coordinates:

Latitude	*Longitude*
33°–44′–29″ N	118°–14′–14″ W.
33°–43′–48″ N	118°–13′–56″ W.
33°–42′–53″ N	118°–14′–35″ W.
33°–42′–49″ N	118°–14′–48″ W.
33°–42′–56″ N	118°–15′–32″ W.
33°–43′–51″ N	118°–15′53″ W.

and thence along the shoreline to the point of origin.

(2) *Shallow water habitat.* The waters of Los Angeles Harbor encompassing the rock dike and landfill for the development of a permanent shallow water habitat, as defined by the line connecting the following coordinates:

Latitude	*Longitude*
33°–42′–24″ N	118°–16′–28″ W.
33°–42′–36″ N	118°–16′–22″ W.
33°–42′–38″ N	118°–16′–12″ W.
33°–42′–45″ N	118°–16′–07″ W.
33°–42′–47″ N	118°–15′–55″ W.
33°–42′–28″ N	118°–15′–16″ W.

and thence along the San Pedro Breakwater to the point of origin.

(b) *Effective date.* This section is effective beginning 12:01 a.m. PDT on September 6, 1994. It will remain in effect until canceled by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this zone by vessels not involved in the development of the shallow water habitat or the construction of Pier 400 is prohibited unless authorized by the Captain of the Port Los Angeles-Long Beach, CA.

Dated: August 23, 1994.

E.E. Page,

Captain, U.S. Coast Guard, Captain of the Port Los Angeles-Long Beach, CA.

[FR Doc. 94–21911 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF EDUCATION

34 CFR Parts 602, 628, 667, and 682

Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; State Postsecondary Review Program; Federal Family Education Loan Program; and Endowment Challenge Grant Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies; State Postsecondary Review Programs; Federal Family Education Loan Program; and Endowment Challenge Grant Program to add the Office of Management and Budget (OMB) control numbers to certain sections of the regulations. Those sections contain information collection requirements approved by OMB. The Secretary takes this action to inform the public that these requirements have been approved.

EFFECTIVE DATE: September 7, 1994.

FOR FURTHER INFORMATION CONTACT: Mattie L. Bonner, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 5123, Washington, D.C. 20202. Telephone (202) 401–8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 29, 1994, final regulations were published in the **Federal Register** for the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies (59 FR 22250); State Postsecondary Education Review Program (59 FR 22286); and Federal Family Education Loan Program (59 FR 22462). The final regulations for the Endowment Challenge Grant Program were published in the **Federal Register** on February 23, 1993 at 58 FR 11162. Compliance with the information collection requirements in these regulations was delayed until those requirements were approved by OMB under the Paperwork Reduction Act of 1980, as amended. OMB approved the information collection requirements for the Secretary's Procedures and Criteria for Recognition of Accrediting Agencies and the State Postsecondary Education Review Program on July 1, 1994. The information collection requirements for the Federal Family Education Loan Program were approved by OMB on June 28, 1994. The Endowment Challenge Grant Program information collection requirements were approved by OMB on May 25, 1993.

Section 682.202 was inadvertently listed as containing information collection requirements in the notice of revised effective date published in the **Federal Register** on June 30, 1994 (59 FR 33682). This section was determined not to contain information collection requirements and was correctly removed from the list of sections that contained information collection requirements subject to OMB approval in the correction notice published in the **Federal Register** on June 8, 1994 (56 FR 29543).

Waiver of Proposed Rulemaking

In accordance with section 431(b)(2)(A) of the General Education Provisions Act (20 U.S.C. 1232(b)(2)(A)) and the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Secretary to offer interested parties the opportunity to comment on proposed regulations. However, the publication of OMB control numbers is purely technical and does not establish substantive policy. Therefore, the Secretary has determined, under 5 U.S.C. 553(b)(B), that proposed rulemaking is unnecessary and contrary to the public interest and that a delayed effective date is not required under 5 U.S.C. 553(d)(3).

List of Subjects

34 CFR Part 602

Colleges and universities, Education, Reporting and recordkeeping requirements.

34 CFR Part 667

Administrative practice and procedures, Colleges and universities, Education, Grant programs-education, Loan Programs-education, Reporting and recordkeeping requirements.

34 CFR Part 682

Administrative practice and procedures, Colleges and universities, Education, Loan programs-education, Reporting and recording requirements, Student aid, Vocational education.

34 CFR Part 628

Colleges and universities, Education, Reporting and recordkeeping requirements.

Dated: August 31, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

The Secretary amends parts 602, 667, 682, and 628 of Title 34 of the Code of Federal Regulations as follows:

PART 602—SECRETARY'S PROCEDURES AND CRITERIA FOR RECOGNITION OF ACCREDITING AGENCIES

1. The authority citation for part 602 continues to read as follows:

Authority: 20 U.S.C. 1099b, unless otherwise noted.

2. Sections 602.4, 602.10, and 602.27 are amended by adding the OMB control number at the end of these sections to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0607)"

PART 667—STATE POSTSECONDARY REVIEW PROGRAM

3. The authority citation for part 667 continues to read as follows:

Authority: 20 U.S.C. 1099a through 1099a–3, unless otherwise noted.

4. Sections 667.3, 667.4, 667.8, 667.12, 667.15, 667.21, 667.22, and 667.26 are amended by adding the OMB control number at the end of these sections to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0659)"

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

5. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

6. Sections 682.208, 682.402, 682.410, and 682.411 are amended by adding the OMB control number at the end of these sections to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0538)".

PART 628—ENDOWMENT CHALLENGE GRANT PROGRAM

7. The authority citation for part 628 continues to read as follows:

Authority: 20 U.S.C. 1065, unless otherwise noted.

8. Sections 628.20 and 628.32 are amended by adding the OMB control number at the end of these sections to read as follows:

"(Approved by the Office of Management and Budget under control number 1840–0531)"

[FR Doc. 94–21916 Filed 9–6–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–50–1–6198a; FRL–5029–2]

Clean Air Act Approval and Promulgation of Emission Statement Implementation Plan for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is approving a revision to the State Implementation Plan (SIP) submitted by the State of Florida through the Florida Department of Environmental Protection (FDEP) for the purpose of implementing an emission statement program for stationary sources within the Florida ozone nonattainment areas: Duval County, Miami, and Tampa. The SIP was submitted on January 12, 1993, by the State to satisfy the Federal requirements for an emission statement program as part of the SIP for Florida.

DATES: This final rule will be effective November 7, 1994 unless someone submits adverse or critical comments by October 7, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: A SIP revision was submitted by the State of Florida on January 12, 1993, to satisfy the requirements of section 182(a)(B) of the Clean Air Act Amendments of 1990 (CAA) (November 15, 1990). The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated May 6, 1993, addressed to Mr. Howard Rhodes, Director, Florida Department of Environmental Protection, was sent to FDEP indicating the submittal was administratively complete.

There are several key general and specific components of an acceptable emission statement program. Specifically, the state must submit a revision to its SIP and the emission statement program must meet the minimum requirements for reporting. In general, the program must include, at a minimum, provisions for applicability, compliance, and specific source requirements detailed below.

A. *SIP Revision Submission.* The FDEP submitted the Florida emission statement regulation on January 12, 1993, which meets the emission statement requirement.

B. *Program Elements.* The State emission statement program must, at a minimum, include provisions covering applicability of the regulations, a compliance schedule for sources covered by the regulations, and the

specific reporting requirements for sources. The emission statement submitted by the source should contain, at a minimum, a certification that the information is accurate to the best knowledge of the individual certifying the statement. The Florida submittal meets these requirements.

C. *Applicability.* Section 182(a)(3)(B) requires that states with areas designated as nonattainment for ozone require emission statement data from sources of volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the nonattainment areas. This requirement applies to all ozone nonattainment areas, regardless of the classification (Marginal, Moderate, etc.).

The states may waive, with EPA approval, the requirement for emission statements for classes or categories of sources with less than 25 tons per year of actual plant-wide NO_X or VOC emissions in nonattainment areas if the class or category is included in the base year and periodic inventories and emissions are calculated using emission factors established by EPA (such as those found in EPA publication AP–42) or other methods acceptable to EPA. The Florida submittal waives the emission statement requirement for sources with less than 25 tons per year combined of actual plant-wide NOx and VOC emissions and has included calculations of these emissions in their 1990 Base Year Emission Inventory.

Final Action

In this action, EPA is approving the Emission Statement SIP revision submitted by the State of Florida through the FDEP on January 12, 1993. This action is being taken without prior proposal because the changes are noncontroversial and EPA anticipates no significant comments on them. The public should be advised that this action will be effective November 7, 1994. However, if adverse or critical comments are received by October 7, 1994, this action will be withdrawn and two subsequent documents will be published before the effective date. One document will withdraw the final action. The second document will be the final rulemaking action which will address the comments received.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607 (b)(2).)

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting, allowing, or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Oxides of nitrogen, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 29, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

Part 52 of chapter I, title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42.U.S.C. 7401–7671q.

Subpart K—Florida

2. Section 52.520, is amended by adding paragraph (c)(85) to read as follows:

§ 52.520 Identification of plan.

* * * * *

(c) * * *

(85) Revisions to the State of Florida State Implementation Plan (SIP) concerning emission statements were submitted on January 12, 1993 by the Florida Department of Environmental Protection.

(i) Incorporation by reference.

(A) Revisions to the following Florida Regulations were effective February 9, 1993. F.A.C. 17–210.100; 17–210.200(47), (49), (52) and (64); 17–210.370; and 17–210.900.

(ii) Other material. None.

[FR Doc. 94–21951 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[GA–23–1–6346a; FRL–5066–1]

Approval and Promulgation of Implementation Plans Georgia: Approval of Revisions to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action approves revisions to the Georgia State Implementation Plan (SIP) adopted by the Georgia Department of Natural Resources, Environmental Protection

Division (GA EPD) on November 17, 1993, for the purpose of implementing a program of Photochemical Assessment Monitoring Stations (PAMS). This program is required in all ozone (O_3) nonattainment areas designated as serious, severe, or extreme. The submitted revisions meet the plan requirements for serious nonattainment areas of the Clean Air Act as amended in 1990 (CAA). The revisions were submitted by the State of Georgia through the GA EPD for the Atlanta O_3 nonattainment area.

DATES: This final rule will be effective November 7, 1994 unless adverse or critical comments are received by October 7, 1994. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, The telephone number is 404/347–2864. Reference file GA–23–1–6346.

SUPPLEMENTARY INFORMATION: The CAA provides for classification of O_3 nonattainment areas according to the severity of their O_3 problem. On January 6, 1991, the thirteen (13) county Atlanta area was classified as a serious O_3 nonattainment area and required to meet all of the nonattainment requirements of the CAA for serious areas. Pursuant to the CAA, Georgia is required to adopt specific air quality control rules and incorporate them into the Georgia SIP.

The air quality planning and SIP requirements for O_3 nonattainment and transport areas are set out in subparts I and II of part D of title I of the CAA. Section 182 of the CAA sets out a graduated control program for O_3 nonattainment areas. Section 182(c)(1) requires areas serious and above to adopt and implement an enhanced monitoring program. The program must require enhanced monitoring of ambient concentrations of O_3, oxides of nitrogen (NO_x) and volatile organic compounds (VOCs). Each SIP for a serious nonattainment area shall contain measures to improve the ambient monitoring of such air pollutants.

On November 8, 1993, the State of Georgia submitted the Georgia SIP for PAMS and the Atlanta PAMS Network Description. The SIP submittal meets the criteria required by 40 CFR 58.20 as amended February 12, 1993. In order to obtain more comprehensive and representative data on O_3 air pollution, the Georgia SIP revision requires enhanced monitoring for O_3, NO_x, monitoring for speciated non-methane VOC's, carbonyl sampling, and meteorological measurements (wind direction, wind speed, relative humidity, temperature, barometric pressure, and solar radiation and upper air soundings). The monitoring is to be accomplished through the establishment of a standard, isolated network of five (5) PAMS.

Final Action

EPA is approving the revision to the Georgia SIP requiring enhanced monitoring. This action is being taken without prior proposal because the EPA views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 7, 1994 unless, by October 7, 1994, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective November 7, 1994.

The EPA has reviewed this request for revision of the SIP for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Under section 307(b)(1) of the CAA, 42 U.S.C. 7607 (b)(1), petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for 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) of the CAA, 42 U.S.C. 7607 (b)(2)).

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Nothing in this action shall be construed as permitting or allowing or establishing a precedent for any future request for a revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small

entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP Actions

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: August 24, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart L—Georgia

2. Section 52.582 is added to read as follows:

§ 52.582 Control strategy: Ozone.

Approval—The Administrator approves the incorporation of the photochemical assessment ambient monitoring system submitted by Georgia on November 8, 1993, into the Georgia State Implementation Plan. This submittal satisfies 40 CFR 58.20(f) which requires the State to provide for the establishment and maintenance of photochemical assessment monitoring stations (PAMS).

[FR Doc. 94–21953 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[MD31–1–6371a; FRL–5059–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland (Actions on Permits and Approvals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision requires the State of Maryland to offer the public an opportunity to request a public hearing before issuing a permit to construct certain sources. The intended effect of this action is to incorporate by reference into the federally-enforceable SIP revised State regulations which meet current Federal requirements. This action is being taken under section 110 of the Clean Air Act.

DATES: This final rule will become effective November 7, 1994 unless notice is received on or before October 7, 1994 that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland 21224.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (3AT10), (215) 597–1325.

SUPPLEMENTARY INFORMATION: On March 30, 1987, the State of Maryland submitted a formal revision to its State Implementation Plan (SIP). The State's submittal consists of revisions to the Code of Maryland Administrative Regulations (COMAR) 26.11.02.10C. regarding action on a permit application and approval of new sources. At the time of submittal, the official State citation for this amendment was COMAR 10.18.02.03H. However, the State recodified its air pollution regulations in 1988, and EPA approved this recodification scheme as a SIP revision on November 3, 1992 (57 FR 49651). One of the revisions associated with EPA's approval of the Maryland's recodification pertained to the transfer of the air permitting program from the Departement of Health and Mental Hygiene (DHMH) to the Department of the Environment (MDE). Therefore, EPA will address these amendments in terms of the current COMAR citations and the permitting authority currently vested with MDE.

Description of Revisions

The revisions to COMAR 26.11.02.10C. offers the public the opportunity to request a public hearing before the State may issue a permit to construct for any of the following scenarios: Any source will be required to obtain a permit to operate under COMAR 26.11.02.04 (formerly COMAR 10.18.02.03B.), any source subject to the Federal standards under 40 CFR part 60 (New Source Performance Standards (NSPS)), 40 CFR part 61 (National Emission Standards for Hazardous Air Pollutants (NESHAP)), or 40 CFR 52.21 (Prevention of Significant Deterioration (PSD)), any stationary source of lead (Pb) that discharges 100 tons per year or more of lead or lead compounds measured as elemental lead (Pb), any source that discharges 100 tons per year or more for any pollutant, and any new source impacting on a nonattainment area (NSINA). (Note: Effective April 26, 1993, Maryland has replaced the term "NSINA" with "new source review" ("NSR"). EPA will formally incorporate this revised term into the Maryland SIP in a separate rulemaking action.)

The revised provisions to COMAR 26.11.02.10C. will be implemented by following certain procedures. If the MDE makes a preliminary determination to issue a permit or approval, the applicant will publish an advertisement in a newspaper in the area of concern which will allow 10 days for the public to request a public hearing and 30 days for public comment. If the MDE receives a request for a public hearing, the MDE will schedule a hearing. A notice of the hearing will be published in a newspaper in the area of concern at least 30 days in advance of the hearing. If a public hearing is held, the MDE must issue the permit or approval within 60 days after the conclusion of the public hearing, except that the department must issue the permit or approval within five working days after the conclusion of the public hearing if

no information is presented that would affect the issuance of the permit or approval. These provisions are codified at COMAR 26.11.02.10C.(1) through 26.11.02.10C.(9). (Note: On July 27, 1993 (58 FR 40060), EPA had approved a revision to the Maryland SIP which cross-references 40 CFR 52.21 as amended through 1989. This revision is codified in the Maryland SIP at 40 CFR 52.1070(c)(95).) If the permit or approval is to be denied, it must be done within 60 days after receiving all information necessary to act on the application. (COMAR 26.11.02.10D, 26.11.02.10E).

As required by 40 CFR 51.102, the State of Maryland certified that, after adequate public notice, a public hearing was held on September 30, 1986 concerning the revisions to COMAR 26.11.02.10C.

EPA Evaluation

The implementation of revised COMAR 26.11.02.10C. will have no adverse economic impact on the State or local agencies. Similarly, the amendment will have no direct impact on air quality because it only addresses procedural matters such as the opportunity for public hearing and does not affect any air quality standards. The amendment will give the public more opportunity to learn about and potentially influence the MDE's decisions on the issuance of permits. The specific public participation requirements found in revised COMAR 26.11.02.10C. are consistent with those found in 40 CFR 51.160 and 51.161.

Final Action

EPA is approving the revisions to COMAR 26.11.02.10C. as a revision to the Maryland SIP. The Agency has also reviewed this SIP revision request for conformance with the provisions of the 1990 amendments enacted on November 15, 1990, and has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective November 7, 1994 unless, by October 7, 1994, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on November 7, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impacton any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve revisions to COMAR 26.11.02.10C. governing Maryland's public participation requirements before issuing construction permits to certain sources must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1994. 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, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Dated: August 19, 1994.

John R. Pomponio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(108) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(108) Revisions to the Code of Maryland Administrative Regulations (COMAR) submitted on March 30, 1987 by the Maryland Department of Health and Mental Hygiene:

(i) Incorporation by reference.

(A) Letter of March 30, 1987 from the Maryland Department of Health and Mental Hygiene transmitting revisions to the Maryland State Implementation Plan (SIP).

(B) Revised COMAR 10.18.02.03H. (Action on an Application for a Permit and for Approval of a PSD Source or NSINA) (currently COMAR 26.11.02.10C.), effective March 24, 1987.

(ii) Additional material.

(A) Remainder of the March 30, 1987 State submittal pertaining to COMAR

10.18.02.03H. (currently COMAR 26.11.02.10C.).

[FR Doc. 94–21944 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 52

[MD4–2–6353, MD10–1–6352, MD24–1–6354; FRL–5061–3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Volatile Organic Compound RACT Fix-ups, Including Test Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This submittal consists of revised volatile organic compound (VOC) regulations applicable in the Baltimore nonattainment area, including Baltimore City and the Counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard and the Washington, DC nonattainment area, including Montgomery and Prince George's Counties. The intended effect of this action is to approve Maryland's revised VOC regulations to correct deficiencies in Maryland's ozone SIP. This action is being taken under the Clean Air Act (the Act).

EFFECTIVE DATE: This final rule will become effective on October 7, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, (215) 597–9337, at the EPA Regional office listed above.

SUPPLEMENTARY INFORMATION: On September 30, 1993 (58 FR 51028), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The formal SIP revision was submitted by Maryland on September 20, 1991, April 2, 1992, and January 18, 1993. The NPR proposed approval of revisions to Maryland's ozone SIP to EPA as a SIP revision to comply with part of the reasonably available control technology (RACT) fix-up requirement of the Clean Air Amendments of 1990 (the Amendments).

Maryland's September 20, 1991 submittal consisted of the addition of COMAR 26.11.19.16 and Technical Memorandum 91–01 (TM 91–01), and revisions and additions to COMAR 26.11.01.01, 26.11.01.04, 26.11.06, 26.11.08, 26.11.10, 26.11.13.02, 26.11.14, 26.11.19.02, 26.11.19.07, 26.11.19.11, 26.11.19.12. On April 2, 1992, Maryland submitted further revisions to COMAR 26.11.01.01, 26.11.01.04, 26.11.04, 26.11.06, 26.11.10, 26.11.13.04, 26.11.13.05, 26.11.14, 26.11.19.02, 26.11.19.09, and 26.11.19.12, and TM 91–01. On June 17, 1992 Maryland submitted a letter to EPA withdrawing the capture efficiency protocols (Method 1003 of TM 91–01) from its September 20, 1991 SIP revision submittal. However, on January 18, 1993 Maryland formally resubmitted TM 91–01 to EPA as a SIP revision. This January 18, 1993 submittal also included amendments to COMAR 26.11.01.04, 26.11.06, 26.11.13.04, 26.11.13.05, and 26.11.19.07, and 26.11.19.15.

Revisions to COMAR 26.11.04, 26.11.06, 26.11.08, 26.11.10, and 26.11.14, which are not related to VOCs, are addressed by separate rulemaking actions. Revisions to COMAR 26.11.13.04 and 26.11.19.15 also are the subject of separate rulemaking actions (58 FR 8565).

This rulemaking action is approving the addition of Appendixes A and B and Methods 1000, 1002, 1003, 1006, 1007, 1008, 1009, 1011, and 1012 contained in TM 91–01 and COMAR 26.11.19.16 into the Maryland SIP, as well as amendments to COMAR 26.11.01.01, 26.11.01.04, 26.11.13.02, 26.11.13.05, 26.11.19.02, 26.11.19.07, 26.11.19.09, 26.11.19.11, and 26.11.19.12, which were proposed for approval on September 30, 1993 (58 FR 51028). Specifically, this action is approving the following revisions to the Maryland ozone SIP:

(1) Amendments to the definition of the term "volatile organic compound (VOC)" to reflect current EPA guidance and to update citations (COMAR 26.11.01.01DD);

(2) Amendments to COMAR 26.11.01.04C to delete a reference to Maryland's old technical memorandum and add a reference to: (1) Maryland's Technical Memorandum 91–01 (TM–91–01), *Test Methods and Equipment Specifications for Stationary Sources*, (January, 1991) as amended by Supplements 1 and 2 (July 1, 1991 and July 1, 1992, respectively); and (2) all EPA test methods contained in 40 CFR part 60, appendix A, 1990 edition;

(3) The addition of test methods applicable to VOC regulations: Methods 1000, 1002, 1003, 1006, 1007, 1008, 1009, 1011, and 1012 and Appendices A and B contained in TM 91–01;

(4) Amendments to COMAR 26.11.13.02C(2), Maryland's storage tank regulation to exempt storage tanks with liquid mounted seals from the secondary seal requirement for consistency with the applicable control techniques guideline (CTG);

(5) Amendments to COMAR 26.11.13.05B(2) and 26.11.13.05C(2) to delete specific references to the EPA approved test methods and replace the old reference with references to COMAR 26.11.01.04C.

(6) Amendments to COMAR 26.11.19.02D, 26.11.19.09, 26.11.19.12F to delete references to Maryland's old technical memorandum and replace the old references with references to COMAR 26.11.01.04C.

(7) Amendments to COMAR 26.11.19.07A to add definitions for the terms sheet-fed paper coating and ultraviolet curable coating.

(8) Addition of new COMAR 26.11.19.07D, a RACT regulation for sheet-fed paper coating. Sheet-fed paper coating is a source category for which EPA has not issued a CTG, a so called "non-CTG" source category.

(9) Amendments to COMAR 26.11.19.11B and C to clarify the applicability of this miscellaneous printing and coating regulation.

(10) Addition of new COMAR 26.11.19.16, which contains VOC leak detection and repair requirements. This regulation applies to persons subject to any VOC regulation in COMAR 26.11.19 and not subject to a more specific leak requirement.

Other specific requirements of these revisions, and the rationale for EPA's action are explained in the NPR and will not be restated here. No public comments were received on the NPR.

Final Action

EPA is approving the addition of Appendices A and B and Methods 1000, 1002, 1003, 1006, 1007, 1008, 1009, 1011, and 1012 contained in TM 91–01 and COMAR 26.11.19.16 into the Maryland SIP, as well as amendments to COMAR 26.11.01.01, 26.11.01.04, 26.11.13.02, 26.11.13.05, 26.11.19.02, 26.11.19.07, 26.11.19.09, 26.11.19.11, and 26.11.19.12, which were proposed for approval on September 30, 1993 (58 FR 51028) in Maryland's ozone SIP, which Maryland submitted to EPA on April 5, 1991.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future

request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.I11This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to corrections to VOC regulations in the Maryland ozone SIP, must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1994. 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, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: August 4, 1994.

Peter H. Kostmayer,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraphs (c)(103), (104) and (105) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(103) Revisions to the Maryland State Implementation Plan submitted on September 20, 1991 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of September 20, 1991 from the Maryland Department of the Environment transmitting addition, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The following revisions to the provisions of COMAR 26.11, adopted by the Secretary of the Environment on July 24, 1991, effective August 19, 1991:

(*1*) Amendments to COMAR 26.11.01.01DD, the definition for the term volatile organic compound.

(*2*) Amendments to COMAR 26.11.01.04C, pertaining to emission test methods, including the addition of a: reference to 40 CFR part 60; and Methods 1000, 1002, and 1003 and Appendixes A and B, contained in "Technical Memorandum 91–01, Test Methods and Equipment Specifications for Stationary Sources" (January 1991).

(*3*) Amendments to COMAR 26.11.13.02(C)(2), pertaining to exemptions for large storage tanks.

(*4*) Amendments to COMAR 26.11.19.02D(2), pertaining to test methods.

(*5*) Amendments to COMAR 26.11.19.07A, including amendments to the definition for the term paper coating, and the addition of definitions for the terms sheet-fed paper coating and ultraviolet curable coating, and the renumbering of definitions.

(*6*) Addition of new COMAR 26.11.19.07D, pertaining to sheet-fed paper coating.

(*7*) Addition of new COMAR 26.11.19.11B(2), and amendments to COMAR 26.11.19.11C, pertaining to plastic coating.

(*8*) Amendments to COMAR 26.11.19.12F(3) and (4), pertaining to compliance determinations for petroleum solvent dry cleaning installations.

(*9*) Addition of new COMAR 26.11.19.16, pertaining to volatile organic compound equipment leaks.

(ii) Additional material.

(A) Remainder of the September 20, 1991 State submittal pertaining to COMAR 26.11.01.01DD, COMAR 26.11.01.04C, Appendixes A and B and Methods 1000, 1002, and 1003 contained in "Technical Memorandum 91–01, Test Methods and Equipment Specifications for Stationary Sources" (January 1991), COMAR 26.11.13.02(C)(2), COMAR 26.11.19.02D(2), COMAR 26.11.19.07A, COMAR 26.11.19.07D, COMAR 26.11.19.11B(2) and C, COMAR 26.11.19.12F(3) and (4), and COMAR 26.11.19.16.

(104) Revisions to the Maryland State Implementation Plan submitted on April 2, 1992 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of April 2, 1992 from the Maryland Department of the Environment transmitting addition, deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The following revisions to the provisions of COMAR 26.11, adopted by the Secretary of the Environment on January 20, 1992, effective February 17, 1992:

(*1*) Amendments to COMAR 26.1.01.01DD, the definition for the term volatile organic compound.

(*2*) Amendments to COMAR 26.11.01.04C, pertaining to emission test methods, including the addition of Methods 1006, 1007, and 1008 contained in Supplement 1 (July 1, 1991) to "Technical Memorandum 91–01, Test Methods and Equipment Specifications for Stationary Sources" (January 1991), and revisions to Method 1000 and Appendixes A and B contained in Supplement 1.

(*3*) Amendments to COMAR 26.11.19.02D, pertaining to test methods for coatings and adhesives containing volatile organic compounds.

(*4*) Amendments to COMAR 26.11.19.09B, pertaining to emission standards for volatile organic compound metal cleaning.

(*5*) Amendments to COMAR 26.11.19.12F(3) and (4), pertaining to compliance determinations for petroleum solvent dry cleaning installations.

(ii) Additional material.

(A) Remainder of the April 2, 1992 State submittal pertaining to COMAR 26.11.01.01DD, COMAR 26.11.01.04C, Appendixes A and B and Methods 1002, 1006, 1007, and 1008 contained in Supplement 1 (July 1, 1991) to "Technical Memorandum 91–01, Test Methods and Equipment Specifications for Stationary Sources" (January 1991), COMAR 26.11.19.02D, COMAR 26.11.19.09B, and COMAR 26.11.19.12F(3) and (4).

(105) Revisions to the Maryland State Implementation Plan submitted on January 18, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letter of January 18, 1993 from the Maryland Department of the Environment transmitting addition,

deletions, and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The following revisions to the provisions of COMAR 26.11, adopted by the Secretary of the Environment on January 18, 1993, effective February 15, 1993:

(*1*) Amendments to COMAR 26.11.01.04C, pertaining to emission test methods, including the addition of Methods 1009, 1011, and 1012 contained in Supplement 2 (July 1, 1992) to "Technical Memorandum 91–01, Test Methods and Equipment Specifications for Stationary Sources" (January 1991), and revisions to Method 1003 and Appendix B contained in Supplement 2.

(*2*) Amendments to COMAR 26.11.13.05B(2) and C(2), pertaining to compliance determinations for tank trucks.

(*3*) Amendments to COMAR 26.11.19.07A(4), the definition for the term ultraviolet curable coating.

(ii) Additional material.

(A) Remainder of the January 18, 1993 State submittal pertaining to COMAR 26.11.01.04C, Appendix B and Methods 1003, 1009, 1011, and 1012 contained in Supplement 2 (July 1, 1992) to "Technical Memorandum 91–01, Test Methods and Equipment Specifications for Stationary Sources (January 1991), COMAR 26.11.13.05B(2) and C(2), and COMAR 26.11.19.07A(4).

* * * * *

[FR Doc. 94–21946 Filed 9–6–94; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 52

[MI04–01–5160B, MI30–01–6427B, MI31–01–6428B, MI32–01–6429B; FRL–5028–1]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The United States Environmental Protection Agency approves the State Implementation Plan (SIP) revision submitted by the State of Michigan for the purpose of establishing new Reasonably Available Control Technology (RACT) rules for sources of volatile organic compounds (VOCs). On June 12, 1993 and November 12, 1993 the Michigan Department of Natural Resources (MDNR) submitted VOC rules to the EPA as proposed revisions to Michigan's ozone SIP. These revisions address deficiencies listed in letters dated December 11, 1990 and August 23, 1991 to the State of Michigan commenting on proposed State regulations (addressing the requirement of the Clean Air Act, as amended in 1990, (Act) that States correct deficient VOC RACT rules ("fix-up" requirement)) and the requirement of the Act that States adopt VOC RACT rules where not previously required ("catch-up" requirement). Further, these revisions address deficiencies in Rules 628 and 629 which were disapproved on December 12, 1993 (58 FR 64678). The rationale for the approval is set forth in this final rule; additional information is available at the address indicated. Elsewhere in this **Federal Register**, EPA is proposing approval of, and soliciting public comment on, this requested SIP revision. If adverse comments are received on this direct final rule, EPA will withdraw this final rule and address the comments received in the final action on the proposed rule published in the proposed rules section of this **Federal Register**. Unless this final rule is withdrawn, no further rulemaking will occur on this requested SIP revision.

DATES: This final rule will be effective November 7, 1994, unless notice is received by October 7, 1994, that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Copies of the SIP revision request and the EPA's analysis are available for inspection at the following address: (It is recommended that you telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, Chicago, Illinois 60604, (312) 353–6960.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 107 of the Clean Air Act, as amended in 1977 (1977 Act), EPA designated certain areas in each State as not attaining the National Ambient Air Quality Standards (NAAQS) for ozone. For Michigan, see 43 FR 8962 (March 3, 1978) and 43 FR 45993 (October 5, 1978). For these areas, section 172(a) of the 1977 Act, required that the State revise its SIP to provide for attaining the primary NAAQS as expeditiously as practicable, but not later than December 31, 1982.[1]

Sections 172 (b) and (c) of the 1977 Act require that for stationary sources, an approvable SIP must include legally enforceable requirements reflecting the application of RACT to sources of VOC emissions. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared three groups of Control Techniques Guideline (CTG) documents which each establish the presumptive norm for RACT for a specific source category. In cases where the State adopts rules that are less stringent than in the CTG, the State must justify that those rules are RACT for that source or source category. In partial response to the requirement for VOC RACT rules, the State of Michigan submitted and EPA approved controls representing the application of RACT for certain stationary sources of VOCs covered by the first two groups of CTGs (RACT I—40 CFR 52.1170(c)(16) (45 FR 29790); 40 CFR 52.1170(c)(39) (46 FR 43422); 40 CFR 52.1170(c)(56) (47 FR 32116) and RACT II—40 CFR 52.1170(c)(56) (47 FR 32116)).

Section 172 of the 1977 Act authorized EPA to grant extensions to those States that could not demonstrate attainment of the ozone standard by December 31, 1982 if certain conditions were met by the States in revising their air pollution control program. These areas became known as extension areas. Michigan requested and received an extension to December 31, 1987 for achieving the ozone NAAQS in Wayne, Oakland and Macomb Counties. This extension was granted on June 2, 1980 (45 FR 37196) and obligated the State to develop, for those counties, RACT regulations for sources that are addressed by the Group III CTGs (RACT III) and RACT regulations for major sources that are not addressed by a CTG (major non-CTG RACT).[2]

On May 26, 1988 pursuant to section 110(a)(2)(H) of the 1977 Act, EPA Region 5 notified Governor James J. Blanchard that the Michigan SIP was

[1] The 1977 Act's requirements for an approvable SIP are described in a "General Preamble" for part D rulemaking published at 44 FR 20372 (April 4, 1979), 44 FR 38583 (July 2, 1979), 44 FR 50371 (August 28, 1979), 44 FR 53761 (September 17, 1979), and 44 FR 67182 (November 23, 1979).

[2] On January 22, 1981, (46 FR 7182), USEPA published guidance for the development of 1982 ozone SIPs in "State Implementation Plans: Approval of 1982 Ozone and Carbon Monoxide Plan Revisions for Areas Needing an Attainment Date Extension".

substantially inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). Among other deficiencies, EPA noted that the State had not yet submitted the RACT regulations for sources in Wayne, Oakland and Macomb Counties that were covered by the third set of CTGs.

On November 15, 1990 the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399 (codified at 42 U.S.C. 7401 *et seq.*). By operation of law, the Detroit area, including Wayne, Oakland and Macomb Counties, retained its nonattainment designation and was classified as a moderate nonattainment area for ozone. Section 182(a)(2)(A) of the Act requires each State to submit to EPA by May 15, 1991 revisions or additions to its SIP to correct deficiencies in its RACT rules for ozone. Section 182(a)(2)(A) of the Act applies to those ozone nonattainment areas classified as marginal or above, and requires States to adopt and correct RACT rules for such areas pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[3] Because the Detroit area (including Wayne, Oakland and Macomb Counties) is classified as moderate, the area is subject to this RACT "fix-u" requirement and the May 15, 1991 deadline.

Other areas within Michigan also retained a designation of nonattainment and were classified by operation of law upon enactment. These areas are also subject to the RACT fix-up requirement. However, under EPA's pre-amendment guidance [4] interpreting the requirements of section 172(b) these areas were not required to adopt RACT rules for sources covered by the Group III CTGs. Therefore, for purposes of the May 15, 1991 deadline, only three counties were required to have RACT rules for Group III CTG sources.

Areas that are designated nonattainment, that are classified as moderate or above, and that were not previously required to adopt RACT rules for sources covered by the Group III CTGs, are required to adopt such rules under section 182(b)(2) of the amended Act.[5] Section 182(b)(2) requires that these areas adopt RACT rules for: (1) Each category of VOC sources in the area covered by a CTG document issued by the Administrator between the date of enactment of the 1990 Amendments and the date of attainment, by a date specified by the Administrator; (2) all VOC sources in the area covered by any CTG issued before the date of enactment; and (3) all other major stationary sources of VOCs that are located in the area, by November 15, 1992. The requirements of section 182(b)(2) are also referred to as "catch-up" requirements. For these areas, RACT rules for the Group III CTGs are due on November 15, 1992.

On April 28, 1989 MDNR submitted final regulations to satisfy outstanding commitments in its 1982 ozone SIP for southeast Michigan (Wayne, Oakland and Macomb Counties). The regulations submitted addressed RACT III categories for fugitive VOC leaks from synthetic organic chemical manufacturing industries (SOCMI) and natural gas plants, Rules 628 and 629, as well as non-CTG categories for paint and resin manufacturing and coating of auto, truck, and business machine parts. These are rules 630, 631, and 632, respectively. At the time MDNR submitted these rules, EPA only required adoption of rules for Ract III categories in extension areas. However, MDNR chose to expand the applicability of these rules to all of the counties listed in EPA's SIP-Call, which include the Detroit, Grand Rapids, and Muskegon areas. This submittal, therefore, addressed requirements of EPA's SIP-Call, section 182(a)(2)(A) of the Act (for Wayne, Oakland, and Macomb Counties), and section 182(b)(2) of the Act (for Livingston, Monroe, St. Clair, Washtenaw, Kent, Ottawa, and Muskegon Counties).

On December 9, 1993 EPA disapproved two of the five RACT III category rules (58 FR 40759). The rules disapproved were those that covered VOC leaks from synthetic organic chemical and polymer manufacturing plants (Rule 628) and natural gas processing plants (Rule 629).

On June 12, 1993 MDNR submitted final regulations to satisfy the section 182(a)(2)(A) fix-up requirements of the Act. Included in these regulations were changes meant to address deficiencies listed in EPA's May 26, 1988 SIP call. Since MDNR chose to expand the coverage of these regulations to all of the 10 ozone nonattainment counties classified as moderate (Michigan has no ozone nonattainment classifications above moderate), this submittal also addressed requirements under section 182(b)(2). EPA found this submittal to be complete in a letter dated June 28, 1993 from Valdas Adamkus, EPA's Region 5 Administrator, to Roland Harmes, Director of MDNR. This letter stopped a sanctions process which was initiated on October 22, 1991 for failure to submit a SIP revision to fulfill the fix-up requirements.

Under a cover letter dated November 15, 1993 MDNR submitted final regulations to satisfy the remaining deficiencies not addressed in the June 12, 1993 submittal, to correct deficiencies cited in the December 9, 1993 disapproval of Rules 628 and 629, and to satisfy the catch-up requirements of section 182(b)(2) of the Act. A letter dated April 18, 1994 from Valdas Adamkus to Roland Harmes found the November 15, 1993 submittal complete for the Detroit—Ann Arbor area and halted the sanctions process which was started on January 15, 1993 for a failure to submit these regulations. The clock for the Muskegon and Grand Rapids areas continued to run because of an outstanding item which was not submitted for the western portion of the State.

A finding of completeness was made in a July 14, 1994 letter from Valdas Adamkus to Roland Harmes for the Grand Rapids and Muskegon areas. This finding was in response to the submittal of a non-CTG SIP submittal made for the western portion of the State and halted the last of the sanction clocks that were started on January 15, 1993 for the State of Michigan.

This document proposes approval of the final regulations submitted by MDNR on June 12, 1993 and November 15, 1993 for incorporation into Michigan's ozone SIP.

II. EPA's Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action,

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 Ozone and Carbon Monoxide Policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[4] The two memoranda are: May 21, 1984 memorandum entitled, "Confirmation That Volatile Organic Compound (VOC) Regulations Are Required for Source Categories for Which Control Techniques Guidelines Have Been Issued" and a June 25, 1984 memorandum entitled, "Applicability of Group III Control Techniques Guidelines" under the same signature.

[5] This requirement would apply to the remainder of the Detroit nonattainment area as well as the Grand Rapids (Kent and Ottawa Counties), and Muskegon (Muskegon County) areas which are all designated as nonattainment and classified as moderate.

appears in the various EPA policy guidance documents listed in footnote 3. Among these provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for existing major stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

Under the amended Act, Congress ratified EPA's use of CTG documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A).

List of Michigan Rules Submitted for Incorporation (Both June and November Submittals)

Following is a list of the State Rules which have been modified and are being submitted for incorporation into the federally approved SIP:

R 336.1101 Definitions; A
R 336.1103 Definitions; C
R 336.1105 Definitions; E
R 336.1116 Definitions; P
R 336.1122 Definitions; V
R 336.1601 Definitions;
R 336.1602 General provisions for existing sources of volatile organic compound emissions
R 336.1610 Existing coating lines; emission of volatile organic compounds from exiting automobile, light-duty truck, and other product and material coating lines
R 336.1611 Existing cold cleaners
R 336.1619 Perchloroethylene; emission from existing dry cleaning equipment
R 336.1620 Emission of volatile organic compounds from existing flat wood paneling coating lines
R 336.1621 Emission of volatile organic compounds from existing metallic surface coating lines
R 336.1622 Emission of volatile organic compounds from existing components off a petroleum refineries; refinery monitoring program
R 336.1623 Storage of petroleum liquids having a true vapor pressure of more than 1.0 psia, but less than 11.0 psia, in existing external floating roof stationary vessels of more than 40,000-gallon capacity
R 336.1624 Emission of volatile organic compounds from an existing graphic arts line
R 336.1625 Emission of volatile organic compounds from existing equipment utilized in manufacturing synthesized pharmaceutical products
R 336.1627 Delivery vessels; vapor collection systems
R 336.1628 Emission of volatile organic compounds from components of existing process equipment used in manufacturing synthetic organic chemicals and polymers; monitoring program
R 336.1629 Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program
R 336.1630 Emission of volatile organic compounds from existing paint manufacturing processes
R 336.1631 Emission of volatile organic compounds from existing process equipment utilized in manufacture of polystyrene or other organic resins
R 336.1632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines
R 336.1702 General provisions of new sources of volatile organic compound emissions
R 336.2004 Appendix A; reference test methods; adoption of Federal reference test methods
R 336.2006 Reference test method serving as alternate version of Federal reference test method 25 by incorporating Byron analysis
R 336.2007 Alternate version of procedure L, referenced in R 336.2040(10)
R 336.2040 Method for determination of volatile organic compound emissions from coating lines and graphic arts lines (except for Subrules R 336.2040(9) and R 336.2040(10)).
R 336.2041 Recordkeeping requirements for coating lines and graphic arts lines.

In reviewing these regulations submitted by the State the EPA used guidance memoranda, the Blue Book, and the CTGS which have been issued up to this point.

EPA's Analysis of the State's Submittal

The following is a summary of the major changes to Michigan's VOC regulations contained in the State's submittal.

I. June 1993 Submittal

On June 12, 1993 MDNR submitted to EPA a SIP revision to address deficiencies in the State's ozone SIP. Listed below are descriptions of the changes contained in this submittal.

A. Rules 101, 103, 105, 116, 122 (Definitions A; C; E; P; V)

Definitions have been added or revised and include the following. These sections have additionally been renumbered to accommodate those definitions which have been added or deleted.

(1) MDNR has revised the definition of "Actual emissions" to not apply in Parts 6 and 7 of these rules. Parts 6 and 7 regulate the emissions of VOCs.

(2) MDNR has removed one of the two definitions of "Air-dried coating" from the State's rules. Now there is only one definition which applies to all of the rules.

(3) MDNR has revised the definition of "Air quality standard" to mean the concentration and duration of an air contaminant specified by the commission or by the national ambient air quality standards as contained in the provisions of 40 CFR part 50 (1990), whichever is more restrictive, as the maximum acceptable concentration and duration of that contaminant in the ambient air.

(4) MDNR has added the definition of "Calendar day" which means a 24-hour time period which normally is midnight to midnight, but which may, upon written notification to the commission, cover a different, consecutive 24-hour time period for a specific process.

(5) MDNR has added the definition of "Coating category" which means a type of surface coating for which there is a separate emission limit specified in these rules.

(6) MDNR has revised the definition of "Coating line" to mean an operation which is a single series in a coating process and which is comprised of 1 or more coating applicators and any associated flash-off areas, drying areas and ovens wherein 1 or more surface coatings are applied and subsequently dried or cured.

(7) MDNR has revised the definition of "Coating of fabric" to include the application of coating by saturations and impregnation.

(8) MDNR has revised the definition of "Coating of paper" to include saturation.

(9) MDNR has revised the definition of "Coating of vinyl" to not include the application of plastisols.

(10) MDNR has revised the definition of "Completed organic resin" to include dry organic resin.

(11) MDNR has revised the definition of "component" and lists specific parts which are designated as "components" for Rules 336.1622, 336.1628, 336.1629, and specifically excludes a valve that has no external controls, therefore having no potential to leak VOCs.

(12) MDNR has added the definition of "Extreme environmental conditions" to mean any of the following: (i) Outdoor weather; (ii) temperatures consistently above 95 degrees celsius (203 degrees fahrenheit); (iii) detergents; (iv) abrasive and scouring agents; (v) solvents; (vi) corrosive atmospheres; (vii) other similar harsh conditions.

(13) MDNR has revised the definition of "Extreme performance coating" to mean a coating which is designed to protect a coated part from extreme environmental conditions and which is

applied to a part that, in its use as a finished product, is intended to be subjected to extreme environmental conditions.

(14) MDNR has removed the definition of "Pneumatic tire manufacturing".

(15) MDNR has added the definition of "Vapor collection system" which means, as it pertains to the provisions of R 336.1627, all piping, seals, hoses, connections, pressure-vacuum vents, and any other equipment between and including the delivery vessel and a stationary vessel, vapor processing unit, or vapor holder.

(16) MDNR has revised the definition of "Volatile organic compound" to mean any compound of carbon or mixture of compounds of carbon that has a vapor pressure of more than 0.1 millimeter of mercury at standard conditions, excluding a number of listed compounds. The definition also includes compounds of carbon or mixtures of compounds of carbon with a vapor pressure less than or equal to 0.1 millimeter of mercury at standard conditions and which participates in atmospheric photochemical reactions.

(17) The following definitions have undergone minor word changes (for example, changing the word "which" to "that"): Allowable emissions, Coating of automobiles and light-duty trucks, Coating of large appliances, Component, Condenser, Contemporaneous, Creditable, Electrostatic prep coat, Equivalent method, Potential emissions, Potential to emit, Printed interior panel, Publication rotogravure printing, Pushside, Very large precipitator.

B. Rule 602 (General Provisions for Existing Sources of Volatile Organic Compound Emissions)

MDNR has listed items which can deviate from the Part 6 regulations given State approval. However, in addition to needing State approval for any equivalent emission rate, alternate emission rate, or compliance method, any provision listed under 602(2) must, generally, be sent to EPA as a SIP revision and will not become federally enforceable until the SIP revision request is approved by the EPA.

Two minor exceptions to the above provisions which do not need to be submitted as site-specific SIP revisions but must still have State approval are discussed in the Technical Support Document.[6]

[6]The term "Director's discretion", as it is being used in this notice, is defined as a State making a decision which would be federally enforceable without EPA review. There are two instances in which Director's discretion language is being approved without need of U.S. EPA approval are as follows: (1) Director's discretion for the use of an alternate base starting level in R 336.1624(2)(a)(i) will be allowed because this is only applicable in areas attaining the ozone standard. Since these areas are not subject to RACT requirements Director's discretion language, in this instance, is allowable. (2) Director's discretion language is also acceptable for alternate condenser temperature in R 336.1625(4) because this alternate temperature will be based on the physical properties of chemicals passing through the condenser. These chemical properties are readily available in many chemistry and physics handbooks. The temperature at which these chemicals condense is not truly Director's discretion because the Director cannot influence a chemical's condensation temperature.

In this rule the State also clarifies that for rules 336.1610, 336.1621 and 336.1632 the phrase "minus water" shall also include compounds which are used as organic solvents and which are excluded from the definition of volatile organic compound. In other rules, the limits are based on emission rates, usually in pounds per hour, so the phrase "minus water" is only used in rules 336.1610, 336.1621 and 336.1632 whose applicable limits are based on VOC content.

C. Rule 610 (Existing Coating Lines; Emission of Volatile Organic Compounds From Existing Automobile, Light-duty Truck, and Other Product and Material Coating Lines)

In this rule the State sets forth the limits which shall be applied to the following coating line categories: automobiles and light-duty trucks, cons, coils, large appliances, metal furniture, magnet wire, and the nonmetallic surfaces of fabrics, vinyl, or paper. In addition to meeting the applicable emission limits, sources covered by this rule must also submit a written program to demonstrate compliance with the emission limits. Recordkeeping requirements are also contained within this rule. Exemptions based on, e.g., emission cutpoints (15 pounds per day), are listed in this rule.

D. Rule 611 (Existing Cold Cleaners)

In this rule MDNR sets forth provisions for operating procedures for cold cleaners. Written procedures for compliance with these provisions must be developed and posted. Units that were previously exempt under the older version of these rules will have until 6 months after the date these rules become effective, in the State, to comply.

E. Rule 619 (Perchloroethylene; Emission From Existing Dry Cleaning Equipment)

In this rule MDNR sets forth provisions to control the emissions of perchloroethylene from existing dry cleaners. In all instances, save one, where a comment was made by EPA on this rule, either the State made the change suggested by EPA or EPA withdrew the comment. Even though one comment has not been addressed, EPA finds this rule approvable. Moreover, EPA notes that it has issued a maximum available control technology or "MACT" rule for this emission source category with which sources will need to comply.

F. Rule 620 (Emission of Volatile Organic Compounds From Existing Flat Wood Paneling Coating Lines)

The State sets forth the emission limits which shall apply to sources of VOC used in the coating of flat wood paneling. The State has replaced methods for determining VOC content in a coating with other recordkeeping and compliance requirements. The State has removed a provision allowing State discretion on equivalent emission rates and transfer efficiencies. The State lists exemptions to this rule. The State describes under what circumstances the use of an afterburner, used to achieve compliance with the emission limits in this rule, may be interrupted outside of the ozone season.

G. Rule 621 (Emission of Volatile Organic Compounds From Existing Metallic Surface Coating Lines)

The State sets forth the emission limits for existing metallic surface coating lines and the compliance and recordkeeping requirements needed to demonstrate compliance with these limits. The State establishes an alternate limit for glass adhesion primer which is used to affix windshields to automobile frames. This alternate limit and its justification is discussed in this action's technical support document. The State has also replaced language providing State discretion and pertaining to equivalent emission rates and transfer efficiencies with new more explicit language which, in addition to being acceptable to the commission, must also receive EPA's approval before being incorporated into the SIP. The State lists exemptions to the provisions of this rule. In certain instances, the rule for coating of automobile, truck, and business machine parts (R 336.1632) may apply. When a source is complying with R 336.1632 it will not have to comply with R 336.1622.

In addition to these specific exemptions, the State also provides broader based exemptions as well. With the addition of new exemptions, other existing exemptions were removed from the regulations. Any coating lines that were previously exempt under the exemptions that have been removed

from the rules and are no longer exempt, now have 1 year from the State's adoption date of these rules to demonstrate compliance. The State has included provisions allowing the discontinuance of a natural gas-fired afterburner, used to meet the emission limits of this rule, between November 1 and March 31.

H. Rule 622 (Emission of Volatile Organic Compounds From Existing Components of Petroleum Refineries; Refinery Monitoring Program)

The State has added to the list of components which require annual inspection those components that are "difficult to monitor." The State has replaced the requirements for all inspections described in EPA 450/2–78–036 with Federal Reference Test Method 21. The State has defined leaking as an instance when a concentration of more than 10,000 ppm, by volume, as methane or hexane, is measured by Method 21.

The State has added the following provisions:

(i) If for 2 consecutive quarters 2 percent or less of the process valves in a given refinery unit are found to be leaking, then inspections may be skipped for 1 quarter. If for 5 consecutive quarters 2 percent or less of the process valves in a given refinery unit are found to be leaking, then inspections of process valves may be done annually. If a subsequent inspection shows that more than 2 percent of the process valves are leaking, quarterly inspections shall again be required.

(ii) To determine the percent of valves leaking on a refinery unit, the total number of valves found to be leaking on the refinery unit during the specified monitoring period shall be divided by the number of valves required to be monitored.

Under exemptions from the monitoring requirements of this rule, the State has removed an exemption for inaccessible valves but added an exemption for components that are unsafe to monitor, until monitoring personnel would no longer be exposed to immediate danger.

The State has added the requirement that a current, written description detailing routine sampling procedures and listing the sealing devices involved shall be maintained and, upon request by the commission, shall be submitted to the commission in an acceptable format.

I. Rule 623 (Storage of Petroleum Liquids Having a True Vapor Pressure of More Than 1.0 psia, but Less Than 11.0 psia, in Existing External Floating Roof Stationary Vessels of More Than 40,000-gallon Capacity)

The State has added to its list of exemptions for external floating roof stationary vessels, those vessels that are used to store jet naphtha (Jet B or JP–4).

The State has added the requirement that any person who is responsible for the operation of a vessel that meets 1 of the criteria for exemption shall maintain records of the following:

(i) The capacity of the stationary vessel.

(ii) The contents of the stationary vessel.

(iii) The type of the stationary vessel.

and may also include:

(i) The type of primary seal.

(ii) The true vapor pressure of the petroleum liquid.

J. Rule 624 (Emission of Volatile Organic Compounds From an Existing Graphic Arts Line)

The State has rewritten much of the Graphic Arts Rule. The new rule sets forth the emission limits, recordkeeping requirements, compliance demonstration requirements and exemptions for the affected sources. These rules, for the most part, are written to have a statewide effect.

K. Rule 625 (Emission of Volatile Organic Compounds From Existing Equipment Utilized in Manufacturing Synthesized Pharmaceutical Products)

The State has added a provision which describes the method for comparing actual emission levels from alternative control technology to allowable emission levels. The method for determining the actual emission level is found in R 336.2004 and the allowable emission level shall be determined using methods found in Appendix B of "Control of Volatile Organic Compound Emissions From Manufacture of Pharmaceutical Products," EPA–450/2–78–029.

The State has added language stating that a person shall not be required to reduce the temperature of a gas stream flowing through a condenser below the freezing point of a condensible component in the gas stream if it can be shown using intrinsic chemical data that the condenser would be rendered ineffective.

The State has added a provision which describes the method for comparing actual emission levels from alternative control technology to allowable emission levels resulting from the use of a pressure/vacuum conservation vent. The method for determining the actual emission level is found in R 336.2004 and the allowable emission level shall be determined using methods found in Appendix B of "Control of Volatile Organic Compound Emissions From Manufacture of Pharmaceutical Products," EPA–450/2–78–029.

The State has removed the provision requiring interim reduction milestones since the dates of these milestones had all passed several years before this package was submitted.

The State has added daily recordkeeping requirements which must be complied with within 3 months of the State's effective date of this rule. The records required shall include:

(i) For reactors, distillation operations, crystallizers, centrifuges, and vacuum dryers which are controlled by a condenser or an alternative control technology:

(a) A list of all VOCs in the stream.

(b) The vapor pressure, as measured at 20 degrees Celsius, of each VOC.

(c) The mole fraction of each VOC in the liquid mixture.

(d) The gas outlet temperature of each condenser.

(ii) For operations that are in compliance with the exemption provisions listed in this rule, the amount of material entering and exiting each reactor, distillation operation, crystallizer, centrifuge, and vacuum dryer.

(iii) For air dryers, the amount of material entering and exiting each air dryer.

(iv) A person loading a VOC which has a vapor pressure of more than 210 millimeters of mercury, measured at 20 degrees Celsius, from a truck or railcar into an existing stationary vessel of more than a 2,000 gallon capacity using a vapor balance system or alternate control system shall maintain records of the following information:

(a) The date and time each vessel is loaded.

(b) The type and vapor pressure, as measured at 20 degrees Celsius, of each VOC loaded into each stationary vessel.

(v) For centrifuges, rotary vacuum filters, or other filters that have an exposed liquid surface, where the liquid contains a VOC or VOCs and the sum of the partial pressures is 26.2 millimeters of mercury or more, as measured at 20 degrees Celsius, the following records shall be maintained:

(a) A list of all VOCs in the liquid.

(b) The vapor pressure, as measured at 20 degrees Celsius, of each VOC.

(c) The mole fraction of each VOC in the liquid mixture.

(vi) For any equipment from which a liquid containing a VOC or VOCs can be observed dripping or running the following records shall be kept:

(a) The date and time each leak was detected.

(b) The date and time each leak was repaired.

L. Rule 627 (Delivery Vessels; Vapor Collection Systems)

The State lists the provisions which must be met by all delivery vessels subject to control by a vapor collection system required by R 336.1606, R 336.1607, R 336.1608, R 336.1609, R 336.1703, R 336.1704, R 336.1705, or R 336.1706. The modifications made by the State to this rule are: (1) Listing gauge pressures in inches of water as well as in pounds per square inch, and (2) moving the definition of "vapor collection system" from this rule to R 336.1122 (Definitions; V).

M. Rule 630 (Emission of Volatile Organic Compounds From Existing Paint Manufacturing Processes)

The State lists the 10 moderate ozone nonattainment areas where these regulations shall apply. The State has removed several of the exemption provisions and is allowing sources which were previously exempt, 1 year from the rules' effective date (i.e. by April 27, 1994) to achieve compliance with these rules. Examples of these sources would be those that were not covered by the previous rules because the rules did not apply in that area. April 19, 1990 is the date by which other sources must achieve compliance.

N. Rule 631 (Emission of Volatile Organic Compounds From Existing Process Equipment Utilized in Manufacture of Polystyrene or Other Organic Resins)

The State lists the 10 moderate ozone nonattainment areas that these regulations shall apply in.

The State requires that a person shall not operate a reactor, thinning tank, or blending tank unless either of the following provisions is complied with:

(i) All VOCs emitted from existing reactors, thinning tanks, and blending tanks shall be vented to control equipment that is designed and operated to reduce the quantity of VOCs by not less than 95 weight percent. Reflux condensers that are essential to the operation of the resin reactor are not considered to be control equipment.

(ii) The total VOCs emitted to the atmosphere from the reactors, thinning tanks, and blending tanks do not exceed 0.5 pounds per 1,000 pounds of completed organic resin produced.

Notwithstanding the preceding requirement, the State requires the Monsanto Company of Trenton to comply with either of the following provisions for its reactors, thinning tanks, and blending tanks:

(i) All VOCs emitted from reactors, thinning tanks, and blending tanks shall be vented to control equipment that is designed and operated to reduce the quantity of VOCs by not less than 95 weight percent. Reflux condensers that are essential to the operation of the resin reactor are not considered to be control equipment.

(ii) The total VOCs emitted to the atmosphere from the reactors, thinning tanks, and blending tanks do not exceed 2.6 pounds per 1,000 pounds of dry organic resin produced.

The State has altered the recordkeeping requirement to now be mandatory for all sources subject to this rule. The recordkeeping requirements are effective 3 months after the effective date of this rule. The records which need to be kept will vary depending upon the fashion in which a source chooses to control the VOC emissions and may include any of the following information:

(i) Emissions test data.
(ii) Material balance calculations.
(iii) Process production rates.
(iv) Control equipment specifications and operating parameters.

The State has revised one of the provisions to read,

A person may discontinue the operation of a natural gas-fired afterburner, which is used to achieve compliance with the emission limits in this rule, between November 1 and March 31 unless the afterburner is used to achieve compliance with, or is required by, any of the following:

(a) Any other provision of these rules.
(b) A permit to install.
(c) A permit to operate.
(d) A voluntary agreement.
(e) A performance contract.
(f) A stipulation.
(g) An order of the commission.

If the operation of a natural gas-fired afterburner is discontinued between November 1 and March 31 pursuant to the provisions of the preceding provision, both of the following shall apply during this time period:

(a) All other provisions of this rule, except the emission limits, shall remain in effect.

(b) All other measures that are used to comply with the emission limits in this rule between April 1 and October 31 shall continue to be used.

A RACT analysis has been performed for the limit of 2.6 lb VOC emissions/1,000 pounds of dry organic resin produced set for Monsanto and has been found to be comparable to a RACT limit set for a similar Monsanto facility in Massachusetts and is therefore approvable.

Rule 631(6) seems ambiguous as to what information is necessary to determine compliance because of the presence of the wording "information may include." The State has provided EPA with all of the compliance orders for all of the facilities affected by this rule and they have been reviewed to determine if sufficient information is included to determine compliance with this rule. EPA has found all of the compliance orders to contain sufficient information to determine compliance. All facilities are required to keep sufficient records for determination of compliance with this rule. Rule 702(d), described later in this package, requires new sources which could fall under this category to meet the same emission limits as existing sources in this category. The State has also written a letter, dated July 13, 1994, that clarifies the intent of this rule is to require new sources to meet not only the same emission limits as existing sources but also to meet the same recordkeeping and reporting requirements as existing sources as well.

O. Rule 632 (Emission of Volatile Organic Compounds From Existing Automobile, Truck, and Business Machine Plastic Part Coating Lines)

The State has expanded the geographic limits of these rules to cover all of the moderate nonattainment counties in the State. The cross-line averaging provisions of this rule have been removed. Recordkeeping requirements have been changed to be more stringent than previously required.

P. Rule 702 (General Provisions for new Sources of Volatile Organic Compound Missions)

The State has added a provision stating that new sources of VOCs shall be limited to the lowest emission rate listed in the following: (1) The maximum allowable emission rate listed by a commission on its own initiative or based upon the application of the best available control technology; (2) the maximum allowable emission rate specified by a new source performance standard promulgated by the EPA; (3) the maximum allowable emission rate specified as a condition of a permit to install or a permit to operate; or (4) the limit for this source category as is listed in the rules for existing sources.

Q. R 336.2004 Appendix A; Reference Test Methods; Adoption of Federal Reference Test Methods

In this appendix, the State has added the following Federal Reference Test

Methods to the list of those already adopted by reference:

(1) Method 1A—Sample and velocity traverses for stationary sources with small stacks or ducts.

(2) Method 2A—Direct measurement of gas volume through pipes and small ducts.

(3) Method 2C—Determination of stack gas velocity and volumetric flow rate in small stacks and ducts (standard pitot tube).

(4) Method 2D—Measurement of gas volumetric flow rates in small pipes and ducts.

(5) Method 10B—Determination of carbon monoxide from stationary sources.

R. R 336.2006 Reference Test Method Serving as Alternate Version of Federal Reference Test Method 25 by Incorporating Byron Analysis

The State sets forth provisions by which Federal Test Method 25 may be conducted by incorporating the Byron analysis.

S. R 336.2007 Alternate Version of Procedure L, Referenced in R 336.2040(10)

The State sets forth provisions by which an alternate version of the Federal Procedure L may be used.

T. R 336.2040 Method for Determination of Volatile Organic Compound Emissions From Coating Lines and Graphic Arts Lines

The State sets forth provisions describing methods for determining compliance for coating lines in this rule. Appropriate methods are described for the various coating lines whose emission limits may be expressed differently from one another depending on the method of compliance being used.

The State requires that for sources subject to emission limits expressed as pounds of VOCs per gallon of coating, minus water, as applied, the phrase "minus water" shall also include compounds which are used as organic solvents and which are excluded from the definition of volatile organic compound.

For calculations required by this rule, the State requires the following:

(1) Not less than 5 significant digits shall be carried in intermediate calculations. Rounding shall occur after final calculations and emission numbers will be rounded to not less than 2 but not more than 3 significant figures.

(2) The calculations for a coating line shall include all of the coatings which are in the same coating category and which are used during the averaging period as specified in the applicable limit.

(3) In most cases, the calculations for a graphic arts line shall include all of the inks and coatings that are used during the averaging period as specified in the applicable emission limit.

The State describes the methods by which the VOC content of inks and coatings, and the weight of VOCs used during an averaging period shall be determined.

U. R 336.2041 Recordkeeping Requirements for Coating Lines and Graphic Arts Lines

The State sets forth the recordkeeping requirements which shall apply to coating lines and graphic arts lines. These provisions require that records for the various types of coating and graphic arts lines be kept.

The types of records that must be kept are specific to the coating or graphic arts line and the method by which it is meeting the appropriate emission limit.

All of the rules submitted for approval in the June 12, 1993 submittal have been reviewed and found to be approvable for incorporation into the Michigan ozone SIP.

II. November 1993 Submittal

On November 15, 1993 MDNR submitted to EPA a SIP revision to address the remaining deficiencies in the State's VOC RACT regulations which were not corrected by the June 12, 1993 submittal. Listed below are descriptions of the changes this SIP submittal proposed.

A. Rule 601 (Definitions)

A revised definition for the term "person responsible" as used in Part 6 rules has been added.

B. Rule 602 (General Provisions for Existing Sources of Volatile Organic Compound Emissions)

Provisions allowing for alternative compliance methods in Rules 628 and 629 require site-specific SIP revisions when implemented.

C. Rule 624 (Emission of Volatile Organic Compounds From an Existing Graphic Arts Line)

An unacceptable prorating method for recordkeeping has been removed.

D. Rule 628 (Emission of Volatile Organic Compounds From Components of Existing Process Equipment Used in Manufacturing Synthetic Organic Chemicals and Polymers; Monitoring Program) and Rule 629 (Emission of Volatile Organic Compounds From Components of Existing Process Equipment Used in Processing Natural Gas; Monitoring Program)

Test methods have been added which define how the percent VOC in a piece of equipment is to be determined. Provisions allowing reduced frequency of monitoring for low-leaking equipment have been changed to comply with EPA requirements. Wording was added requiring that all equivalent control methods must be submitted to EPA as site-specific SIP revisions as specified in Rule 602. The counties affected by these rules have been listed in the same format as other similar rules, for the purpose of uniformity.

E. Non-CTG RACT Rules

There are 3 non-CTG major sources of VOCs located in Michigan's Detroit-Ann Arbor ozone nonattainment area. These sources are: VCF Films, Inc.; Ford Motor Company's Utica Trim Plant; and the Woodbridge Corporations Whitmore Lake Plant (formerly Johnson Controls, Inc.). The course of action Michigan pursued for these companies was the development of administrative consent orders requiring implementation of RACT-level controls.

VCF Films, Inc. has entered into an administrative consent order requiring RACT-level controls for VOC emissions for its film casting processes. This order has been submitted as a SIP revision.

Ford Motor Company's Utica Trim Plant has entered into an administrative consent order requiring RACT-level controls for its polyurethane foam manufacturing processes, reaction injection molding processes, and various adhesive operations at this facility. This order has been submitted as a SIP revision.

The Woodbridge Corporation, Whitmore Lake Plant (formerly Johnson Controls, Inc.) has entered into an administrative consent order requiring RACT-level controls for VOC emissions for its polyurethane foam automotive seat cushion manufacturing operation, and elimination of all methylene chloride emissions from the facility. This order has been submitted as a SIP revision.

These 3 site-specific, non-CTG regulations have been reviewed by US EPA and are being approved for inclusion into Michigan's SIP.

F. Stage I Vapor Recovery

Michigan has controlled VOC emissions from underground tank loading at service stations, called Stage I controls, since the early 1980s. Rule 606, the Stage I rule, currently requires services stations in the Detroit, Flint, Grand Rapids, and Lansing urban areas to have their underground gasoline storage tanks equipped with vapor balance equipment when unloading gasoline at the service stations.

New Stage I legislation has recently been enacted and submitted as part of the November 12, 1993 submittal which expands the geographic coverage of the current program and lowers the exemption level. Service stations with greater than 10,000 gallons per month of gasoline sales and located in the 10 county moderate nonattainment areas will now be required to implement the Rule 606 Stage I controls and meet the equipment specifications as specified by the California Air Resources Board. In addition, pressure/vacuum valves on the underground storage tank vents will now be mandatory, as required in the equipment specifications.

All of the rules submitted on November 12, 1993 have been reviewed and been found to be approvable by the EPA for incorporation into the Michigan ozone SIP.

G. Negative Declarations

In a letter dated March 30, 1994, meant to supplement the November 12, 1993 submittal, Michigan included current negative declarations for the following CTG categories: (1) Large petroleum dry cleaners; (2) SOCMI air oxidation processes; (3) High-density polyethylene and polypropylene resin manufacturing; and (4) Pneumatic rubber tire manufacturing. These current negative declarations obviate the need for Michigan to develop regulations for these source categories because none of these types of sources exist in the State.

Federal Action

The EPA approves the VOC RACT rules submitted as a SIP revision for the State of Michigan to the EPA on June 12, 1993 and November 12, 1993. The EPA has evaluated all of Michigan's rules, as submitted on June 12, 1993 and November 12, 1993 for consistency with the requirements of the Act, EPA regulations and the EPA's interpretation of these requirements as expressed in EPA policy documents. The EPA has found that the rules meet the requirements applicable to ozone and are, therefore, approvable for incorporation into the State's ozone SIP. A more complete discussion of the EPA's review of the State's regulations is contained in technical support documents dated December 11 1990, August 23, 1991, and May 5, 1994. The EPA is proposing to approve this revision as fully meeting the RACT fix-up requirements of section 182(a)(2)(A) of the Act and the RACT catch-up requirements of section 182(b)(2) of the Act.

Because EPA considers this action noncontroversial and routine, we are approving it without prior proposal. This action will become effective on November 7, 1994. However, if we receive adverse comments by October 7, 1994, EPA will publish: (1) a document that withdraws this action; and (2) address the comments received in the final rule on the requested SIP revision which has been proposed for approval in the proposed rules section of this **Federal Register**.

Miscellaneous

A. Applicability to Future SIP Decisions

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. The EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

B. Executive Order 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. The OMB has exempted this regulatory action from E.O. 12866 review.

C. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This approval does not create any new requirements. Therefore, I certify that this action does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of the regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of the State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976).

D. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 1994. 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)).

Final Approval of Michigan's VOC RACT Fix-Up and Catch-Up SIP Submittal (page 37 of 37)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: July 22, 1994.

Valdas V. Adamkus,

Regional Administrator.

40 CFR part 52 is amended as follows.

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart X—Michigan

2. Section 52.1170 is amended by adding paragraph (c)(96) to read as follows:

§ 52.1170 Identification of plan.

* * * * *

(c) * * *

(96) Revisions to the Michigan Regulations submitted on June 12, 1993 and November 12, 1993 by the Michigan Department of Natural Resources:

(i) Incorporation by reference.

(A) Revisions to the following provisions of the Michigan Air Pollution Control Commission General Rules filed with the Secretary of State on April 12, 1993 and effective on April 27, 1993:

(1) R 336.1101 Definitions; A—Revised definitions of the following terms: actual emissions, air-dried coating, air quality standard, allowable emissions and alternate opacity.

(2) R 336.1103 Definitions; C—Added definition of coating category. Revised definitions of the following terms: calendar day, class II hardboard paneling finish, coating line, coating of automobiles and light-duty trucks coating of fabric, coating of large appliances, coating of paper, coating of vinyl, component, component in field gas service, component in gaseous volatile organic compound service, component in heavy liquid service, component in light liquid service, component in liquid volatile organic compound service, condenser, conveyorized vapor degreaser, and creditable.

(3) R 336.1105 Definitions; E—Added definition of the term extreme environmental conditions. Revised definitions of the following terms: electrostatic prep coat, equivalent method and extreme performance coating.

(4) R 336.1116 Definitions; P—Revised definitions of the following terms: packaging rotogravure printing, printed interior panel, process unit turnaround, publication rotogravure printing and pushside. Deleted definition of the term pneumatic rubber tire manufacturing.

(5) R 336.1122 Definitions; V—Added definition of the term vapor collection system. Revised definitions of the following terms: very large precipitator and volatile organic compound.

(6) R 336.1602 General provisions for existing sources of volatile organic compound emissions (entire rule).

(7) R 336.1610 Existing coating lines; emission of volatile organic compounds from exiting automobile, light-duty truck, and other product and material coating lines (entire rule).

(8) R 336.1611 Existing cold cleaners (entire rule).

(9) R 336.1619 Perchloroethylene; emission from existing dry cleaning equipment (entire rule).

(10) R 336.1620 Emission of volatile organic compounds from existing flat wood paneling coating lines (entire rule).

(11) R 336.1621 Emission of volatile organic compounds from existing metallic surface coating lines (entire rule).

(12) R 336.1622 Emission of volatile organic compounds from existing components of petroleum refineries; refinery monitoring program (entire rule).

(13) R 336.1623 Storage of petroleum liquids having a true vapor pressure of more than 1.0 psia, but less than 11.0 psia, in existing external floating roof stationary vessels of more than 40,000-gallon capacity (entire rule).

(14) R 336.1625 Emission of volatile organic compounds from existing equipment utilized in manufacturing synthesized pharmaceutical products (entire rule).

(15) R 336.1627 Delivery vessels; vapor collection systems (entire rule).

(16) R 336.1630 Emission of volatile organic compounds from existing paint manufacturing processes (entire rule).

(17) R 336.1631 Emission of volatile organic compounds from existing process equipment utilized in manufacture of polystyrene or other organic resins (entire rule).

(18) R 336.1632 Emission of volatile organic compounds from existing automobile, truck, and business machine plastic part coating lines (entire rule).

(19) R 336.1702 General provisions of new sources of volatile organic compound emissions (entire rule).

(20) R 336.2004 Appendix A; reference test methods; adoption of federal reference test methods (entire rule).

(21) R 336.2006 Reference test method serving as alternate version of federal reference test method 25 by incorporating Byron analysis (entire rule).

(22) R 336.2007 Alternate version of procedure L, referenced in R 336.2040(10) (entire rule).

(23) R 336.2040 Method for determination of volatile organic compound emissions from coating lines and graphic arts lines (except R 336.2040(9) and R 336.2040(10)).

(24) R 336.2041 Recordkeeping requirements for coating lines and graphic arts lines (entire rule).

(B) Revisions to the following provisions of the Michigan Air Pollution Control Commission General Rules filed with the Secretary of State on November 3, 1993 and effective on November 18, 1993:

(1) R 336.1601 Definitions—Added definition of the term person responsible.

(2) R 336.1602 General provisions for existing sources of volatile organic compound emissions—Addition of provisions requiring submittal of site-specific SIP revisions to EPA for the use of equivalent control methods allowed under rules 336.1628(1) and 336.1629(1).

(3) R 336.1624 Emission of volatile organic compounds from existing graphic arts lines (entire rule).

(4) R 336.1628 Emission of volatile organic compounds from components of existing process equipment used in manufacturing synthetic organic chemicals and polymers; monitoring program (entire rule).

(5) R 336.1629 Emission of volatile organic compounds from components of existing process equipment used in processing natural gas; monitoring program (entire rule).

(C) Senate Bill No. 726 of the State of Michigan 87th Legislature for Stage I controls signed and effective on November 13, 1993.

(D) State of Michigan, Department of Natural Resources, Stipulation for Entry of Consent Order and Final Order No. 39–1993 which was adopted by the State on November 12, 1993.

(E) State of Michigan, Department of Natural Resources, Stipulation for Entry of Consent Order and Final Order No. 40–1993 which was adopted by the State on November 12, 1993.

(F) State of Michigan, Department of Natural Resources, Stipulation for Entry of Consent Order and Final Order No. 3–1993 which was adopted by the State on June 21, 1993.

3. Section 52.1174 is amended by adding paragraph (d) to read as follows:

§ 52.1174 Control strategy: Ozone.

* * * * *

(d) In a letter addressed to David Kee, EPA, dated March 30, 1994, Dennis M. Drake, State of Michigan, stated:

(1) Michigan has not developed RACT regulations for the following industrial source categories, which have been addressed in Control Techniques Guidance (CTG) documents published prior to the Clean Air Act Amendments of 1990, because no affected sources are located in the moderate nonattainment counties:

(i) Large petroleum dry cleaners;
(ii) SOCMI air oxidation processes;
(iii) High-density polyethylene and polypropylene resin manufacturing; and
(iv) Pneumatic rubber tire manufacturing.

(2) (Reserved).

[FR Doc. 94–21955 Filed 9–6–94; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 180

[PP 7F3546/R2074; FRL–4904–9]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances and Extension of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes time-limited tolerances (with an expiration date of November 15, 1997) for residues of the snythetic pyrethroid bifenthrin in or on the raw agricultural commodities (RACs) corn (field, seed, and pop) grain, silage (forage), stover (fodder); milk, milk fat; meat, fat, and meat byproducts of cattle, goats, hogs, horses, sheep, and poultry; and eggs. FMC Corp. petitioned EPA to establish maximum permissible levels for residues of the pesticide in or on the commodities. EPA also is establishing time-limited tolerances for residues of bifenthrin in or on cottonseed and dried hops.

EFFECTIVE DATE: This regulation becomes effective September 7, 1994.

ADDRESSES: Written objections, identified by the document control number, [PP 7F3546/R2074], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: George T. LaRocca, Product Manager, (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Second Floor, Crystal Mall #1, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6100.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 22, 1994 (59 FR 32167), EPA issued a proposed rule that gave notice that pursuant to pesticide petition 7F3546 and subsequent amendments to it, the FMC Corp., 1735 Market St., Philadelphia, PA 19103, had requested that pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, EPA amend 40 CFR part 180 to establish tolerances for residues of the pesticide bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, and its 4'-hydroxy metabolite in or on the commodities corn (field, seed, and pop) grain at 0.05 part per million (ppm), forage at 2.0 ppm, fodder at 5.0 ppm; milk, fat (reflecting 0.1 ppm in whole milk) at 1.0 ppm; meat of cattle, goats, hogs, horses, poultry, and sheep at 0.05 ppm; meat byproducts (mbyp) of cattle, goats, hogs, horses, and sheep at 0.10 ppm; poultry mbyp at 0.05 ppm; fat of cattle, goats, hogs, horses, and sheep at 1.0 ppm; poultry fat at 0.05 ppm; cottonseed at 0.5 ppm; hops, dried at 10.0 ppm; and eggs at 0.05 ppm. EPA proposed to establish time-limited tolerances, with an expiration date of November 15, 1997.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted on the proposal and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the time-limited tolerances will protect the public health. Therefore, the time-limited tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register,** file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of the Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 18, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.442, to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

Tolerances, to expire on November 15, 1997, are established for residues of the pyrethroid bifenthrin, (2-methyl [1,1'-biphenyl]-3-yl)methyl-3-(2-chloro-3,3,3,-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylate, in or on the following commodities:

Commodity	Parts per million
Cattle, fat	1.0
Cattle, meat	0.5
Cattle, mbyp	0.10
Corn, forage	2.0
Corn, fodder	5.0
Corn, grain (field, seed, and pop)	0.05
Cottonseed	0.5
Eggs	0.05
Goats, fat	1.0
Goats, meat	0.5
Goats, mbyp	0.10
Hogs, fat	1.0
Hogs, meat	0.5
Hogs, mbyp	0.10
Hops, dried	10.0
Horses, fat	1.0
Horses, meat	0.5
Horses, mbyp	0.10
Milk, fat (reflecting 0.1 ppm in whole milk)	1.0
Poultry, fat	0.05
Poultry, meat	0.05
Poultry, mbyp	0.05
Sheep, fat	1.0
Sheep, meat	0.5
Sheep, mbyp	0.10

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GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–1, 301–7, 301–8, 301–11, 301–16, and 301–17

[FTR Amendment 39]

RIN 3090–AF29

Federal Travel Regulation; Hotel and Motel Fire Safety Act Requirements

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule.

SUMMARY: This final rule amends the Federal Travel Regulation (FTR) to incorporate standards for Federal agency compliance with the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391, Sept. 25, 1990). These provisions are intended to enhance the safety of Federal employees traveling on official business.

EFFECTIVE DATE: This final rule is effective October 1, 1994, and applies for travel (including travel incident to a change of official station) performed on or after October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert A. Clauson, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

SUPPLEMENTARY INFORMATION: The Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391, Sept. 25, 1990), hereinafter referred to as "the Act", among other things, amended title 5, United States Code, by adding new §§ 5707(d) and 5707a to save lives and protect property by promoting fire and life safety in hotels, motels, and all places of public accommodation affecting commerce.

Hotel and Motel Fire Safety Guidelines

The Act sets standards for fire prevention and control in places of public accommodation affecting commerce. These requirements include installation of hard-wired, single station smoke detectors in each guest room of each place of public accommodation, and an automatic sprinkler system in each place of public accommodation that is more than three stories. The Act further requires each State to submit to the Director of the Federal Emergency Management Agency (FEMA) a list of places of public accommodation in the State that comply with the Act's fire safety standards. From the State lists, FEMA must compile and publish in the **Federal Register** a national master list and distribute it to each Federal agency. The Act requires FEMA to periodically update the master list based on information provided by the States, and to distribute the updated list to each agency.

Federal Travel Program Compliance

The Act requires the General Services Administration (GSA) to modify certain of its travel programs to adhere to established fire safety guidelines. This includes listing in the Federal Travel Directory only those lodging establishments that comply with the Act's fire safety standards, specifying which access and safety devices each establishment provides for the hearing impaired or visually or physically handicapped, and surveying only accommodations that meet the Act's fire safety standards when conducting surveys of lodging costs for the purpose of establishing locality per diem rates.

Agency Compliance

The Act also requires each agency to ensure that it achieves an adequate "approved accommodations percentage", as specified in the Act and reflected in the regulation, for Fiscal Year 1995 and each fiscal year thereafter (an approved accommodation is a hotel, motel, or other place of public accommodation affecting commerce that meets the Act's fire safety standards). The actual approved accommodations percentage is computed by dividing the number of nights spent throughout the United States, including its territories and possessions, in approved accommodations by the total number of nights spent throughout the United States, including its territories and possessions, in all places of public accommodation affecting commerce.

GSA has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of Sept. 30, 1993. This final rule is not required to be published in the **Federal Register** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply.

List of Subjects in 41 CFR Parts 301–1, 301–7, 301–8, 301–11, 301–16, and 301–17

Government employees, Travel, Travel allowances, Travel and transportation expenses

For the reasons set out in the preamble, 41 CFR parts 301–1, 301–7, 301–8, 301–11, and 301–16 are amended and 41 CFR part 301–17 is added as follows:

PART 301–1—APPLICABILITY AND GENERAL RULES

1. The authority citation for part 301–1 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; 31 U.S.C. 1353; 40 U.S.C. 486(c); E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—Authority, Applicability, and General Rules

2. Section 301–1.3 is amended by revising paragraphs (a) and (c)(1) to read as follows:

§ 301–1.3 General rules.

(a) *Employee's obligation*—(1) *Prudent person rule.* An employee traveling on official business is expected to exercise the same care in incurring expenses that a prudent person would exercise if traveling on personal business. Excess costs, circuitous routes, delays, or luxury accommodations and services unnecessary or unjustified in the performance of official business are not acceptable under this standard. Employees will be responsible for excess costs and any additional expenses incurred for personal preference or convenience.

(2) *Approved (firesafe) accommodation.* It is the policy of the Government, as reflected in the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391, Sept. 25, 1990), referred to as "the Act" in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, employees are strongly encouraged to stay in an approved accommodation when commercial lodging is required. Such action will serve to benefit all travelers by influencing the management of places of public accommodation affecting commerce to comply with the Act's fire safety requirements and maintain approved accommodation status. An approved accommodation provides certain fire detection and safety devices that reduce the likelihood of injury to, and protect the lives of, travelers.

* * * * *

(c) *Definitions*—(1) *Agency.* Except as otherwise provided in § 301–17.2(a) of this chapter, "agency" for purposes of this chapter means an executive agency as defined in 5 U.S.C. 105; a military department; an office, agency, or other establishment in the legislative branch; and the government of the District of Columbia; but does not include a Government-controlled corporation, a Member of Congress, or an office or committee of either House of Congress or of the two Houses.

* * * * *

Subpart B—Official Government Business Travel

3. Section 301–1.101 is amended by adding paragraph (b)(4) to read as follows:

§ 301–1.101 Authorization of travel.

* * * * *

(b) * * *

(4) It is the policy of the Government, as reflected in the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391, Sept. 25, 1990), to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of these goals, each agency, as defined in § 301–17.2(a) of this chapter, when authorizing travel shall take appropriate measures to influence employees who will procure commercial lodging when performing official travel to stay at a firesafe approved accommodation as defined in § 301–17.2(c) of this chapter. Further, each agency shall establish procedures to ensure that its approved accommodations percentage is in compliance with the provisions of part 301–17 of this chapter. Additionally, each agency shall be prepared, as required in § 301–17.4(b) of this chapter, to furnish the General Accounting Office with information necessary for the conduct of an audit of agency compliance with the approved accommodations percentage requirement.

* * * * *

Subpart C—Pre-employment Interview Travel

4. Section 301–1.202 is amended by revising the section heading and by adding paragraphs (a)(5) and (b)(6) to read as follows:

§ 301–1.202 Responsibilities for pre-employment interview travel.

(a) * * *

(5) *Fire safety responsibilities.* Agencies should encourage an interviewee for his/her safety to stay in an approved accommodation while performing interview travel, and shall provide the interviewee with a list of approved accommodations in the interview area. Section 5707(d) of title 5, United States Code requires that the approved accommodations percentage, as defined in § 301–17.2(d) of this chapter, be computed based solely on official travel by employees. An agency, therefore, shall not collect approved accommodations data from an interviewee.

(b) * * *

(6) *Fire safety responsibilities.* It is the policy of the Government, as reflected in the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391, Sept. 25, 1990), referred to as "the Act" in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, an interviewee traveling to a pre-employment interview is strongly encouraged to stay at an approved accommodation as defined in § 301–17.2(c) of this chapter when commercial lodging is required. An approved accommodation provides certain fire detection and safety devices that reduce the likelihood of injury to, and protect the lives of, travelers. Section 5707(d) of title 5, United States Code, requires that the approved accommodations percentage, as defined in § 301–17.2(d) of this chapter, be computed based solely on official travel by employees. An interviewee, therefore, is exempt from the requirement in §§ 301–7.2(a)(4) and 301–8.5(a)(4) of this chapter to account for approved accommodations data.

5. Section 301–1.205 is amended by adding paragraph (e) to read as follows:

§ 301–1.205 Claims for reimbursement.

* * * * *

(e) *Approved accommodations data.* Section 5707(d) of title 5, United States Code, requires that the approved accommodations percentage, as defined in § 301–17.2(d) of this chapter, be computed based solely on official travel by employees. An interviewee, therefore, is exempt from the requirement in § 301–11.2(b) of this chapter to account for approved accommodations data.

PART 301–7—PER DIEM ALLOWANCES

6. The authority citation for part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

7. Section 301–7.2 is amended by adding new paragraph (a)(4) and revising paragraph (b) to read as follows:

§ 301–7.2 Employee and agency responsibilities.

(a) * * *

(4) *Fire safety responsibilities.* An employee traveling on official business is strongly encouraged to stay at an approved accommodation as defined in § 301–17.2(c) of this chapter. Each employee shall account, in accordance with his/her agency's procedures established under paragraph (b)(2) of this section, for the number of nights spent in approved accommodations as well as the number of nights spent in all places of public accommodation affecting commerce as defined in § 301–17.2(b) of this chapter.

(b) *Agency responsibilities*—(1) *Authorizing/approving rates.* It is the responsibility of the head of each agency, or his/her designee, to authorize or approve only those per diem allowances that are justified by the circumstances affecting the travel and are allowable under the specific rules in this part. However, the per diem rates provided for under these rules represent the maximum allowable. To prevent authorization or approval of per diem allowances in excess of amounts required to meet the necessary per diem expenses of official travel, consideration shall be given to factors such as those listed in this paragraph that reduce the necessary expenses of employees (see specific guidelines in § 301–7.12 of this part for reducing rates):

(i) Known arrangements or established cost experience at temporary duty locations showing that lodging and/or meals can be obtained without cost or at reduced cost to the employee;

(ii) Situations in which special rates for accommodations have been made available for a particular meeting, conference, training or other temporary duty assignments;

(iii) Traveler's familiarity with establishments providing lodging and meals at a lower cost in certain localities, particularly where repetitive travel or extended stays are involved;

(iv) Modes of transportation where accommodations are provided as part of the transportation cost; and

(v) Situations in which the Government furnishes lodging, such as Government quarters or other lodging procured for the employee by means of an agency purchase order (see § 301–7.12(a) of this part).

(2) *Fire safety responsibilities.* Each agency, as defined in § 301–17.2(a) of this chapter, is responsible for influencing its employees who require commercial lodging when performing official travel to stay at an approved accommodation as defined in § 301–17.2(c) of this chapter and for ensuring that its approved accommodations percentage is in compliance with the fire safety guidelines established in the Hotel and Motel Fire Safety Act of 1990 (Pub. L. 101–391, Sept. 25, 1990) (see part 301–17 of this chapter). Each agency shall establish accounting procedures to collect from each employee traveling on official business data regarding the number of nights spent in approved accommodations as well as the number of nights spent in all places of public accommodation affecting commerce as defined in § 301–17.2(b) of this chapter.

PART 301–8—REIMBURSEMENT OF ACTUAL SUBSISTENCE EXPENSES

8. The authority citation for part 301–8 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

9. Section 301–8.5 is amended by adding paragraph (a)(4) to read as follows:

§ 301–8.5 Requirements for documentation, review, and administrative controls.

(a) * * *

(4) *Fire safety responsibilities.* An employee traveling on official business is strongly encouraged to stay at an approved accommodation as defined in § 301–17.2(c) of this chapter. Each employee shall account, in accordance with his/her agency's procedures established under § 301–7.2 of this chapter, for the number of nights spent in approved accommodations as well as the number of nights spent in all places of public accommodation affecting commerce as defined in § 301–17.2(b) of this chapter.

PART 301–11—CLAIMS FOR REIMBURSEMENT

10. The authority citation for part 301–11 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

11. Section 301–11.2 is revised to read as follows:

§ 301–11.2 Records of travel and expenses.

(a) *Expenditure records.* All persons authorized to travel on official business (see certificate on travel voucher form) should keep a record of expenditures properly chargeable to the Government, noting each item at the time the expense is incurred and the date. The information thus accumulated will be available for the proper preparation of travel vouchers.

(b) *Approved accommodations data.* An employee is required under §§ 301–7.2(a)(4) and 301–8.5(a)(4) of this chapter to account for the number of nights spent in approved accommodations as well as the number of nights spent in all places of public accommodation affecting commerce as defined in § 301–17.2(b) of this chapter in accordance with procedures established by his/her agency pursuant to § 301–7.2(b)(2) of this chapter.

PART 301–16—CONFERENCE PLANNING

12. The authority citation for part 301–16 continues to read as follows:

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

§ 301–16.2 [Amended]

13. Section 301–16.2 is amended by removing paragraph (g).

14. Section 301–16.3 is revised to read as follows:

§ 301–16.3 Authorization of Government sponsorship or co-sponsorship of a conference.

(a) *General.* A senior agency official shall authorize Government sponsorship or co-sponsorship of a conference which involves travel by 30 or more employees.

(b) *Prohibition on use of a place of public accommodation that is not an approved accommodation*—(1) *General rule.* As provided in 15 U.S.C. 2225a, an agency, as defined in § 301–17.2(a) of this chapter, may not sponsor or fund in whole or in part a conference in any State, as defined in § 301–17.2(f) of this chapter, at a place of public accommodation that is not an approved accommodation as defined in § 301–17.2(c) of this chapter, unless a waiver is granted under paragraph (b)(2) of this section. This prohibition also applies to Federal funds expended by the government of the District of Columbia.

(2) *Waiver of the prohibition on scheduling a conference at a place of public accommodation that is not an approved accommodation.* An agency, as defined in § 301–17.2(a) of this chapter, may sponsor or fund in whole or in part a conference in any State, as defined in § 301–17.2(f) of this chapter, at a place of public accommodation that is not an approved accommodation when the agency head waives the prohibition in paragraph (b)(1) of this section based on his/her written determination that such waiver is necessary in the public interest for a particular event. The agency head may delegate the authority to waive the prohibition in paragraph (b)(1) of this section to a senior level official if such official is given the authority with respect to all conferences sponsored or funded by the agency.

(3) *Requirement to include prohibition notice on advertisements and applications for attendance at a conference.* As required by 15 U.S.C. 2225a, any advertisement or application for attendance at a conference sponsored or funded in whole or in part by an agency in any State, as defined in § 301–17.2(f) of this chapter, shall include a notice of the prohibition contained in paragraph (b)(1) of this section on holding a conference at a place of public accommodation that is not an approved accommodation. An agency shall not be required to include notice of the prohibition in any advertisement or application for attendance at a conference, however, when the agency head, or his/her designee, waives the prohibition in accordance with paragraph (b)(2) of this section.

(4) *Notification to non–Federal entities receiving Federal funds of the prohibition on scheduling a conference at a place of public accommodation that is not an approved accommodation.* As provided in 15 U.S.C. 2225a, an Executive agency, as defined in 5 U.S.C. 105, which provides Federal funds to a non–Federal entity shall notify the non–Federal entity receiving such funds of

the prohibition contained in paragraph (b)(1) of this section.

15. Section 301–16.4 is amended by revising paragraph (c)(1) to read as follows:

§ 301–16.4 Selection of a conference site.

* * * * *

(c) *Restrictions on selection of conference facilities*—(1) *Approved accommodations.* When an agency, as defined in § 301–17.2(a) of this chapter, holds a conference at a place of public accommodation, as defined in § 301–17.2(b) of this chapter, the agency shall use an approved accommodation as defined in § 301–17.2(c) of this chapter unless a waiver is granted under § 301–16.3(b)(2) of this part. Any advertisement or application for attendance at the conference shall include notice of the prohibition on using a place of public accommodation that is not an approved accommodation in accordance with § 301–16.3(b) of this part. In addition, any Executive agency as defined in 5 U.S.C. 105 shall notify all non–Federal entities to which it provides Federal funds of the prohibition.

* * * * *

16. Chapter 301 is amended by adding part 301–17 to read as follows:

PART 301–17—AGENCY TRAVEL DATA REQUIREMENTS

Subpart A—Approved Accommodations Data Reporting

Sec.

301–17.1 Applicability.
301–17.2 Definitions.
301–17.3 Approved accommodations percentage.
301–17.4 Agency compliance.

Subpart B—[Reserved]

Authority: 5 U.S.C. 5701–5709; E.O. 11609, 36 FR 13747, 3 CFR, 1971–1975 Comp., p. 586.

Subpart A—Approved Accommodations Data Reporting

§ 301–17.1 Applicability.

(a) This part applies to Federal agencies as defined in § 301–17.2(a) of this part.

§ 301–17.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Agency.* "Agency" has the same meaning it is given in § 301–1.3(c)(1) of this chapter except it does not include the government of the District of Columbia.

(b) *Place of public accommodation affecting commerce.* "Place of public accommodation affecting commerce" means any inn, hotel, or other establishment within a State that provides lodging to transient guests, except that such term does not include:

(1) An establishment owned by the Federal Government;

(2) An establishment treated as an apartment building for purposes of any State or local law or regulation; or

(3) An establishment located within a building that contains not more than 5 rooms for rent or hire and that is actually occupied as a residence by the proprietor of such establishment.

(c) *Approved accommodation.* "Approved accommodation" means any place of public accommodation that meets the requirements of the fire prevention and control guidelines in 15 U.S.C. 2225. (A master list of all approved accommodations is compiled, periodically updated, and published in the **Federal Register** by the Director of the Federal Emergency Management Agency. The statute (5 U.S.C. 5707a(b)) requires that the General Services Administration list only approved accommodations in any directory listing public accommodations.)

(d) *Approved accommodations percentage.* "Approved accommodations percentage" is the percentage of nights that an agency's employees traveling on official business spend in approved accommodations relative to the total number of nights spent in places of public accommodation.

(e) *Employee.* "Employee" has the same meaning it is given in § 301–1.3(c)(2) of this chapter and in § 302–1.4(c) of chapter 302 of this title, and does not include an interviewee as defined in § 301–1.3(c)(3) of this chapter.

(f) *State.* "State" means any State, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, the Canal Zone, Guam, American Samoa, or any other U.S. territory or possession.

§ 301–17.3 Approved accommodations percentage.

(a) *Scope.* An agency's approved accommodations percentage is based on all official travel in any State by the agency's employees. En route travel to the new official station and travel to seek residence quarters authorized in chapter 302 of this title shall be included in the calculation. Travel to an area other than a State as defined in § 301–17.2(f) of this part and pre-employment interview travel shall be excluded from the calculation.

(b) *Calculation.* Each agency shall compute its approved accommodations percentage as follows:

(1) Determine the total number of nights that agency employees performing official travel spent at an approved accommodation within any State;

(2) Determine the total number of nights that agency employees performing official travel spent at any place of public accommodation affecting commerce within any State;

(3) Divide the number determined in paragraph (b)(1) of this section by the number determined in paragraph (b)(2) of this section; and

(4) Multiply the quotient determined in paragraph (b)(3) of this section by 100 to determine the approved accommodations percentage.

§ 301–17.4 Agency compliance.

(a) *Required approved accommodations percentage.* Each agency shall institute procedures to ensure that its approved accommodations percentage is not less than:

(1) 65 percent for Fiscal Year 1995;

(2) 75 percent for Fiscal Year 1996; and

(3) 90 percent for Fiscal Year 1997, and each fiscal year thereafter.

(b) *Reporting requirement.* The General Accounting Office (GAO) is required to conduct an audit of agencies' compliance with the required approved accommodations percentage within 6 months following the end of each fiscal year designated in paragraph (a) of this section and to annually report the audit results to the Congress. Agencies shall maintain records of compliance and make the information available upon request to GAO for audit.

Subpart B—[Reserved]

Dated: August 25, 1994.

Roger W. Johnson,

Administrator of General Services.

[FR Doc. 94–22130 Filed 9–6–94; 8:45 am]

BILLING CODE 6820–24–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 24

[GEN Docket No. 90–314 and ET Docket No. 92–100; FCC 94–218]

Narrowband Personal Communications Services

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This *Second Memorandum Opinion and Order (2nd MO&O)* finalizes the service rules for the narrowband personal communications service (PCS). This action is taken in part on the Commission's own motion and in part in response to a petition for reconsideration of the *Memorandum Opinion and Order*. The changes adopted herein are intended to improve the fairness of the licensing process for narrowband PCS and provide for more effective use of the narrowband PCS spectrum.

EFFECTIVE DATE: October 7, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Mooring, Office of Engineering and Technology, (202) 653–8114.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *2nd MO&O* in GEN Docket No. 90–314 and ET Docket No. 92–100, adopted August 16, 1994, and released August 25, 1994. The complete *2nd MO&O* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037.

Summary of 2nd MO&O

Introduction

1. By this action, we are amending the rules concerning the licensing of "response channels" in the narrowband personal communications services (PCS). Response channels are channels that are set aside to provide existing paging systems with two-way capability, including acknowledgement of a page or advanced messaging capability. Specifically, we are modifying the definition of an existing paging licensee, the requirement that an existing paging licensee operate a base station in the area for which it is applying for a response channel and the rule limiting existing paging licensees to two response channels in any given geographic area. These changes are in response to a Petition for Reconsideration of the *Memorandum Opinion and Order* in this matter that was filed by the National Association of Business and Educational Radio, Inc. (NABER).[1] We are also modifying the attribution standards with regard to narrowband PCS channels and revising the Basic Trading Area (BTA) service area definition to provide two local service areas in Puerto Rico. We believe these changes will improve the fairness of the licensing process for narrowband PCS and provide for more effective use of the narrowband PCS spectrum.

Background

2. In the *First Report and Order*, we allocated three megahertz of spectrum at 900 MHz for the narrowband PCS service and adopted rules to govern narrowband PCS operation. As part of this action, we allotted eight 12.5 kHz wide response channels exclusively for use by existing common carrier and private paging licensees. In the *Memorandum Opinion and Order*, we designated four of the eight response channels for licensing at the Major Trading Area (MTA) level and four for licensing at the BTA level.[2] We also defined an existing paging licensee as a paging licensee authorized under Part 22 or Part 90, as of June 24, 1993, the adoption date of the *First Report and Order*. Additionally, we stated that to be eligible for a response channel license, an existing paging licensee must operate at least one base station in the MTA or BTA for which it requests a license. Finally, we limited each licensee to two paging response channels per geographic area.

3. On April 25, 1994, NABER submitted a Petition for Reconsideration of the *Memorandum Opinion and Order* requesting reconsideration and clarification of certain aspects of the eligibility and multiple ownership rules that apply to the response channels. Comments were filed by Paging Network, Inc. (PageNet);[3] no reply comments were filed.

Discussion

Eligibility for Response Channel Licenses

4. As indicated above, we limited eligibility for acquiring narrowband PCS response channels to existing paging licensees and defined an existing paging licensee to be a paging licensee authorized under Part 22 or Part 90 of our rules as of June 24, 1993. We also required that the existing paging licensee operate at least one base station in any MTA or BTA for which it requests a response channel.

5. In its petition, NABER requests that the eligibility requirement to operate a base station in the service or trading area for which a response channel is sought be changed to a requirement that the applicant merely provide coverage within the trading area. NABER argues that basing eligibility on the location of a transmitter instead of coverage area could prevent operators from obtaining response channels. It states that the coverage provided by a single base station may include more than one BTA and that thus, under the adopted rules, the operator would not be eligible for response channels in all of the BTAs in which it provides conventional one-way paging services. NABER recommends that we allow paging licensees to apply for response channels in trading areas that are within 25 miles of the geographic coordinates of any base station licensed as of May 10, 1994, the release date of the *Third Report and Order* in PP Docket No. 93–253 59 FR 26741, May 24, 1994.[4]

6. NABER also requests that we clarify whether the June 24, 1993, date for determining whether an entity is an existing paging licensee is applicable in determining the area of operation for license eligibility purposes. It notes that an existing carrier, initially licensed as of June 24, 1993, may have expanded or constructed its system into adjacent areas after June 24, 1993. NABER contends that such a carrier should be able to include its current coverage area for purposes of obtaining response channels so as to make its entire system compatible and competitive even though parts of it were constructed or put into operation after June 24, 1993.

7. PageNet, in its comments, generally supports the rule modifications suggested by NABER. In addition, PageNet requests that the rule limiting applicants to only Part 22 and Part 90 licensees as of June 24, 1993, be eliminated or modified. It argues that this restriction is not needed to prevent speculative or frivolous applications under an auction regime and that the ability to improve service should not be arbitrarily restricted to those that were licensees on a certain date. PageNet requests that the rules be modified to

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[1] *See Memorandum Opinion and Order*, 59 FR 14115 (March 25, 1994). The *Memorandum Opinion and Order* was issued in response to petitions for reconsideration and clarification of the *First Report and Order*, 58 FR 42681 (August 11, 1993).

[2] *See* Rand McNally, *1992 Commercial Atlas & Marketing Guide*, at pages 38–39. Rand McNally organizes the 50 States and the District of Columbia into 47 MTAs and 487 BTAs. For PCS licensing purposes, we adopted service areas based on the Rand McNally MTA and BTA definitions with certain exceptions. In particular, we separated Alaska from the Seattle MTA and added five insular areas: Puerto Rico, U.S. Virgin Islands, Guam, Northern Mariana Islands, and American Samoa. In our rules, the insular areas are treated as five BTA service areas and three MTA service areas, *see* Section 24.102 of the Commission's Rules.

[3] PageNet's comments were filed 33 days late. In a petition for acceptance of late-filed comments, PageNet states that it did not focus on NABER's petition until it was reviewing the proposed auction rules for the response channels. In the interest of considering a full record in this matter, we are accepting PageNet's comments.

[4] This recommendation was submitted by NABER in an *ex parte* presentation to the Commission's staff on June 29, 1994.

permit applications for response channels by any licensee operating a system serving at least some portion of the market on the date the application is filed.

8. Our decision to license the response channels on an MTA and BTA basis and to require operation of a base station transmitter in the service area was intended to facilitate our licensing process and provide a simple method for determining mutually exclusive applications. Existing paging stations are currently licensed on a mileage separation basis rather than an MTA and BTA basis. We concur with the parties that there are advantages to basing eligibility on the coverage area of existing base stations. As noted by NABER, a single base station may often cover more than one BTA. We therefore find that a coverage area standard for response channel eligibility would better conform with the service needs of existing paging operations. Accordingly, we are amending our rules to permit licensees to obtain response channels sufficient to upgrade existing paging systems over their entire coverage area.

9. We also believe that a simple "brightline" test is needed for determining the coverage area of existing paging systems in order to facilitate the licensing of response channels. In considering this issue, we note that while existing paging operations include several classes of operations with varying service radii, a 20-mile (32.2 kilometer) radius of reliable service is typical of paging operations. We therefore believe that a 20-mile service radius would better reflect the service areas of most existing paging operations than the 25-mile standard suggested by NABER. At the same time, we recognize that, as specified in our rules, some paging operations have service areas larger than 20 or 25 miles. Accordingly, we will consider the service radius of a paging transmitter to be 20 miles for purposes of determining eligibility for response channel licenses, except that for certain classes of high-powered paging stations we will use a graduated series of wider service radii specified in our paging rules.[5] This standard will establish a clear and concise test for all applicants and minimize the administrative burden on our resources. Existing paging licensees will be eligible for response channels in any BTA or MTA that encompasses an authorized base station or which is partly or wholly overlapped by the paging system's service area as defined above.

10. We also find merit in NABER's request to allow existing licensees that expand their service areas after June 24, 1993, to be eligible for response channels in the expanded service areas. This request is consistent with our decision to provide opportunities for upgrading existing paging operations. We further agree with PageNet that any licensee operating a system that serves some portion of a market should be eligible to apply for response channels in that market, regardless of whether the licensee was operating before June 24, 1993. In this regard, we see no reason why operators of existing systems that have been expanded into adjacent trading areas after June 24, 1993, should be entitled to bid for response channels in newly served areas while operators of new systems authorized after that date should be barred from bidding for those channels. We therefore conclude that, as a matter of equity, the eligibility criterion should be modified to permit any paging licensee to apply for the response channels in a market, so long as the licensee's system serves some portion of that market on the date the application is filed. In particular, we note that on October 21, 1993, we adopted amendments to our private paging rules that resulted in the issuance of substantial numbers of new licensees for conventional paging. We find that licensees of both expanded systems and new systems authorized after June 24, 1993, should have an opportunity to purchase the response channels. Accordingly, we are amending the eligibility requirements for holding narrowband PCS response channels as follows. Existing paging licensees will be defined as paging licensees authorized under Part 22 or Part 90 of our Rules as of the deadline for filing applications to participate in the competitive bidding for the paging response channels.[6] This application filing deadline will be established in a public notice.

Acquisition of Multiple Response Channels

11. In the *Memorandum Opinion and Order*, we limited existing paging licensees to acquisition of two response channels in a given geographic area. Our intent in imposing this limit was to allow an opportunity for at least four existing paging licensees to upgrade their operations. NABER agrees that the two channel limit is useful as it relates to the initial auctioning of frequencies and that it should serve as a protective measure against the hoarding of response channels by a few carriers. NABER is concerned, however, that this rule could interfere with the orderly operation of the marketplace if maintained on a long term basis. It states that when paging licensees merge or are acquired, the response channels used with their systems should be transferred as an integral part of the new system. Such transfers would not be permitted under the current rules if the acquiring operator would end up with more than two response channels in a particular service area. NABER recommends that we modify the two channel limit to provide that, under certain conditions, existing paging licensees would not be subject to a limit on the number of response channels they could acquire at any time after the initial grants of the licenses for those channels are final.[7] Under NABER's proposal, aggregation of response channels would be limited to parties that acquire the channels as part of an existing system or to supplement their own existing system. It suggests that approval for such acquisitions be conditioned on a review by the Commission to ensure that the purpose of the rule would not be violated and that this scrutiny be relaxed after one year.

12. Our purpose in adopting the two-channel limit was to ensure that at least four existing paging licensees will have the opportunity to upgrade their one-way services. We now believe that once the existing paging licensees have had an opportunity to obtain response channels and the competitive structure of narrowband PCS markets have taken form, it will not be necessary to limit the number of response channels a

[5] In the case of "F," "G," "H," or "K" class paging stations under both Sections 22.502(c) and 90.495(b)(1) of our rules, the service area for purposes of response channel eligibility will be defined by the service area radius specified in Section 22.504(b)(2).

[6] Mercury Communications, Inc. (Mercury) filed a petition for clarification of the *Third Report and Order* in the competitive bidding proceeding (PP Docket No. 93–253) requesting that the June 24, 1993 date apply only to the initial auction and that this date not apply should response channels remain available following the initial auction. Mercury states that it is an applicant to provide private carrier paging service at numerous locations in the New York City metropolitan area, but was not authorized in that area as of June 24, 1993. Mercury argues that it would not serve the public interest to forever preclude companies not authorized as of June 24, 1993 because paging is a dynamic, evolving industry. We believe that the revised rules we are adopting herein will remedy the inequity to which Mercury refers.

[7] This description of NABER's recommendation includes clarifications that were submitted in its *ex parte* presentation to the Commission's staff on June 29, 1994. NABER had initially suggested that this problem be resolved by providing for waivers of the rule or by establishing a sunset date after which the rule would be automatically eliminated.

paging licensee may hold.[8] We agree with NABER that in cases where paging systems are merged or acquired, the seller should be permitted to transfer the response channels as well. At that point, the response channels would be integral to the individual systems that are merged, and we see no reason to require that they be divested. We also agree with NABER that eliminating the rule immediately after the initial licensing auction could encourage frivolous bidding in the auction process. We therefore find that NABER's initial suggestion for providing a sunset period is reasonable, and believe that a period of two years will be sufficient to discourage such speculation. Accordingly, we are amending the rules to provide that the two response channel per market limit will expire two years after the date of initial license grant. We believe that this sunset provision addresses NABER's concerns and that additional scrutiny by the Commission of response channel acquisitions would impose an unnecessary administrative burden.

Ownership Attribution

13. The narrowband PCS rules provide that licensees shall not have an ownership interest in more than three narrowband PCS channels in any geographic area. The rules further provide that, for the purpose of this restriction, a licensee is any person or entity with an ownership interest of five or more percent in an entity holding a narrowband PCS license.[9] On our own motion, we reconsider this attribution requirement as it applies to indirect ownership of narrowband PCS licenses. In cases where a party has indirect ownership, through an interest in an intervening corporation or partnership that has less than a controlling ownership in a narrowband PCS license, we consider whether to apply a "multiplier" to determine the effective ownership interest of that party. A multiplier is currently used in our attribution rules for broadcast licenses, and has recently been adopted for broadband PCS licenses, by multiplying together each non-majority, non-controlling interest in a license to determine the effective ownership interest of a party whose interest is held through intervening entities. For example, if Party X owns a 25-percent non-controlling interest in Corporation Y that holds a 10-percent non-controlling interest in Licensee Z, Party X would be deemed to have a 2.5-percent effective ownership interest in Licensee Z. Use of a multiplier allows the Commission to accurately take account of a party's "actual involvement with the ultimate licensee" as well as the party's ability to exert control over that licensee.

14. In the *Memorandum Opinion and Order*, we adopted a flat five percent attribution rule for any party that has any ownership interest in an entity holding a narrowband PCS license to ensure that no person or entity is able to exert undue market power through partial ownership in multiple narrowband PCS licensees in a single service area. We did not specify that both direct and indirect interests in a narrowband PCS licensee were attributable. *Compare* Section 24.204 (a), (d)(2)(viii) of the Commission's Rules. On reconsideration, we conclude that consideration of indirect ownership interests, through the use of a multiplier in future application proceedings,[10] will better facilitate a competitive narrowband PCS market. Under our prior rule, a party that has an ownership interest in a company that has a non-controlling ownership interest in a narrowband PCS licensee would be permitted to acquire an attributable ownership interest in three additional narrowband PCS licensees in the same area. For example, if Party A has a 40-percent non-controlling ownership interest in Company B, which in turn has a 40-percent non-controlling ownership interest in Narrowband PCS Licensee C, Party A (having only an indirect interest in Licensee C) would, under this rule, be permitted to acquire an attributable ownership interest in Narrowband PCS Licensees D, E, and F in the same area. By contrast, when considering its indirect ownership interest under the multiplier approach, Party A would be deemed to have a 16-percent effective ownership interest in Narrowband PCS Licensee C, well in excess of our five percent limitation, and would therefore be permitted to have an attributable ownership interest in only two additional narrowband PCS licensees in the same area.

15. We also find that using a multiplier to calculate the effective indirect ownership interest will better promote a competitive narrowband PCS market than attributing to a party in full the ownership interest of an intervening company in a narrowband PCS licensee. This approach would likely exclude parties that pose no threat to competition and prevent a party that has neither the ability to exert control nor a substantial financial stake in a narrowband PCS licensee from acquiring an attributable ownership interest in more than two additional narrowband PCS licensees in the same area. In the example in paragraph 13, *supra*, Corporation Y's 10 percent non-controlling interest in Licensee Z would be deemed in excess of the five percent threshold applicable to narrowband PCS ownership. Thus, Party X, which has a 25-percent non-controlling interest in Corporation Y, would be restricted to acquiring an attributable ownership interest in only two additional narrowband PCS licensees in the same area despite its inability to exert control or significant influence over the operations of Licensee Z. By contrast, use of a multiplier produces an effective ownership interest of only 2.5 percent by Party X in Licensee Z, permitting Party X to acquire an attributable ownership interest in three additional narrowband PCS licensees in the same area.

16. Considerations of true economic interest in, and ability to control, a licensee are crucial in determining whether a particular indirect ownership interest could affect the degree of competition in a market and therefore should be attributed to the holder for purposes of our multiple ownership rules. These considerations apply equally in the broadband and narrowband PCS contexts. Accordingly, a multiplier similar to that used in applying our attribution rules in broadband PCS will be used to determine effective ownership interests in narrowband PCS licensing. We therefore will amend Section 24.101 of our rules to include the use of a

[8] We do not believe that it is necessary to maintain the two channel limit in order to ensure a competitive market for narrowband PCS services in the long run. In this regard we note that our rules provide for twenty-one 50 kHz based narrowband PCS licenses with associated response channels at any geographic point. Nine of these response channels are 50 kHz (five nationwide, two regional, and two MTA channels) and twelve are 12.5 kHz (three nationwide, four regional, three MTA, and two BTA channels). Thus, existing paging licensees that operate narrowband PCS services using response channels will compete with other narrowband PCS licensees in each area.

[9] As we have stated in addressing interests acquired at auction, where common non-controlling ownership exists between two or more bidders and such bidders cumulatively obtain more licenses than permitted, we permit divestiture of non-controlling interests to bring the entities into compliance if completed within 90 days of license grant. *Third Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, PP Docket No. 93–253, GEN Docket No. 90–314, and ET Docket No. 92–100, FCC 94–219 at ¶ 29 (adopted August 16, 1994). Further, both investors and corporate licensees have a continuing obligation to be vigilant in monitoring relevant holdings to ensure compliance.

[10] The multiplier rule will not be applied to Mobile Telecommunication Technologies Corporation's pioneer's preference license for a nationwide channel, or to the other ten nationwide channels that already have been auctioned. We do not believe that it would be equitable to apply this new rule retroactively.

multiplier to determine whether an entity holding an indirect non-controlling interest in a narrowband PCS licensee has an attributable interest for the purpose of our multiple ownership rules. As in our broadcast and broadband PCS rules, where an entity's ownership interest in any link in the ownership chain is greater than 50 percent or is controlling, the interest will be treated as if it were 100 percent for the purposes of applying the multiplier.

Local Service Areas in Puerto Rico

17. In response to a suggestion by Pegasus Communications, Inc. (Pegasus) in the recent broadband PCS proceeding, we are revisiting the local service area adopted for the Commonwealth of Puerto Rico. We currently treat Puerto Rico as a BTA for narrowband PCS licensing purposes. In the broadband PCS proceeding, Pegasus requested that we divide the Puerto Rico service area into two local service areas and suggested that we likewise establish two BTA-like service areas in Puerto Rico for the narrowband PCS service. Pegasus argued that due to the size and mountainous terrain of the island, Puerto Rico essentially is split in half, comprising two commercial centers: San Juan and Mayagüez-Ponce. Pegasus stated that these mountains make travel to San Juan difficult for Puerto Ricans located in the southern and western portions of the island, and therefore they must conduct essentially all commerce in the port cities of Mayagüez, Aguadilla, or Ponce. Pegasus also stated that the population of its proposed Mayagüez/Aguadilla-Ponce service area is more than one million and this area would be larger in population than several of the existing BTAs. Pegasus provided a list of municipios that it suggests constitute the Mayagüez/Aguadilla-Ponce service area and suggested that the San Juan service area consist of all municipios not listed for the Mayagüez/Aguadilla-Ponce BTA-like service area.[11] No party responded to this petition. In our *Memorandum Opinion and Order* on broadband PCS, we adopted Pegasus's suggestion and provided two separate service areas in Puerto Rico, one for Mayagüez/Aguadilla-Ponce and one for San Juan. This change recognized the difficulties created by the mountain range separating these two areas. We also stated that no parties opposed this request[12] and that we found this adjustment to be in the public interest.

18. We agree with Pegasus that it is desirable to modify the Puerto Rico narrowband PCS service area to specify two BTA-like service areas in the same manner as our action in the broadband PCS proceeding. The 1990 census for Puerto Rico is 3,522,037. The population of the new Mayagüez/Aguadilla-Ponce service area is 1,048,473 and the population of the new San Juan service area is 2,473,564. Only 49 of the remaining 491 BTAs have a population of greater than 1,048,473 and only 18 BTAs have a population greater than 2,473,564. We find that the population of each of these service areas is sufficient to support advanced narrowband PCS services.[13] Additionally, we conclude that the patterns of local trade caused by the mountainous terrain of the island make the proposed division economically and geographically desirable. Accordingly, we are providing two BTA-like service areas in Puerto Rico for narrowband PCS service. This modification will apply to all BTA channels in the narrowband PCS service, *i.e.*, both the eight paging response channels and the two 50 kHz paired with 12.5 kHz channels.

Ordering Clauses

19. Accordingly, *it is ordered*, That Part 24 of the Commission's Rules is amended as specified below, effective 30 days after publication in the **Federal Register**.

20. *It is further ordered*, That the Petition for Reconsideration filed by the Association of Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc. is granted to the extent discussed above. *It is further ordered*, That the Petition for Acceptance of Late-filed Comments by Paging Network, Inc. is granted.

21. This action is taken pursuant to Sections 4(i), 7(a), 302, 303(c), 303(f), 303(g), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) 157(a), 302, 303(c), 303(f), 303(g), and 303(r).

List of Subjects in 47 CFR Part 24

Personal communications service, Radio.

[11] The primary political divisions of Puerto Rico are termed "municipios."

[12] We note, however, that Puerto Rico Telephone Company has filed a petition for reconsideration of the broadband PCS *Memorandum Opinion and Order*, in which it requests that we reconsider our decision to divide Puerto Rico into two BTAs.

[13] We note that Puerto Rico is licensed as five Metropolitan Statistical Areas (MSAs) and seven Rural Service Areas (RSAs) in the Domestic Public Cellular Radio Telecommunications Service.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 24 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 24—PERSONAL COMMUNICATIONS SERVICES

1. The authority citation in Part 24 is revised to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332, unless otherwise noted.

2. Section 24.101 is revised to read as follows:

§ 24.101 Multiple ownership restrictions.

(a) Narrowband PCS licensees shall not have an ownership interest in more than three of the 26 channels listed in Section 24.129 in any geographic area. For the purpose of this restriction, a narrowband PCS licensee is any person or entity with an ownership interest of five or more percent in a narrowband PCS license.

(b) In cases where a party applies for a license after August 16, 1994 or has a license transferred to it after that date, and the party has indirect ownership, through an interest in an intervening entity (or entities) that has ownership in the narrowband PCS license, that indirect ownership shall be attributable if the percentages of ownership at each level, multiplied together, equal five or more percent ownership of the narrowband PCS license, except that if the ownership percentage for an interest in any link in the chain exceeds 50 percent or represents actual control, it shall be treated as if it were a 100 percent interest.

Example: Party X has a non-controlling ownership interest of 25 percent in Company Y, which in turn has a non-controlling ownership interest of 10 percent in Company Z, the narrowband PCS licensee. Party X's effective ownership interest in Company Z is Party X's ownership interest in Company Y (25 percent) times Company Y's ownership interest in Company Z (10 percent). Therefore, Party X's effective ownership interest in Company Z is 2.5 percent, and is not attributable.

3. Section 24.102 is amended by revising paragraph (d) to read as follows:

§ 24.102 Service areas.

* * * * *

(d) The BTA service areas are based on the Rand McNally *1992 Commercial Atlas & Marketing Guide*, 123rd Edition, at pages 38–39, with the following additions licensed separately as BTA-

like areas: American Samoa; Guam; Northern Mariana Islands; Mayagüez/Aguadilla-Ponce, Puerto Rico; San Juan, Puerto Rico; and the United States Virgin Islands. The Mayagüez/Aguadilla-Ponce BTA-like service area consists of the following municipios: Adjuntas, Aguada, Aguadilla, Añasco, Arroyo, Cabo Rojo, Coamo, Guánica, Guayama, Guayanilla, Hormigueros, Isabela, Jayuya, Juana Díaz, Lajas, Las Marías, Maricao, Maunabo, Mayagüez, Moca, Patillas, Peñuelas, Ponce, Quebradillas, Rincón, Sabana Grande, Salinas, San Germán, Santa Isabel, Villalba, and Yauco. The San Juan BTA-like service area consists of all other municipios in Puerto Rico.

4. Paragraph (a) of Section 24.130 is revised to read as follows:

§ 24.130 Paging response channels.

(a) The channels listed in paragraphs (b) and (c) of this section are available to licensees of conventional one-way paging base stations licensed pursuant to Part 22 or Part 90 of this chapter as of the application filing deadline for the paging response channels. Eligibility for response channels shall be based on the authorized service area of each existing paging licensee. This service area is defined as the area within a 32.2 kilometer radius of the licensee's base stations or, in the case of "F," "G," "H," or "K" class stations under Sections 22.502(c) and 90.495(b)(1) of this chapter, as the area that is within the service area radius specified in Section 22.504(b)(2) of this chapter. Existing paging licensees are eligible to bid for any response channel in any BTA or MTA which encompasses an authorized base station or which is partly or wholly overlapped by a licensee's service area. These channels shall be used only in paired communications with existing paging channels to provide mobile-to-base station communications. Until two years after the date of initial license grant, eligible paging licensees are limited to a maximum of two response channels within the same geographic area. Licenses for paging response channels are not counted toward the multiple ownership restrictions of Section 24.101.

* * * * *

[FR Doc. 94–21844 Filed 9–6–94; 8:45 am]

BILLING CODE 6712–01–M

Proposed Rules

Federal Register
Vol. 59, No. 172
Wednesday, September 7, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AG12

Prevailing Rate Systems; Special Wage Schedules for Supervisors of Negotiated Rate Bureau of Reclamation Employees

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to establish special wage schedules for the supervisors of certain Bureau of Reclamation, Department of the Interior, employees who negotiate their wage rates.

DATES: Comments must be submitted on or before October 7, 1994.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Acting Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, Room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: Bureau of Reclamation electrical power employees in mixed bargaining units (including both workers and supervisors) were historically paid negotiated rates under the authority of section 9(b) of Pub. L 92–392 and section 704 of Pub. L. 95–454. The historical practice was to pay supervisors a negotiated percentage differential above the rates of the workers supervised.

In 1989, the Department of the Interior began pulling supervisors out of these mixed bargaining units as contracts expired, and a new method of paying the supervisors was needed. In 1990, OPM approved a temporary set-aside practice under former Federal Personnel Manual Supplement 532–1, Appendix V, Listing of Agency Special Wage Schedules and Rates Documented Under the Federal Wage System (FWS), to continue paying existing negotiated supervisory differentials for the supervisors removed from the bargaining units. This was based on expected serious, pay-based recruitment and retention problems if supervisors were placed on regular FWS schedules.

The Department of the Interior has now requested the authority to establish FWS special wage schedules for the supervisors that use a special job evaluation system and pay rates based on wage surveys of private sector supervisory jobs. The special wage schedules would cover approximately 109 supervisors in 13 special wage areas (Great Plains Region, Mid-Pacific Region, Green Springs Power Field Station, Pacific Northwest Region Drill Crew, Snake River Area Office, Hungry Horse Project Office, Grand Coulee Power Office, Upper Columbia Area Office (Yakima), Colorado River Storage Project Area, Elephant Butte Area, Lower Colorado Dams Area, Yuma Projects Area, and Bureau of Reclamation, Denver). Positions formerly evaluated as Foremen II, III, and IV under the Department of the Interior Evaluation Plan for Supervisory and Leader Positions are covered.

No current employee will have his or her pay rate reduced as a result of these new special schedules. During implementation of the new special schedules, the initial special wage schedules will not be subject to statutory pay increase limitations.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Subpart B is amended by adding § 532.285 to read as follows:

§ 532.285 Special wage schedules for supervisors of negotiated rate Bureau of Reclamation employees.

(a) The Department of the Interior shall establish and issue special wage schedules for wage supervisors of negotiated rate wage employees in the Bureau of Reclamation. These schedules shall be based on annual special wage surveys conducted by the Bureau of Reclamation in each special wage area. Survey jobs representing Bureau of Reclamation positions at up to four levels will be matched to private industry jobs in each special wage area. Special schedule rates for each position will be based on prevailing rates for that particular job in private industry.

(b) Each supervisory job shall be described at one of four levels corresponding to the four supervisory situations described in Factor I and four levels of Subfactor IIIA of the FWS Job Grading Standard for Supervisors. They shall be titled in accordance with regular FWS practices with the added designation of level I, II, III, or IV. The special survey and wage schedule for a given special wage area includes only those occupations and levels having employees in that area. For each position on the special schedule, there shall be three step rates. Step 2 is the prevailing rate as determined by the survey, step 1 is 96 percent of the prevailing rate, and step 3 is 104 percent of the prevailing rate.

(c) For each special wage area, the Bureau of Reclamation shall designate and appoint a special wage survey committee, including a chairperson and two other members (at least one of whom shall be a supervisor paid from the special wage schedule), and one or more two-person data collection teams (each of which shall include at least one supervisor paid from the special wage schedule). Full-scale surveys shall be planned and conducted in each area at least every 3 years, with wage change surveys in each intervening year. More frequent full-scale surveys may be scheduled to balance the agency survey workload. The local wage survey committee shall determine the prevailing rate for each survey job as a weighted average. Survey specifications are as follows for all surveys:

(1) Tailored to the Bureau of Reclamation activities and types of supervisory positions in the special wage area, private industry companies to be surveyed shall be selected from among the following Standard Industrial Classification Major Groups: 12 coal mining; 13 oil and gas extraction; 14 mining and quarrying of nonmetallic minerals, except fuels; 35 manufacturing industrial and commercial machinery and computer equipment; 36 manufacturing electronic and other electrical equipment and components, except computer equipment; 42 motor freight transportation and warehousing; 48 communications; 49 electric, gas, and sanitary services; and 76 miscellaneous repair services. No minimum employment size is required for surveyed establishments.

(2) Each local wage survey committee shall compile lists of all companies in the survey area known to have potential job matches. For the first survey, all companies on the list will be surveyed. Subsequently, companies shall be removed from the survey list if they prove not to have job matches, and new companies will be added if they are expected to have job matches. Survey data will be shared with other local wage survey committees when the data from any one company is applicable to more than one special wage area.

(3) For each area, survey job descriptions shall be tailored to correspond to the position of each covered supervisor in that area. They will be described at one of four levels (I, II, III, or IV) corresponding to the definitions of the four supervisory situations described in Factor I and four levels of Subfactor IIIA of the FWS Job Grading Standard for Supervisors. A description of the craft, trade, or labor work supervised will be included in each supervisory survey job description.

(d) Special wage area boundaries shall be identical to the survey areas covered by the special wage surveys. The areas of application in which the special schedules will be paid are smaller than the survey areas, reflecting actual Bureau of Reclamation worksites and the often scattered location of surveyable private sector jobs. Special wage schedules shall be established in the following areas:

The Great Plains Region

Special Wage Survey Area (Counties)

Montana: All counties except Lincoln, Sanders, Lake, Flathead, Mineral, Missoula, Powell, Granite, and Ravalli
Wyoming: All counties except Lincoln, Teton, Sublette, Uinta, and Sweetwater
Colorado: All counties except Moffat, Rio Blanco, Garfield, Mesa, Delta, Montrose, San Miguel, Ouray, Delores, San Juan, Montezuma, La Plata, and Archuleta
North Dakota: All counties
South Dakota: All counties

Special Wage Area of Application (Counties)

Montana: Broadwater, Jefferson, Lewis and Clark, Yellowstone, and Bighorn counties
Wyoming: All counties except: Lincoln, Teton, Sublette, Uinta, and Sweetwater
Colorado: Boulder, Chaffee, Clear Creek, Eagle, Fremont, Gilpin, Grand, Lake, Larimer, Park, Pitkin, Pueblo, and Summitt
Beginning month of survey: August

The Mid-Pacific Region

Special Wage Survey Area (Counties)

California: Shasta, Sacramento, Butte, San Francisco, Merced, Stanislaus

Special Wage Area of Application (Counties)

California: Shasta, Sacramento, Fresno, Alameda, Tehama, Tuolumne, Merced
Beginning month of survey: October

Green Springs Power Field Station

Special Wage Survey Area (Counties)

Oregon: Jackson

Special Wage Area of Application (Counties)

Oregon: Jackson
Beginning month of survey: April

Pacific NW. Region Drill Crew

Special Wage Survey Area (Counties)

Montana: Flathead, Missoula
Oregon: Lane, Bend, Medford, Umatilla, Multnomah
Utah: Salt Lake
Idaho: Ada, Canyon, Adams
Washington: Spokane, Grant, Lincoln, Okanogan

Special Wage Area of Application (Counties)

Oregon: Deschutes, Jackson, Umatilla
Montana: Missoula
Idaho: Ada
Washington: Grant, Lincoln, Douglas, Okanogan, Yakima
Beginning month of survey: April

Snake River Area Office (Central Snake/ Minidoka)

Special Wage Survey Area (Counties)

Idaho: Ada, Caribou, Bingham, Bannock

Special Wage Area of Application (Counties)

Idaho: Gem, Elmore, Bonneville, Minidoka, Boise, Valley, Power
Beginning month of survey: April

Hungry Horse Project Office

Special Wage Survey Area (Counties)

Montana: Flathead, Missoula, Cascade, Sanders, Lake
Idaho: Bonner

Special Wage Area of Application (Counties)

Montana: Flathead
Beginning month of survey: March

Grand Coulee Power Office (Grand Coulee Project Office)

Special Wage Survey Area (Counties)

Oregon: Multnomah
Washington: Spokane, King

Special Wage Area of Application (Counties)

Washington: Grant, Douglas, Lincoln, Okanogan
Beginning month of survey: April

Upper Columbia Area Office (Yakima)

Special Wage Survey Area (Counties)

Washington: King, Yakima
Oregon: Multnomah

Special Wage Area of Application (Counties)

Washington: Yakima
Oregon: Umatilla
Beginning month of survey: September

Colorado River Storage Project Area

Special Wage Survey Area (Counties)

Arizona: Apache, Coconino, Navajo
Colorado: Moffat, Montrose, Routt, Gunnison, Rio Blanco, Mesa, Garfield, Eagle, Delta, Pitkin, San Miguel, Delores, Montezuma, La Plata, San Juan, Ouray, Archuleta, Hindale, Mineral
Wyoming: Unita, Sweetwater, Carbon, Albany, Laramie, Goshen, Platte, Niobrara, Converse, Natrona, Fremont, Sublette, Lincoln
Utah: Beaver, Box Elder, Cache, Carbon, Daggett, Davis, Duchesne, Emery, Garfield, Grand, Iron, Juab, Kane, Millard, Morgan, Piute, Rich, Salt Lake, San Juan, Sanpete, Sevier, Summit, Tooele, Uintah, Utah, Wasatch, Washington, Wayne, Weber

Special Survey Area of Application (Counties)

Arizona: Coconino
Colorado: Montrose, Gunnison, Mesa
Wyoming: Lincoln
Utah: Daggett
Beginning month of survey: March

Elephant Butte Area

Special Wage Survey Area (Counties)

New Mexico: Grant, Hidalgo, Lune, Doña Ana, Otero, Eddy, Lea, Roosevelt, Chaves, Lincoln, Sierra, Socorro, Catron, Cibola, Valencia, Bernalillo, Torrance, Guadalupe, De Baca, Curry, Quay
Texas: El Paso, Hudspeth, Culberson, Jeff Davis, Presido, Brewster, Pecos, Reeves, Loving, Ward, Winkler
Arizona: Apache, Greenlee, Graham, Cochise

Special Wage Area of Application (Counties)

New Mexico: Sierra
Beginning month of survey: June

Lower Colorado Dams Area

Special Wage Survey Area (Counties)

Nevada: Clark
California: Los Angeles
Arizona: Maricopa

Special Wage Area of Application (Counties)

Nevada: Clark
California: San Bernadino
Arizona: Mohave

Beginning month of survey: August

Yuma Projects Area

Special Wage Survey Area (Counties)

California: San Diego
Arizona: Maricopa, Yuma

Note: Bureau of Reclamation may add other survey counties for dredge operator supervisors because of the uniqueness of the occupation and difficulty in finding job matches.)

Special Wage Area of Application (Counties)

Arizona: Yuma
Beginning month of survey: November (Maintenance) and April (Dredging)

Bureau of Reclamation, Denver, Co, Area

Special Wage Survey Area (Counties)

Colorado: Jefferson, Denver, Adams, Arapahoe, Boulder, Larimer

Special Wage Survey Area of Application (Counties)

Colorado: Jefferson
Beginning month of survey: February

(e) These special schedule positions will be identified by pay plan code XE, grade 00, and the Federal Wage System occupational codes will be used. New employees shall be hired at step 1 of the position. With satisfactory or higher performance, advancement between steps shall be automatic after 52 weeks of service.

(f)(1) In the first year of implementation (fiscal year 1995), all special areas will have full-scale surveys.

(2) Current employees shall be placed in step 2 of the new special schedule or, if their current rate of pay exceeds the rate for step 2, they shall be placed in step 3. Pay retention shall apply to any employee whose rate of basic pay would otherwise be reduced as a result of placement in these new special wage schedules.

(3) The waiting period for within-grade increases shall begin on the employee's first day under the new special schedule.

[FR Doc. 94–21934 Filed 9–6–94; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 981

[FV94–981–3PR]

Almonds Grown in California; Proposed Salable, Reserve, and Export Percentages for the 1994–95 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: This proposed rule invites comments on the establishment of salable, reserve, and export percentages for California almonds received by handlers during the 1994–95 almond crop year, which commenced on July 1, 1994. Based on the recommendation of the Almond Board of California (Board), the agency which locally administers the almond marketing order, and other available information, it is proposed to establish salable, reserve, and export percentages of 90 percent, 10 percent, and 0 percent, respectively. This proposed rule is authorized under the marketing order for almonds grown in California and is intended to promote orderly marketing conditions and avoid unreasonable fluctuations in supplies and prices.

DATES: Comments must by received by September 22, 1994.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, D.C. 20090–6456, FAX (202) 720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Kathleen M. Finn, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2536–S, P.O. Box 96456, Washington, D.C. 20090–6456; telephone: (202) 720–1509, or FAX (202) 720–5698; or Martin Engeler, Assistant Officer-in-Charge, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, Suite 102–B, Fresno, CA 93721; telephone: (209) 487–5901, or FAX (209) 487–5906.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 981 [7 CFR Part 981], both as amended, hereinafter referred to as the "order", regulating the handling of almonds grown in California. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

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

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposal is not intended to have retroactive effect. The proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

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

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

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

There are approximately 115 handlers of almonds who are subject to regulation under the marketing order and approximately 7,000 producers in the regulated area. Small agricultural service firms are defined as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000. The majority of handlers and producers of California almonds may be classified as small entities.

The National Agricultural Statistics Service estimates 1994 California almond production at 640 million kernelweight pounds, 31 percent larger than last year. If realized, this could be one of the largest crops on record.

In order to lessen the impact of this projected large almond supply facing the industry, the Board, at its July 7, 1994, meeting in Modesto, California, recommended establishing salable, reserve, and export percentages for the 1994–95 crop year by a vote of seven to three. This proposal would require handlers of California almonds to withhold, as a reserve, from normal domestic and export markets, 10 percent of the merchantable almonds they receive from growers during the 1994–95 crop year. The remaining 90 percent (the salable percentage) of the crop could be sold by handlers in any market at any time. The last year salable and reserve percentages were established was the 1991–92 crop year.

Almond production, like that of many agricultural commodities, can vary significantly from season-to-season due to a variety of factors. This in turn can cause wide fluctuations in prices. For example, the Board has estimated grower prices increased from $1.26 per pound for 1992 crop almonds to nearly $2.00 per pound for 1993 crop almonds, when the corresponding estimated shipments for those crop years were 535.9 million pounds and 497.7 million pounds, respectively. The large 1994 California almond crop estimate has caused early speculation of grower prices in the $1.15 per pound range. Such swings in supplies and price levels can result in market instability and uncertainty for growers, handlers, buyers, and consumers.

The long term goal of the almond industry is to increase almond consumption and demand, and the Board believes this can be best achieved in the presence of stable and orderly market conditions. The Board believes that the use of the reserve provisions of the marketing order as a supply management tool, in conjunction with other marketing tools available in the order, can assist in accomplishing the industry's goals.

While this rule could restrict the amount of almonds which handlers could sell in normal domestic and export markets in the short term, the proposed salable and reserve percentages are intended to promote orderly marketing conditions by avoiding unreasonable fluctuations in supplies and prices and improving grower returns. Further, this proposed rule could help provide market stability during the 1995–96 crop year by reserving almonds for shipment during that season in the event 1995 production is below trade demand needs.

Authority to establish salable and reserve percentages is provided in § 981.47 of the order. Section 981.66 authorizes disposition of reserve almonds to certain outlets, including export. Pursuant to §§ 981.47 and 981.49 of the order, the Board based its recommendation for salable, reserve, and export percentages of 90 percent, 10 percent, and 0 percent, respectively, on estimates of marketable supply and combined domestic and export trade demand for the 1994–95 crop year. The Board's 1994 marketable production estimate of 620.8 million kernelweight pounds is based on a 1994 crop estimate issued by the National Agricultural Statistics Service of 640 million kernelweight pounds, minus an estimated loss of 19.2 million kernelweight pounds resulting from the removal of inedible kernels by handlers and losses during manufacturing.

Trade demand is estimated at 556.4 million kernelweight pounds—175 million pounds for domestic needs and 381.4 million pounds for export needs. An inventory adjustment is made to account for supplies of salable almonds carried in from the 1993–94 crop year and for supplies of salable almonds deemed desirable to be carried out on June 30, 1995, for early season shipment during the 1995–96 crop year. After adjusting for inventory, the trade demand is calculated at 556.8 million kernelweight pounds. This is the quantity of almonds from the estimated 1994 marketable production deemed necessary to meet trade demand needs. The proposed salable percentage of 90 percent would meet those needs.

The remaining 10 percent (64 million kernelweight pounds) of the 1994 crop marketable production would be withheld by handlers to meet their reserve obligations.

The percentage of reserve almonds available for export is recommended at 0 percent. Although the order permits establishment of a percentage of reserve almonds that could be exported, export is currently the largest market for California almonds and is not considered a secondary or noncompetitive outlet. Therefore, exports would be included in trade demand and the export market would not be an authorized reserve outlet.

All or part of reserve almonds could be released to the salable category if it is found that the supply made available by the salable percentage is insufficient to satisfy 1994–95 trade demand needs, including desirable carryover for use during the 1995–96 crop year. The Board is required to make any recommendations to the Secretary to increase the salable percentage prior to May 15, 1995, pursuant to § 981.48 of the order. Alternatively, all or a portion of reserve almonds could be sold by the Board, or by handlers under agreement with the Board, to governmental agencies or charitable institutions or for diversion into almond oil, almond butter, animal feed, or other outlets which the Board finds are noncompetitive with existing normal markets for almonds.

A tabulation of the estimates and calculations used by the Board in arriving at its recommendations follows:

MARKETING POLICY ESTIMATES—1994 CROP

[Kernelweight basis]

	Million pounds	Percent
Estimated Production:		
1. 1994 Production	640.0	
2. Loss and Exempt—3.0%	19.2	
3. Marketable Production	620.8	
Estimated Trade Demand:		
4. Domestic	175.0	
5. Export	381.4	
6. Total	556.4	
Inventory Adjustment:		
7. Carryin 7/1/94	99.6	
8. Desirable Carryover 6/30/95	100.0	
9. Adjustment (Item 8 minus item 7)	0.4	
Salable/Reserve:		
10. Adjusted Trade Demand (Item 6 plus item 9)	556.8	
11. Reserve (Item 3 minus item 10)	64.0	
12. Salable % (Item 10 divided by item 3 × 100)		90
13. Reserve % (100% minus item 12)		10

The "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" (Guidelines) issued by the Department in 1982 specify that 110 percent of recent years' sales be made available to primary markets each season. This rule provides an estimated 656.4 million kernelweight pounds of California almonds for unrestricted sales (1994 crop salable production plus carryin from the 1993 crop) to meet increasing domestic and world almond consumption demands. This amount exceeds the actual 1991–92 record for delivered sales of California almonds by 18 percent. Thus, the Guidelines' goals are met.

The members of the Board that opposed the establishment of salable and reserve percentages believe that free competition is best for the industry and that the industry should concentrate on building demand for almonds rather than imposing a reserve. One member was also concerned that enforcement

procedures would be difficult as many handlers are reluctant to cooperate with a mandated reserve.

The overall consensus of the Board is that the establishment of salable and reserve percentages will reduce market volatility and enhance returns to growers, while stabilizing supplies to customers and encouraging customer confidence in the industry.

Establishment of salable and reserve percentages are often contentious and controversial in the almond industry. Those opposed to reserves generally have philosophical differences with supporters, favoring a market situation not affected by supply controls as reflected in the Board discussion and vote. However, a majority of the Board favored the recommendation, and all Board members (even those opposed) have indicated they will support the majority Board recommendation and work to ensure fair and equitable administration of the reserve, if established.

Based on the above, the Administrator of the AMS has determined that the issuance of this proposed rule would not have a significant economic effect on a substantial number of small entities.

Interested persons are invited to submit their views and comments on this proposal. A 15-day comment period is considered appropriate because the salable and reserve percentages are recommended to be established for almonds received by handlers during the 1994–95 crop year, which began on July 1, 1994.

List of Subjects in 7 CFR Part 981

Almonds, Marketing agreements, Nuts, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 981 is proposed to be amended as follows:

PART 981—ALMONDS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 981 continues to read as follows:

Authority: 7 U.S.C. 601–674.

Subpart—Salable, Reserve, and Export Percentages

2. Section 981.239 is added to read as follows:

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

§ 981.239 Salable, reserve, and export percentages for almonds during the crop year beginning on July 1, 1994.

The salable, reserve, and export percentages during the crop year beginning on July 1, 1994, shall be 90 percent, 10 percent, and 0 percent, respectively.

Dated: August 29, 1994.

Eric M. Forman,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–21880 Filed 9–6–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 94–AEA–03]

Proposed Modification of Class D and Class E Airspace; Morgantown, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to revise controlled airspace in the vicinity of Morgantown, WV, due to the decommissioning of the Bobtown, WV, non-directional radiobeacon (NDB), a proposed cancellation of an NDB or Global Positioning System (GPS) standard instrument approach procedure (SIAP), and a review of air traffic control procedures in the area. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "control zone and transition area," and airspace designated from the surface to adjacent controlled airspace is now being described as Class D and Class E airspace in this vicinity. The intended effect of this proposal is to modify controlled airspace in this vicinity to that actually required for aircraft operating under instrument flight rules (IFR).

DATES: Comments must be received on or before September 30, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Michael Sammartino, Acting Manager, System Management Branch, AEA–530, Docket No. 94–AEA–03, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief Counsel, AEA–7, at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, System Management Branch, Air Traffic Division, at the address shown above.

FOR FURTHER INFORMATION CONTACT: Frank Jordan, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AEA–03". The postcard will be date/time stamped and returned to the commentor. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, AEA–530, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to

modify controlled airspace in the vicinity of Morgantown, WV, to reflect the proposed cancellation of the NDB or GPS Runway 18 SIAP, the decommissioning of the Bobtown, WV, non-directional radiobeacon (NDB), and a review of air traffic control procedures in the area. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the terms "control zone and transition area," and airspace extending upward from the surface to overlying controlled airspace is now being described as Class D & E airspace in this area. The intended effect of this proposal is to reflect that amount of controlled airspace actually required for aircraft operations under instrument flight rules at the Morgantown Municipal-Walter L. Bill Hart Field, WV. The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas extending upward from the surface and from 700 feet above ground level are published in Paragraphs 5000, 6002, 6004, and 6005 of FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class D & E airspace designations listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 5000—General

* * * * *

AEA WV D Morgantown, WV [Revised]

Morgantown Municipal-Walter L. Bill Hart Field Airport, WV
(Lat. 39°38′34″ N., long. 79°54′59″ W.)

That airspace extending upward from the surface to and including 3,700 feet MSL within a 4-mile radius of Morgantown Municipal-Walter L. Bill Hart Field Airport. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AEA WV E2 Morgantown, WV [New]

Morgantown Municipal-Walter L. Bill Hart Field Airport, WV
(Lat. 39°38′34″ N., long. 79°54′59″ W.)

Within a 4-mile radius of Morgantown Municipal-Walter L. Bill Hart Field Airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004—Class E airspace areas extending upward from the surface designated as an extension to a Class D surface area

* * * * *

AEA WV E4 Morgantown, WV [New]

Morgantown Municipal-Walter L. Bill Hart Field Airport, WV
(Lat. 39°38′34″ N., long. 79°54′59″ W.)
Morgantown VORTAC
(Lat. 39°33′24″ N., long. 79°51′37″ W.)

That airspace extending upward from the surface within 1 mile either side of the Morgantown VORTAC 152° (T) 157° (M) radial extending from the 4-mile radius of Morgantown Municipal-Walter L. Bill Hart Field Airport to the Morgantown VORTAC. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA WV E5 Morgantown, WV [Revised]

Morgantown Municipal-Walter L. Bill Hart Field Airport, WV
(Lat. 39°38′34″ N., long. 79°54′59″ W.)
Morgantown VORTAC
(Lat. 39°33′24″ N., long. 79°51′37″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Morgantown Municipal-Walter L. Bill Hart Field Airport and within 3 miles each side of the Morgantown VORTAC 152° (T) 157° (M) radial extending from the 6.5-mile radius to 8.8 miles southeast of the VORTAC and within 3 miles west of the Morgantown VORTAC 336° (T) 341° (M) radial clockwise to 3 miles east of the Morgantown Municipal-Walter L. Bill Hart Field Airport north localizer course extending from the 6.5-mile radius to 15.1 miles north of the airport.

* * * * *

Issued in Jamaica, New York, on August 16, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–21980 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 94–AEA–01]

Proposed Revision of Class E Airspace; New York, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish additional Class E airspace at New York, NY. A Standard Instrument Approach Procedure (SIAP) has been recently developed at the Teterboro Airport, NJ, and controlled airspace down to 700 feet above ground level is needed for instrument flight rules (IFR) operations at Teterboro Airport. The intended effect of this proposed action is to provide adequate Class E airspace for IFR operators.

DATES: Comments must be received on or before September 30, 1994.

ADDRESSES: Send comments on the rule in triplicate to: Michael Sammartino, Acting Manager, System Management Branch, AEA–530, Docket No. 94–AEA–01, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy Int'l Airport, Jamaica, NY 11430.

The official docket may be examined in the Office of the Assistant Chief

Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430.

An informal docket may also be examined during normal business hours in the System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430.

FOR FURTHER INFORMATION CONTACT: Frank Jordan, Designated Airspace Specialist, System Management Branch, AEA–530, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430; telephone: (718) 553–0857.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commentors wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AEA–01". The postcard will be date/time stamped and returned to the commentor. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the System Management Branch, AEA–530, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Office of the Assistant Chief Counsel, AEA–7, F.A.A. Eastern Region, Fitzgerald Federal Building #111, John F. Kennedy International Airport, Jamaica, NY 11430. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 17) to establish additional Class E airspace at New York, NY. The intended effect of this proposal is to provide additional controlled airspace down to 700′ above ground level for IFR operations at Teterboro Airport, NJ. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

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

PART 71—[AMENDED]

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

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9B, Airspace Designations and Reporting Points, dated July 18, 1994, and effective September 16, 1994, is amended as follows:

Paragraph 6005—Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

AEA NY E5 New York, NY [Revised]

John F. Kennedy International Airport, New York, NY
(Lat. 40°38′25″ N., long. 73°46′40″ W.)
Canarsie VOR/DME
(Lat. 40°36′45″ N., long. 73°53′40″ W.)
LaGuardia Airport, New York, NY
(Lat. 40°46′38″ N., long. 73°52′21″ W.)
LaGuardia VOR/DME
(Lat. 40°47′01″ N., long. 73°52′06″ W.)
Teterboro Airport, NJ
(Lat. 40°51′00″ N., long. 74°03′40″ W.)
New International Airport, NJ
(Lat. 40°41′34″ N., long. 74°10′07″ W.)
Morristown Municipal Airport, NJ
(Lat. 40°47′57″ N., long. 74°24′54″ W.)
Chatham NDB
(Lat. 40°44′27″ N., long. 74°25′48″ W.)
Essex County Airport, Caldwell, NJ
(Lat. 40°52′30″ N., long. 74°16′53″ W.)
MOREE LOM
(Lat. 40°52′47″ N., long. 74°20′04″ W.)
Paterson NDB
(Lat. 40°56′47″ N., long. 74°09′04″ W.)

That airspace extending upward from 700 feet above the surface within a 7.9-mile radius of John F. Kennedy International Airport and within 2.7 miles each side of the Canarsie VOR/DME 212° radial, extending from the Canarsie VOR/DME to 3.5 miles southwest of the VOR and within a 6.9-mile radius of LaGuardia Airport and within 3.1 miles each side of the LaGuardia VOR/DME 035° radial extending from the LaGuardia VOR/DME to 8.1 miles northeast of the LaGuardia VOR/DME and within a 6.7-mile radius of Teterboro Airport and within 3 miles either side of a 048°(T) 061°(M) bearing from the northeast end of a northeast to southwest runway at Teterboro Airport extending from the 6.7-mile radius area to 10 miles northeast of the northeast end of the runway and within a 7-mile radius of Newark International Airport and within a 6.6-mile radius of Morristown Municipal Airport and within 8 miles northwest and 4 miles southeast of a 204° bearing from the Chatham NDB extending from the Chatham NDB to 16 miles southwest of the NDB and within a 6.6-mile radius of Essex County Airport and within 4 miles north and 8 miles south of a 276° bearing from the MOREE LOM extending from the MOREE LOM to 16 miles west of the LOM and within 8 miles northwest and 4 miles southeast of a 057° bearing from the Paterson NDB extending

from the Paterson NDB to 16 miles northeast of the NDB.

* * * * *

Issued in Jamaica, New York, on August 22, 1994.

John S. Walker,

Manager, Air Traffic Division.

[FR Doc. 94–21979 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 100

[CGD 08–94–019]

RIN 2115–AE46

Annual Marine Events within the Eighth Coast Guard District

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent special local regulations for the annual marine events in the Eighth Coast Guard District. This proposal would reduce the number of annual requests for temporary final rules for regattas and marine parades and codifying these marine events in the Code of Federal Regulation would streamline the implementation process.

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: Comments should be mailed to the Commander, Eighth Coast Guard District (dl) (CGD 08–94–019), 501 Magazine St., New Orleans, LA 70130–3396, or may be delivered to room 1311 of the Hale Boggs Federal Building at the same address between 8 a.m. and 3:30 p.m., Monday through Friday, except holidays. The telephone number is (504) 589–6188. Comments may also be hand-delivered to this address.

The Eighth Coast Guard District Legal Office maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 1311, Eighth Coast Guard District, located in the Hale Boggs Federal Building, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will also be published in local notices to mariners. To be placed on the mailing list for such notices, contact: Commander (oan), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, Suite 1211, New Orleans, Louisiana 70118.

FOR FURTHER INFORMATION CONTACT: LT C.D. Michel, Eighth Coast Guard District Legal Office, at Hale Boggs Federal Building, 501 Magazine, room 1311, New Orleans, Louisiana 70118, telephone (504) 589–6188.

SUPPLEMENTARY INFORMATION:

Requests for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08–94–019) and the specific section to which the comment applies, and give the reasons for concurrence with or for any recommended changes to the proposal. Please submit two copies of all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard, will evaluate all communications received and determine a course of final action on this proposal. Based upon the comments received the proposal may be changed.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eighth Coast Guard District Legal Office at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are LCDR T.P. Marian, Project Manager, and LT C.D. Michel, Project Counsel.

Discussion of Proposed Rules

(a) Currently, Coast Guard units responsible for overseeing the safety of marine events prepare temporary rules each year for each event. This rulemaking would eliminate the need to prepare annual temporary final rules for those annual marine events that have few or no changes from year to year. If this rule is adopted, the rules would be effective at the same time each year without need for temporary rules. The Coast Guard would issue event information in the Local Notice to Mariners. This would streamline the marine event process for those regattas and marine events that have very little annual variation and would significantly reduce the Coast Guard's administrative burden for managing these type events.

The marine events requiring this regulation are regattas and marine parades that occur annually in the Eighth District of the United States Coast Guard with little or no variation in location, time frame, and sponsors. Table 1 delineates the events, their sponsors, dates, and locations. Each event occurs annually on or about the date given. The course will be patrolled by patrol vessels. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within areas designated by the sponsor. Non-participating vessels will be permitted to transit the area at *NO WAKE SPEED* at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This is attributed to the fact that the proposal merely codifies existing marine events. Furthermore, each of the marine events in Table 1 will require that the navigable waterways delineated be closed for only a short period of time. As demonstrated by past experience, these events have been successfully conducted for several years in cooperation with both the organizers of these events and the boating public. The same event regulations will be implemented for each marine event listed in Table 1 and the Coast Guard will continue to monitor these recurring events in the interest of marine safety. Once the marine event is terminated the rule of the Coast Guard in monitoring the marine event ceases. None of the marine events listed in Table 1 would exceed three days in duration and most of them are for only several hours of one day. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant

economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposal will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been demonstrated that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This regulation has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Coast Guard Commandant Instruction M16475.1B.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water). Reporting and recordkeeping requirements, Waterways.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.801 is added to read as follows:

§ 100.801 Annual Marine Events in the Eighth Coast Guard District.

The following regulations apply to the marine events listed in Table 1 of this section. These regulations will be effective annually, for the duration of each event listed in Table 1. Annual notice of the exact dates and times of the effective period of the regulation with respect to each event, the geographical area, and details concerning the nature of the event and the number of participants and type(s) of vessels involved will also be published in local notices to mariners. *Sponsors of events listed in Table 1 must submit an application each year in accordance with 33 CFR 100.15.*

(a) The Coast Guard will patrol the event area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on Channel 16 (156.8 MHz) by the call sign "PATCOM."

(b) All persons and vessels not registered with the sponsor as participants or official patrol vessels are considered spectators. The "official patrol vessels" consist of any Coast Guard, state or local law enforcement and sponsor provided vessels assigned or approved by the Commander, Eighth Coast Guard District, to patrol the event.

(c) Spectator vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer and will be operated at a no wake speed in a manner which will not endanger participants in the event or any other craft.

(d) No spectator shall anchor, block, loiter, or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for entry by or through an official patrol vessel.

(e) The Patrol Commander may forbid and control the movement of all vessels in the regulated area. When hailed or signaled by an official patrol vessel, a vessel shall come to an immediate stop and comply with the directions given. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(f) Any spectator vessel may anchor outside the regulated area specified in Table 1, but may not anchor in, block, or loiter in a navigable channel.

(g) The Patrol Commander may terminate the event or the operation of any vessel at any time it is deemed necessary for the protection of life or property.

(h) The Patrol Commander will terminate enforcement of the special regulations at the conclusion of the event.

Table 1

The Blessing of the Fleet, Morgan City, Louisiana

Sponsor: Louisiana Shrimp and Petroleum Festival & Fair Association, Inc.

Date: First Sunday of September.

Duration: 8:30 a.m. through 1 p.m.

Location: Berwick Bay from the junction of the Lower Atchafalya River at Morgan City, Louisiana to Berwick Locks, Buoy 1 (LLNR 18445).

The Contraband Days Fireworks Display, Lake Charles, Louisiana

Sponsor: Contraband Days Festivities, Inc.

Date: First Saturday of May.

Duration: 9 p.m. through 12 a.m. (midnight).

Location: A 500 foot radius from the fireworks barge in Lake Charles anchored in approximate position 30°13'54" N, 093°13'42" W.

Neches River Festival, Beaumont, Texas

Sponsor: Neches River Festival, Inc.

Date: Third weekend of April.

Duration: First day—8 a.m. through 9:30 p.m.; Second day—8 a.m. through 6 p.m.

Location: The Neches River from Colliers Ferry landing to Lawson's Crossing at the end of Pine Street.

The Blessing of Shrimp Fleet, Galveston, Texas

Sponsor: Blessing of the Fleet, City of Galveston, Texas.

Date: Fourth Saturday of April.

Duration: 9:30 a.m. through 5:30 p.m.

Location: The Galveston Ship Channel from the Pelican Island Bridge to Pier 14 at Galveston, Texas.

Dated: August 16, 1994.

Robert C. North,

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

[FR Doc. 94–21913 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD05–94–050]

RIN 2115–AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Sunset Beach, NC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Atlantic Intracoastal Waterway, mile 337.9, at Sunset Beach, North Carolina. This proposal would restrict bridge openings in the month of November to help reduce highway traffic congestion problems, public safety, and welfare concerns associated with frequent bridge openings caused by recreational boat traffic. The proposed changes to these regulations are, to the extent

practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge.

DATES: Comments must be received on or before November 7, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to Room 109 at the same address between 8 a.m. and 4 p.m., Monday and through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection at Room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05–94–050) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice.

Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LT Monica L. Lombardi, Project Counsel, Fifth Coast Guard District Legal Office.

Background and Purpose

The North Carolina Department of Transportation has requested, on behalf of the Town of Sunset Beach, North Carolina, that the drawbridge across the Atlantic Intracoastal Waterway, mile 337.9, at Sunset Beach, North Carolina, be further restricted through the month of November. This would help to reduce highway traffic congestion problems, public safety, and welfare concerns associated with frequent bridge openings caused by recreational boat traffic. Currently, the drawbridge opens on the hour from 7 a.m. to 7 p.m. for pleasure vessels from April 1 to October 31. It opens on signal at any time for vessels of the United States, State and local government vessels, commercial vessels, and any vessel in an emergency involving danger to life or property. This proposal extends this schedule to November 30 with drawbridge openings occurring on the hour from 7 a.m. to 7 p.m.

The North Carolina Department of Transportation conducted a study of the drawlogs for this drawbridge for the month of November and it revealed that the drawbridge opened 558 times in 1992 and 571 times in 1993. These openings exceeded the openings for every other month during the same years. Based on this information, the Coast Guard believes these proposed regulations will permit an orderly flow of recreational vessel traffic through the draw. This should not unduly restrict recreational vessel passage through the bridge, since they can plan their vessel transits around the hourly restriction.

Regulatory Evaluation

This proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has been determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Paragraph (b)(5) of § 117.821 is revised to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albemarle Sound to Sunset Beach.

* * * * *

(b) * * *

(5) NC 50 bridge, mile 337.9, at Sunset Beach, NC, from April 1 to November 30, between 7 a.m. and 7 p.m., must open if signaled on the hour.

* * * * *

Dated: August 8, 1994.

W.J. Ecker,

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

[FR Doc. 94–21912 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Parts 120 and 128

[CGD 91–012]

RIN 2115–AD75

Security for Passenger Vessels and Passenger Terminals

AGENCY: Coast Guard, DOT.

ACTION: Reopening of comment period; Notice of public hearings.

SUMMARY: The Coast Guard is reopening this rulemaking for comment in response to requests for further time to file comments on the proposed rule. It is also holding three public hearings. These measures will ensure that the affected industry has ample time to consider and comment on the proposed rule and will, to the maximum extent possible, ensure that the Coast Guard receives the best available information on which to base any final action on this rulemaking.

DATES: (1) Comments must be received on or before November 30, 1994. (2) Public hearings will be held on Friday, September 16, 1994, in Seattle, Washington; on Monday, September 19, in Juneau, Alaska; and on Wednesday, September 21, 1994, in Fort Lauderdale, Florida. All three hearings will begin at 9 a.m. and end at 4 p.m. (or earlier, if all speakers have been heard).

ADDRESSES: The public hearing in Seattle will be held at the Headquarters of the Port of Seattle, Commissioners Chambers, Pier 69, 2711 Alaskan Way, Seattle, Washington, The public hearing in Juneau will be held at Centennial Hall, 101 Egan Drive, Juneau, Alaska. The public hearing in Fort Lauderdale will be held at the Port Everglades Authority, Terminal 26, 2026 Eller Drive, Fort Lauderdale, Florida.

Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 91–012], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477. Comments on the collection-of-information requirements must be mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

A copy of the material listed under "Incorporation by Reference" in the preamble to the proposed rule is available for inspection at room 1108, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LCDR Mark O'Malley, Office of Marine Safety, Security and Environmental Protection (G–MPS–3), Room 1108, (202) 267–0491, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal Holidays.

SUPPLEMENTARY INFORMATION:

Background

On March 25, 1994, the Coast Guard published a notice of proposed rulemaking (59 FR 14290) proposing to establish equipment standards, performance standards, and procedures for security against acts of terrorism on certain passenger vessels and associated passenger terminals. Passenger vessels of over 100 gross tons carrying more than 12 passengers on voyages of over 24 hours on the high seas and the associated passenger terminals would have been affected. These rules appeared necessary because of a lack of voluntary compliance with measures of the International Maritime Organization (IMO) published in 1986, or with these measures published as Coast Guard "guidelines" in 1987.

In response to requests for further time to file comments on the proposed rule, the Coast Guard is reopening the comment period through November 30, 1994. It is also holding three public hearings.

Written Comments

The notice of proposed rulemaking published on March 25, 1994, invited and encouraged interested persons to participate in the rulemaking by submitting written comments, including views, data, and arguments, by June 23, 1994. Two organizations representing multiple members of the affected industry sought further time to file comments, citing both the need to assess current practices and compare them with the requirements in the proposed rule and the difficulty of preparing meaningful responses within the original 90-day comment period. Because of these requests, the comment period is reopened through November 30, 1994.

Comments should include the name and address of the person making them, identify this rulemaking [CGD 91–012] and the specific section of the proposed rule to which each comment applies, and give reasons for each comment. Anyone wishing an acknowledgment of receipt of comment should enclose a stamped, self-addressed postcard. The proposed rule may be changed in light of comments received. All comments received during the comment period will be considered before final action is taken on the proposed rule.

Public Hearing

Several parties sought public hearings so they could present spoken comments. The proposed rule was responsive to the IMO's resolution in 1986 concerning security of passenger vessels and associated passenger terminals. In their requests for public hearings, however, several parties alleged that the rule would have a significant, negative effect on the passenger vessel industry and that they could state their cases better orally than in writing. Public hearings will therefore be held on the dates and at the hours indicated above under **DATES** and at the sites indicated above under **ADDRESSES.**

Interested persons are invited to participate in these hearings. Each person wishing to make an oral statement should register by Monday, September 12, 1994. Oral statements by any persons previously unregistered will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations. It also reserves the right to close parts of the meetings to enable candor in the treatment of security against acts of terrorism. To register, write, telefax, or call the Executive Secretary, Marine Safety Council (G–LRA, 3406) [CGD 91–012], U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001; telephone number (202) 267–1477, telefax number (202) 267–0506.

Dated: August 31, 1994.

A.E. Henn,

Vice Admiral, U.S. Coast Guard Acting Commandant.

[FR Doc. 94–22029 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–50–1–6198b; FRL–5060–6]

Clean Air Act Approval and Promulgation of Emission Statement Implementation Plan for Florida

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Florida for the purpose of establishing an emission statement program. In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rational for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 7, 1994.

ADDRESSES: Written comments should be addressed to: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Copies of the material submitted by the State of Florida may be examined during normal business hours at the following locations:

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Resources Management Division, Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, The telephone number is 404/347–2864.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: June 29, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 94–21952 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[GA–23–1–6346b; FRL–5066–2]

Clean Air Act Approval and Promulgation of Emission Statement Implementation Plan for Georgia

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve revisions to the Georgia State Implementation Plan (SIP) adopted by the Georgia Department of Natural Resources, Environmental Protection Division (GA EPD) on November 17, 1993, for the purpose of implementing a program of Photochemical Assessment Monitoring Stations (PAMS). In the final rules section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to that direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: To be considered, comments must be received by October 7, 1994.

ADDRESSES: Written comments on this action should be addressed to Scott Southwick, at the EPA Regional Office listed below.

Copies of the documents relative to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air and Radiation Docket and Information Center (Air Docket 6102), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Environmental Protection Agency, Region IV Air Programs Branch, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, suite 120, Atlanta, Georgia 30354.

FOR FURTHER INFORMATION CONTACT: Scott Southwick, Regulatory Planning and Development Section, Air Programs Branch, Air, Pesticides & Toxics Management Division, Region IV Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, The telephone number is 404/347–2864. Reference file GA–23–1–6346.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: August 24, 1994.

Joe R. Franzmathes,

Acting Regional Administrator.

[FR Doc. 94–21954 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MD31–1–6371b; FRL–5060–1]

Approval and Promulgation of Air Quality Implementation Plans; Maryland (Permits and Approvals)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision requires the State to offer the public an opportunity to request a public hearing before issuing a permit to construct certain sources. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the

approval is set forth in the direct final rule and the accompanying technical support document. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by October 7, 1994.

ADDRESSES: Written comments on this action should be addressed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division (3AT00), U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Harold A. Frankford (3AT10), (215) 597–1325.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is located in the **Rules and Regulations** section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides.

Authority: 42 U.S.C. 7401–7671q.

Dated: August 19, 1994.

John R. Pomponio,

Acting Regional Administrator, Region III.

[FR Doc. 94–21945 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[MI04–01–5160A, MI30–01–6427A, MI31–01–6428A, MI32–01–6429A; FRL–5027–9]

Approval and Promulgation of Implementation Plan; Michigan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Michigan for the purpose of establishing new Reasonably Available Control Technology (RACT) rules for sources of volatile organic compounds (VOCs). In the final rules section of this **Federal Register**, EPA is approving the State's SIP revision, as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed action must be received by October 7, 1994.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Douglas Aburano, Air Toxics and Radiation Br. (AT–18J), EPA Region 5, Chicago, Illinois 60604 (312) 353–6960.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the following address: (It is recommended that you telephone Douglas Aburano at (312) 353–6960 before visiting the Region 5 office.) EPA, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

Authority: 42 U.S.C. 7401–7671q.

Dated: July 22, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–21956 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

Department of the Navy

48 CFR Parts 5232 and 5252

Navy Acquisition Procedures Supplement; Payments Under Shipbuilding Contracts

AGENCY: Department of the Navy, DOD.

ACTION: Proposed rule.

SUMMARY: The Department of the Navy is proposing to revise the shipbuilding progress payments clauses to incorporate several provisions covering standard Federal Acquisition Regulation progress payment clause protections, clarifications and expansions.

DATES: Public comments are solicited and should be received by October 7, 1994.

ADDRESSES: Interested parties should submit written comments to: Office of the Assistant Secretary of the Navy (Research Development & Acquisition), ATTN: Mr. Clarence Belton, APIA(PP–CP), 2211 Jefferson Davis Highway, Arlington, VA 22244–5104.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Belton, OASN(RDA)APIA(PP–CP), (703) 602–2357.

SUPPLEMENTARY INFORMATION:

A. Background

The Department of the Navy has adopted procurement policies and procedures that implement and supplement the Federal Acquisition Regulations (FAR) [48 CFR] and the Defense Federal Acquisition Regulation Supplement (DFARS). The policies and procedures are known collectively as the Navy Acquisition Procedures Supplement (NAPS). Pursuant to FAR 32.500(b), the Navy developed a shipbuilding progress payments clause for use in fixed price (FP) and fixed price incentive (FI) contracts for construction or for shipbuilding or ship conversion, alteration, or repair, when the contracts provide for progress payments based on a percentage or stage of completion. The shipbuilding progress payments clauses are being revised primarily with the intent of incorporating controls, terms and provisions consistent with those found in the clause at FAR 52.232–16, Progress Payments.

B. Summary of Major Revisions

(1) Definitions. Consolidates the FI clause definitions.

(2) Computation of Payments. The proposed rule modifies the payment limitation of 100% of allowable costs to

include unliquidated progress payments made to subcontractors.

(3) Invoices. The proposed rule modifies the invoicing provision by requiring contractor certification of the amount of unliquidated progress payments made to subcontractors.

(4) Physical Progress and Weighting Factors. The proposed rule modifies the physical progress and weighting factors provision to give the Contracting Officer the unilateral right to establish the weighting factors if the contractor and the Contracting Officer cannot reach agreement.

(5) Incurred Costs. The proposed rule adds to the list of incurred costs exclusions, costs incurred by subcontractors and suppliers; and capitalized costs and interim payments to subcontractors and suppliers. This provides consistency with the FAR progress payments clause. The proposed rule also removes the small business provision that allows for billing of material costs not paid for by the contractor.

(6) Progress Payments to Subcontractors. The proposed rule adds a new section containing provisions from the FAR progress payments clause that govern payments to subcontractors.

(7) Liens and Title. A proposed provision is added which references Liens and Title provisions found elsewhere in the contract.

(8) Reduction and Suspension. The proposed rule adds a new section incorporating provisions from the FAR progress payments clause that govern reductions and suspension of progress payments.

(9) Limitations on Undefinitized Contract Actions. A proposed new section is added incorporating provisions from the FAR progress payments clause that govern limitations on Undefinitized Contract Actions.

(10) Special Terms Regarding Default. A proposed new section is added incorporating provisions from the FAR progress payments clause that govern treatment of progress payments in a contract default.

C. Paperwork Reduction Act

The proposed rule contains no new information collection or recordkeeping requirement under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). Supporting data requirements identified in the proposed rule include only data already required to be maintained by shipbuilding contractors.

D. Regulatory Flexibility Act Information

The proposed rule will have no economic impact upon small entities within the meaning of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.* The shipbuilding progress payment clauses have been incorporated into applicable contracts since the early 1980's, affecting all shipbuilders, large and small. The proposed NAPS rule will benefit the Navy and its shipbuilding contractors by insuring uniform application and administration of progress payments. Therefore, no regulatory flexibility analysis has been performed.

List of Subjects in 48 CFR Chapter 52

Government procurement.

For the reasons stated in the Preamble, 48 CFR Chapter 52 is proposed to be amended as follows:

1. Part 5232 is added to read as follows:

PART 5232—CONTRACT FINANCING

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35.

5232.1–5232.499 [Reserved]

5232.500 Scope of part.

The contracting officer shall insert the provision at 48 CFR 5252.232–9100, Payments (FP), or 48 CFR 5252.232–9105, Payments (FI), as appropriate, in all solicitations and contracts for shipbuilding or ship conversion, alteration, or repair, when progress payments are based on a percentage or stage of completion.

PART 5252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES [AMENDED]

2. The authority citation for part 5252 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2405, DOD Directive 5000.35, and DFARS subparts 201.3 and 243.1.

3. Part 5252 is amended by adding sections 5252.232–9100 and 5252.232–9105 to read as follows:

5252.232–9100 Payments (FP).

As prescribed in 32 CFR 5232.500, insert the following clause in fixed price solicitations and contracts for shipbuilding or ship conversion, alteration, or repair, when progress payments are based on a percentage or stage of completion:

(Beginning of Clause)

5252.232–9100 PAYMENTS (FP) (DEC 1992)

(a) *Computation of payments.*

(1) Until such time as physical progress in the performance of work on a vessel is fifty percent (50%) complete, the Government, upon submission by the Contractor of invoices certified by the Contractor as hereinafter provided, will promptly make payments, on account of the total contract price, of ninety percent (90%) of the amount determined by multiplying the total contract price of such vessel by the percentage of physical progress accomplished in the performance of work on such vessel as certified by the Contractor subject to the approval of the Supervisor; *provided*, that no such payment shall be made in an amount which when added to the total of all payments previously made with respect to such vessel under (i) paragraph (a) of this requirement and (ii) the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement exceeds one hundred percent (100%) of the allowable costs certified by the Contractor on the related invoice to have been incurred in the performance of work on such vessel plus any unliquidated progress payments paid to subcontractors.

(2) After the percentage of physical progress in the performance of work on a vessel has reached fifty percent (50%), the Government, upon submission by the Contractor of invoices certified by the Contractor as hereinafter provided, will promptly make payments, on account of the total contract price, of one hundred percent (100%) of the amount determined by: (i) multiplying the total contract price of such vessel by the percentage of physical progress in the performance of work on such vessel as certified by the Contractor subject to the approval of the supervisor, and (ii) subtracting from that product five percent (5%) of the total contract price of such vessel; *provided*, that no such payment shall be made in an amount which when added to the total of all payments made previously with respect to such vessel under paragraph (a) of this requirement *and* the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement exceeds one hundred five percent (105%) of the allowable costs certified by the Contractor on the related invoice to have been incurred in the performance of work on such vessel plus any unliquidated progress payments paid to subcontractors; *provided, further*, that the Contractor furnishes data on actual cumulative costs and estimated future costs acceptable to the Supervisor which demonstrates to the satisfaction of the Supervisor that the Contractor will make a profit of at least five percent (5%) on completion of the contract, and the Contractor provides updated information on a quarterly basis. If updated data indicate the Contractor will not make a profit of at least five percent (5%) on completion of the contract, the progress payments shall be adjusted retroactively so that the total of all payments made with respect to the vessel under paragraph (a) of this requirement and the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement shall not exceed one hundred percent (100%) of the allowable costs certified by the Contractor on the related invoice to have been incurred in the performance of work on such vessel plus any unliquidated progress payments paid to subcontractors or 100% of total contract price, whichever is less.

(b) *Invoices.* Invoices may be submitted every two weeks, but not more frequently;

provided, however, that if after contract award more frequent progress payments are approved by cognizant Government authority, this requirement shall be modified accordingly without additional consideration by the Contractor to the Government for such modification. No payment will be required to be made upon invoices aggregating less than five thousand dollars ($5,000). The Contractor shall certify on each invoice:

(1) The percentage of physical progress in the performance of work on the vessel as a decimal carried to four places; and

(2) The allowable costs incurred in the performance of the work on the vessel plus any unliquidated progress payments paid to subcontractors as of the date the invoice is submitted. Such certification shall provide for cost category reporting in accordance with the Contractor's normal accounting system and shall be broken down into direct material, direct labor, and indirect costs.

(c) *Physical progress and weighting factors.*

(1) Within sixty (60) days after contract award, the Contractor shall submit a progressing system description for review and approval by the Contracting Officer. Upon approval of such system, progress payments shall be in accordance with the approved system. Subsequent revisions to the approved system shall be submitted to the Contracting Officer for approval prior to implementation.

(2) The mutually agreed upon weighting factors for the categories of labor and material for each vessel are set forth in Attachment——— to this contract. The weighting factors shall be revised quarterly. Notwithstanding the above, revision of weighting factors may be requested by either party when factual data indicate that the weighting factors then in use are no longer representative of the actual labor and material distribution. Revisions of weighting factors shall be supported by detailed de-escalated (estimated final) direct material, direct labor, and indirect costs and additional data concerning the cause of the change in the weighting factors. In the event that the parties fail to agree on the establishment of, or a revision to the weighting factors, the Contracting Officer may establish on a unilateral basis the weighting factors to be used in the administration of this provision. Any change in the weighting factors shall be set forth in a Standard Form 30, "Amendment of Solicitation/Modification of Contract".

(d) *Incurred costs.* For the purpose of this requirement, "incurred costs" are those costs identified through the use of the accrual method of accounting, as supported by the records maintained by the Contractor and which are allowable in accordance with Part 31 of the Federal Acquisition Regulation (FAR) and Part 231 of the Department of Defense FAR Supplement (DFARS) in effect on the effective date of this contract and include only:

(1) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(2) Costs for the following may be included when incurred even if before payment, when the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business:

(i) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract;

(ii) Direct labor, direct travel, and other direct inhouse cost;

(iii) Properly allocable and allowable indirect costs.

(3) Accrued costs of Contractor contributions under employee pension or other post-retirement benefit, profit sharing, and stock ownership plans shall not be considered incurred until actually paid unless—

(i) The Contractor's practice is to contribute to the plans quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period. (Any contributions remaining unpaid shall be excluded from the Contractor's total cost for progress payment limitations until paid.)

(4) Incurred costs shall not include:

(i) Any costs that are required under any requirement of this contract (other than the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement) to be reimbursed or paid by the Government to the Contractor or by the Contractor to the Government other than through an equitable adjustment in the contract price;

(ii) Costs incurred by subcontractors or suppliers;

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs;

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—(A) Completed work, including partial deliveries, to which the Contractor has acquired title; and (B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) If an overpayment is made relative to this paragraph (d), interest shall be charged at the prevailing per annum rate established by the Secretary of the Treasury, pursuant to Public Law 92–41, from the date such overpayment is made (date of Government check) until the date the overpayment if fully recovered.

(e) *Progress payments to subcontractors.* Progress payments made by the Contractor to its subcontractors shall be the unliquidated progress payments that are mentioned in (a)(1) and (a)(2) above shall be all progress payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to the unliquidated remainder of progress payments made.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately six months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of this provision or to the clause at 52.232–16, Progress Payments, for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are substantially in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government or against which a lien has been placed in favor of the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(7) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(f) *Retentions.*

(1) Upon preliminary acceptance of each vessel and upon the submission of properly certified invoices, the Government will pay to the Contractor the amount withheld under paragraph (a) of this requirement in respect of that vessel in excess of (i) a performance reserve in the amount of one and one-half percent (1.5%) of the total contract price for such vessel, or (ii) one hundred thousand dollars ($100,000), whichever is greater. If at any time it shall appear to the Government that the amount of performance reserve may be insufficient to meet the cost to the Government of finishing any unfinished work under the contract for which the Contractor is responsible, or of correcting defects for which the Contractor is responsible which are discovered prior to preliminary acceptance or during the guaranty period of any vessel, the Government may, in making payments under this requirement, deduct or withhold such

additional amounts as it may determine to be necessary to render such reserve adequate; *provided*, that any additional amounts deducted or withheld on account of defects which are discovered during the guaranty period of the vessel shall not exceed the limit of the Contractor's liability as set forth in the requirement entitled LIMITATION OF CONTRACTOR'S LIABILITY FOR CORRECTION OF DEFECTS", reduced by the amounts of the cost incurred by the Contractor for work on such vessel because of Contractor responsible deficiencies which are discovered during the guaranty period of the vessel.

(2) The Government may, in its discretion, make payments prior to final settlement on account of the reserves established under this requirement, subject to such conditions precedent as the Contracting Officer may prescribe.

(3) The Government shall, at the time of final settlement, in accordance with the provisions of the requirement entitled "FINAL SETTLEMENT", pay the Contractor the balance owing to it under the contract promptly after the amount of such balance shall have been determined.

(g) *Liens and title.* For liens and title provisions, see the requirement of this contract entitled "LIENS AND TITLE".

(h) *Certifications and audits.* At any time or times prior to final payment under this contract, the Contracting Officer may have any invoices and statements or certifications of costs audited. The Contracting Officer may require the Contractor to submit, or make available for examination by the Contracting Officer or his designated representative, the supporting documentation upon which invoices, statements or certifications of costs are based. Each payment theretofore made shall be subject to reduction as necessary to reflect the exclusion of amounts included in the invoices or statements or certifications of costs which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments on preceding invoices.

(i) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments after finding on substantial evidence of any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract.

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The Contractor fails to maintain an efficient and reliable accounting system and controls adequate for the proper administration of progress payments.

(j) *Limitations on undefinitized contract actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 90 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the "CHANGES" clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (d) of this clause, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payment rates. For purposes of progress payment liquidation, progress payments for undefinitized contract actions shall be liquidated at 90 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 90 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(k) *Special terms regarding default.* If this contract is terminated under the "DEFAULT" clause, (i) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (ii) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the "DEFAULT" clause. The Government shall be liable for no payment except as provided by the "DEFAULT" clause.

(End of Clause)

§ 5252.232–9105 Payments (FI).

As prescribed in § 5232.500, insert the following clause in fixed price incentive solicitations and contracts for shipbuilding or ship conversion, alteration, or repair, when progress payments are based on a percentage or stage of completion:

(Beginning of Clause)

5252.232–9105 PAYMENTS (FI) (DEC 1992)

(a) *Definitions.* For purposes of this contract requirement, the following definitions apply:

(1) *Total contract price*—the sum of the contract prices including, adjustments as set forth in paragraphs (a)(4) (i) or (ii) of this clause and paragraph (c) of this clause, for each item in this contract subject to the requirement entitled, "INCENTIVE PRICE REVISION—FIRM TARGET".

(2) *Original unit target price*—the target price of each item in this contract subject to the requirement entitled, "INCENTIVE PRICE REVISION—FIRM TARGET", that was established at the time of contract award.

(3) *Original total target price*—the sum of the target prices of each item in this contract subject to the requirement entitled, "INCENTIVE PRICE REVISION—FIRM TARGET", that were established at the time of contract award.

(4) *Allocated total contract price*—that portion of the total contract price which is assigned to an item in the contract subject to the requirement entitled, "INCENTIVE PRICE REVISION— FIRM TARGET". The allocated total contract price of each item shall be established by multiplying the total contract price by a percentage, expressed as a decimal carried to four decimal places, equal to that fraction whose numerator is the original unit target price of the vessel and whose denominator is the original total target price. The resulting dollar amount shall be rounded to the nearest one hundred thousand dollar ($100,000), upward or downward; provided that in no event shall the sum of the allocated total contract price of the items exceed the total contract price. The aforesaid percentages of each item shall be revised, by contract modification, in the event that either:

(i) Equitable adjustments to the unit target prices of the items result in unit target prices of a substantially different proportion to the total target prices than previously provided for under this subparagraph (a)(4); or

(ii) Incurred costs indicate that a revision to the percentages is appropriate; *provided, however,* any such revision shall not be made more frequently than at the end of a calendar quarter unless the total contract price is limited to the contract ceiling price and the contract ceiling price is adjusted during the calendar quarter.

(b) *Computation of payments.*

(1) Until such time as physical progress in the performance of work on a vessel is fifty percent (50%) complete, the Government, upon submission by the Contractor of invoices certified by the Contractor as hereinafter provided, will promptly make payments, on account of the total contract price, of ninety percent (90%) of the amount determined by multiplying the allocated total contract price of such vessel by the percentage of physical progress accomplished in the performance of work on such vessel as certified by the Contractor subject to the approval of the Supervisor; *provided,* that no such payment shall be made in an amount which when added to the total of all payments previously made with respect to such vessel under (i) paragraph (b) of this requirement and (ii) the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement exceeds one hundred percent (100%) of the allowable costs certified by the Contractor on the related invoice to have been incurred in the performance of work on such vessel plus any unliquidated progress payments paid to subcontractors.

(2) After the percentage of physical progress in the performance of work on a vessel has reached fifty percent (50%), the Government, upon submission by the Contractor of invoices certified by the Contractor as hereinafter provided, will promptly make payments, on account of the total contract price, at one hundred percent (100%) of the amount determined by: (i) multiplying the allocated total contract price of such vessel by the percentage of physical

progress accomplished in the performance of work on such vessel as certified by the Contractor subject to the approval of the Supervisor, and (ii) subtracting from that product five percent (5%) of the allocated total contract price of such vessel; *provided*, that no such payment shall be made in an amount which when added to the total of all payments made previously with respect to such vessel under paragraph (b) of this requirement and the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement exceeds one hundred five percent (105%) of the allowable costs certified by the Contractor on the related invoice to have been incurred in the performance of work on such vessel plus any unliquidated progress payments paid to subcontractors; *provided, further*, that the Contractor furnishes data on actual cumulative costs and estimated future costs acceptable to the Supervisor which demonstrate to the satisfaction of the Supervisor that the Contractor will make a profit of at least five percent (5%) on completion of the contract, and the Contractor provides updated information on a quarterly basis. If updated data indicate the Contractor will not make a profit of at least five percent (5%) on completion of the contract, the progress payments shall be adjusted retroactively so that the total of all payments made with respect to the vessel under paragraph (b) of this requirement and the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement shall not exceed one hundred percent (100%) of the allowable costs certified by the Contractor on the related invoice to have been incurred in the performance of work on such vessel plus any unliquidated progress payments paid to subcontractors or 100% of the total contract price, whichever is less.

(c) *Billing price.*

(1) For the purpose of this requirement, until the establishment of the total final price in accordance with paragraph (d) of the "INCENTIVE PRICE REVISION (FIRM TARGET)" requirement, the term "total contract price" means the billing price; initially the billing price shall be the initial total contract target price, and thereafter the billing price shall be revised as provided in paragraph (c)(2) below. After establishment of the total final price in accordance with paragraph (d) of the "INCENTIVE PRICE REVISION (FIRM TARGET)" requirement, the billing price shall be the total final price so established.

(2) Within fifteen (15) days after each calendar quarter, the Contractor shall submit in writing a proposed revised billing price which shall be established as follows:

(i) The Contractor shall certify to the Contracting Officer the percentage of physical progress in the performance of the contract as a whole as of the end of the calendar quarter. Such percentage of physical progress shall be expressed as a decimal carried to four decimal places and shall be subject to the approval of the Supervisor.

(ii) The revised billing price shall be the sum of a projected final cost, and a projected profit, computed as follows:

(A) A projected final cost shall be computed by (1) determining the cumulative sum of the base costs as of the end of the calendar quarter, established in accordance with the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement, and (2) dividing the sum thereof by the percentage of physical progress certified and approved as set forth in subparagraph (i) above.

(B) A projected profit shall be determined by applying, to the projected final cost, the incentive formula set forth in paragraph (d)(2) of the "INCENTIVE PRICE REVISION—FIRM TARGET" requirement; *provided*, that in no event shall the revised billing price exceed the ceiling price of the contract.

(iii) The revised billing price determined as stated above shall be set forth separately in a supplemental agreement to this contract, which also shall set forth the computations upon which the revision of the billing price is based.

(iv) Any revision of the billing prices shall not affect the determination of the total final price under paragraph (d) of the "INCENTIVE PRICE REVISION—FIRM TARGET" requirement. After execution of the contract modification referred to in paragraph (d)(3) of said requirement, the total amount paid or to be paid on all invoices or vouchers shall be adjusted to reflect the total final price, and any additional payments, refunds or credits resulting therefrom shall be promptly made.

(d) *Invoices.* Invoices may be submitted every two weeks, but not more frequently; *provided, however*, that if after contract award more frequent progress payments are approved by cognizant Government authority, this provision shall be modified accordingly without additional consideration by the Contractor to the Government for such modification. No payment will be required to be made upon invoices aggregating less than five thousand dollars ($5,000). The Contractor shall certify on each invoice:

(1) the percentage of physical progress in the performance of work on the vessel as a decimal carried to four places; and

(2) the allowable costs incurred in the performance of the work on the vessel plus any unliquidated progress payments paid to subcontractors as of the date the invoice is submitted. Such certification shall provide for cost category reporting in accordance with the Contractor's normal accounting system and shall be broken down into direct material, direct labor, and indirect costs.

(e) *Physical progress and weighting factors.*

(1) Within sixty (60) days after contract award, the Contractor shall submit a progressing system description for review and approval by the Contracting Officer. Upon approval of such system, progress payments shall be in accordance with the approved system. Subsequent revisions to the approved system shall be submitted to the Contracting Officer for approval prior to implementation.

(2) The mutually agreed upon weighting factors for the categories of labor and material for each vessel are set forth in Attachment _____ to this contract. The weighting factors shall be revised quarterly concurrent with the billing price revisions specified in paragraph (c). Notwithstanding the above, revision of weighting factors may be requested by either party when factual data indicate that the weighting factors then in use are no longer representative of the actual labor and material distribution. Revisions of weighting factors shall be supported by detailed de-escalated (estimated final) direct material, direct labor, and indirect costs and additional data concerning the cause of the change in the weighting factors. In the event that the parties fail to agree on the establishment of, or a revision to the weighting factors, the Contracting Officer may establish on a unilateral basis the weighting factors to be used in the administration of this provision. Any change in the weighting factors shall be set forth in a Standard Form 30, "Amendment of Solicitation/Modification of Contract".

(f) *Incurred costs.* For the purpose of this requirement, "incurred costs" are those costs identified through the use of the accrual method of accounting, as supported by the records maintained by the Contractor and which are allowable in accordance with Part 31 of the Federal Acquisition Regulation (FAR) and Part 231 of the Department of Defense FAR Supplement (DFARS) in effect on the effective date of this contract and include only:

(1) The costs of supplies and services purchased by the Contractor directly for this contract may be included only after payment by cash, check, or other form of actual payment.

(2) Costs for the following may be included when incurred even if before payment, when the Contractor is not delinquent in payment of the costs of contract performance in the ordinary course of business:

(i) Materials issued from the Contractor's stores inventory and placed in the production process for use on this contract;

(ii) Direct labor, direct travel, and other direct in-house costs;

(iii) Properly allocable and allowable indirect costs.

(3) Accrued costs of Contractor contributions under employee pension or other post-retirement benefit, profit sharing, and stock ownership plans shall not be considered incurred until actually paid unless—

(i) the Contractor's practice is to contribute to the plans quarterly or more frequently; and

(ii) the contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period. (Any contributions remaining unpaid shall be excluded from the Contractor's total cost for progress payment limitations until paid.)

(4) Incurred costs shall not include:

(i) Any costs that are required under any requirement of this contract (other than the "COMPENSATION ADJUSTMENTS (LABOR AND MATERIAL)" requirement) to be reimbursed or paid by the Government to the Contractor or by the Contractor to the Government other than through an equitable adjustment in the contract price;

(ii) Costs incurred by subcontractors or suppliers;

(iii) Costs ordinarily capitalized and subject to depreciation or amortization except for the properly depreciated or amortized portion of such costs;

(iv) Payments made or amounts payable to subcontractors or suppliers, except for—(A)

Completed work, including partial deliveries, to which the Contractor has acquired title; and (B) Work under cost-reimbursement or time-and-material subcontracts to which the Contractor has acquired title.

(5) If an overpayment is made relative to this paragraph (f), interest shall be charged at the prevailing per annum rate established by the Secretary of the Treasury, pursuant to Public Law 92–41, from the date such overpayment is made (date of Government check) until the date the overpayment is fully recovered.

(g) *Progress payments to subcontractors.* Progress payments made by the Contractor to its subcontractors shall be the unliquidated progress payments paid to subcontractors that are mentioned in (b)(1) and (b)(2), if the following conditions are met:

(1) The amounts included are limited to the unliquidated remainder of progress payments made.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately six months between the beginning of work and the first delivery, or, if the subcontractor is a small business concern, four months.

(3) The terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of this provision or to the clause at FAR 52.232–16, Progress Payments, for any subcontractor that is a large business concern, or that clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this requirement;

(iii) Are not more favorable to the subcontractor or division than the terms of this requirement are to the Contractor;

(iv) Are substantially in conformance with the requirements of paragraph 32.504(e) of the Federal Acquisition Regulation; and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if (A) the Contractor defaults or (B) the subcontractor becomes bankrupt or insolvent.

(4) The progress payment rate in the subcontract is the customary rate used by the Contracting Agency, depending on whether the subcontractor is or is not a small business concern.

(5) The parties agree concerning any proceeds received by the Government for property to which title has vested in the Government or against which a lien has been placed in favor of the Government under the subcontract terms, that the proceeds shall be applied to reducing any unliquidated progress payments by the Government to the Contractor under this contract.

(6) If no unliquidated progress payments to the Contractor remain, but there are unliquidated progress payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this requirement to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(7) To facilitate small business participation in subcontracting under this contract, the Contractor agrees to provide progress payments to small business concerns, in conformity with the standards for customary progress payments stated in subpart 32.5 of the Federal Acquisition Regulation. The Contractor further agrees that the need for such progress payments shall not be considered as a handicap or adverse factor in the award of subcontracts.

(h) *Retentions.*

(1) Upon preliminary acceptance of each vessel and upon the submission of properly certified invoices, the Government will pay to the Contractor the amount withheld under paragraph (b) of this requirement in respect of that vessel in excess of (i) a performance reserve in the amount of one and one-half percent (1.5%) of the allocated total contract price for such vessel, or (ii) one hundred thousand dollars ($100,000), whichever is greater. If at any time it shall appear to the Government that the amount of performance reserve may be insufficient to meet the cost to the Government of finishing any unfinished work under the contract for which the Contractor is responsible, or of correcting defects for which the Contractor is responsible which are discovered prior to preliminary acceptance or during the guaranty period of any vessel, the Government may, in making payments under this requirement, deduct or withhold such additional amounts as it may determine to be necessary to render such reserve adequate; *provided*, that any additional amounts deducted or withheld on account of defects which are discovered during the guaranty period of the vessel shall not exceed the limit of the Contractor's liability as set forth in the requirement entitled "LIMITATION OF CONTRACTOR'S LIABILITY FOR CORRECTION OF DEFECTS", reduced by the amounts of the cost incurred by the Contractor for work on such vessel because of Contractor responsible deficiencies which are discovered during the guaranty period of the vessel.

(2) The Government may, at its discretion, make payments prior to final settlement on account of the reserves established under this requirement, subject to such conditions precedent as the Contracting Officer may prescribe.

(3) The Government shall, at the time of final settlement, in accordance with the provisions of the requirement entitled "FINAL SETTLEMENT", pay the Contractor the balance owing to it under the contract promptly after the amount of such balance shall have been determined.

(i) *Liens and title.* For liens and title provisions, see the requirement of this contract entitled "LIENS AND TITLE".

(j) *Certifications and audits.* At any time or times prior to final payment under this contract, the Contracting Officer may have any invoices and statements or certifications of costs audited. The Contracting officer may require the Contractor to submit, or make available for examination by the Contracting Officer or his designated representative, the supporting documentation upon which invoices, statements or certifications of costs are based. Each payment theretofore made shall be subject to reduction as necessary to reflect the exclusion of amounts included in the invoices or statements or certifications of costs which are found by the Contracting Officer, on the basis of such audit, not to constitute allowable costs. Any payment may be reduced for overpayments, or increased for underpayments on preceding invoices.

(k) *Reduction or suspension.* The Contracting Officer may reduce or suspend progress payments after finding on substantial evidence of any of the following conditions:

(1) The Contractor failed to comply with any material requirement of this contract.

(2) Performance of this contract is endangered by the Contractor's (i) failure to make progress or (ii) unsatisfactory financial condition.

(3) Inventory allocated to this contract substantially exceeds reasonable requirements.

(4) The Contractor is delinquent in payment of the costs of performing this contract in the ordinary course of business.

(5) The Contractor fails to maintain an efficient and reliable accounting system and controls adequate for the proper administration of progress payments.

(l) *Limitations on Undefinitized Contract Actions.* Notwithstanding any other progress payment provisions in this contract, progress payments may not exceed 90 percent of costs incurred on work accomplished under undefinitized contract actions. A "contract action" is any action resulting in a contract, as defined in subpart 2.1, including contract modifications for additional supplies or services, but not including contract modifications that are within the scope and under the terms of the contract, such as contract modifications issued pursuant to the CHANGES clause, or funding and other administrative changes. This limitation shall apply to the costs incurred, as computed in accordance with paragraph (f) of this requirement, and shall remain in effect until the contract action is definitized. Costs incurred which are subject to this limitation shall be segregated on Contractor progress payment requests and invoices from those costs eligible for higher progress payments rates. For purposes of progress payment liquidation, progress payments for undefinitized contract actions shall be liquidated at 90 percent of the amount invoiced for work performed under the undefinitized contract action as long as the contract action remains undefinitized. The amount of unliquidated progress payments for undefinitized contract actions shall not exceed 90 percent of the maximum liability of the Government under the undefinitized contract action or such lower limit specified elsewhere in the contract. Separate limits may be specified for separate actions.

(m) *Special terms regarding default.* If this contract is terminated under the "DEFAULT" clause, (1) the Contractor shall, on demand, repay to the Government the amount of unliquidated progress payments and (2) title shall vest in the Contractor, on full liquidation of progress payments, for all property for which the Government elects not to require delivery under the "DEFAULT" clause. The Government shall be liable for no payment except as provided by the "DEFAULT" clause.

(End of Clause)

Dated: August 19, 1994.

Lewis T. Booker, Jr.,

LCDR, JACC, USN, Federal Register Liaison Officer.

[FR Doc. 94–21611 Filed 9–6–94; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 192 and 195

[Docket No. PS–94; Notice 3]

[RIN 2137–AB38]

Qualification of Pipeline Personnel

AGENCY: Research and Special Programs Administration (RSPA), Transportation.

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

SUMMARY: The Research and Special Programs Administration (RSPA) invites representatives of industry, state and local government, and the public to an open meeting on qualifications of pipeline personnel. The purpose of this meeting is to hear views of interested persons on issues raised as a result of a recently published Notice of Proposed Rulemaking (NPRM) regarding qualifications of pipeline personnel. The comment period is also being extended.

DATES: The meeting will be held on September 29, 1994, from 9 a.m. until 4 p.m., eastern standard time. This meeting may conclude earlier if all persons wishing to speak have been heard. The comment period is extended until October 31, 1994.

ADDRESSES: The meeting will be held at the U.S. Department of Transportation, Nassif Building, Room 3200–3204, 400 Seventh Street, SW, Washington, DC 20590. The meeting will be transcribed. Written comments may be submitted that are relevant to any statement of fact or argument made. A copy of the comments or transcript of the meeting will be available for review in RSPA's public dockets, Room 8421, Nassif building, 400 Seventh Street, SW, Washington, DC 20590, between 8:30 a.m. and 5:00 p.m. each business day.

FOR FURTHER INFORMATION CONTACT: Albert C. Garnett, (202) 366–2036, regarding the public meeting, or Docket Unit, (202) 366–5046, for copies of material in the docket regarding the proposed rule.

SUPPLEMENTARY INFORMATION: On August 3, 1994, RSPA published a Notice of Proposed Rulemaking (NPRM), (59 FR 39506), that proposed requirements on pipeline operators to qualify pipeline personnel who perform, or directly supervise those persons performing, regulated operation, maintenance and emergency response functions. This action would amend current standards for training personnel performing operating or maintenance activities on hazardous liquid and carbon dioxide pipelines, and extend those standards to personnel performing similar functions on gas pipelines. This action was taken to ensure that pipeline personnel have the necessary knowledge and skills to competently perform these regulated functions. The intended effect of this proposed rulemaking is to improve pipeline safety by requiring operators to assure the competency of pipeline personnel through training, testing and periodic refresher training.

Certain parties have stated a desire to confer with RSPA regarding the issues the NPRM presented. Accordingly, RSPA has determined that a public meeting is appropriate to receive additional comments for consideration in preparing the final rule. The purpose of the meeting is to hear views and receive information from the public. In addition, RSPA officials may ask clarifying questions.

Interested persons are invited to attend the meeting and present oral or written statements on matters raised by the NPRM. Any person who wishes to speak should notify Daphené Floyd at (202) 366–1640. Please estimate the time that will be needed to speak. RSPA reserves the right to limit the time of each speaker, if necessary, to ensure that everyone who requests an opportunity to speak is given one. Individuals that are not scheduled to comment will have an opportunity to comment only after approval of the meeting officer.

The comment period is extended until October 31, 1994, because the close of the initial comment period follows immediately after this meeting. Therefore, commenters may not have sufficient time to include information from this public meeting in their comments.

(49 U.S.C. 60102 *et seq.*; 49 CFR 1.53)

Issued in Washington, DC on September 1, 1994.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 94–22032 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[RIN 1018–AC71]

Endangered and Threatened Wildlife and Plants; Notice of Taxonomic Change of Erigeron Maguirei var. Maguirei (Maguire Daisy) to Erigeron Maguirei (Maguire Daisy); Proposal To Reclassify From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The plant *Erigeron maguirei* (Maguire daisy) previously included two recognized varieties: *E. maguirei* var. *maguirei*, listed as endangered in 1985, and *E. maguirei* var. *harrisonii*, a category 2 candidate species. A recent taxonomic revision has synonymized these two plant varieties into one species, *E. maguirei*, because morphological differences that were previously used to distinguish between the two varieties have been determined to be ecotypic and not genetically fixed. The Fish and Wildlife Service (Service) accepts this taxonomic revision, and proposes to change the endangered *E. maguirei* var. *maguirei* to *E. maguirei* and to reclassify it to threatened status under the authority of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). *Erigeron maguirei* is endemic to sandstone canyons and mesas in the San Rafael Swell in Emergy County, Utah, and the Capitol Reef in Wayne County, Utah. This species is found in small populations and portions of its habitat are subjected to adverse effects from mineral and recreational development and livestock grazing. A determination that *E. maguirei* is a threatened species would continue to provide this species protection under the authority of the Act.

DATES: Comments from all interested parties must be received by November 7, 1994. Public hearing requests must be received by October 24, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Lincoln Plaza, Suite 404, 145 East 1300 South, Salt Lake City, Utah 84115. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: John L. England at the above address, Telephone: (801/524–5001).

SUPPLEMENTARY INFORMATION:

Background

The genus *Erigeron* (composite family, Asteraceae) includes the Maguire daisy (*E. maguirei*) and about 200 other species (Cronquist 1947). Most of these species are found in the Western Hemisphere, and the Western United States is their present center of distribution. The Maguire daisy is a perennial, herbaceous plant. Its stems are decumbent to sprawling or erect and 7 to 18 cm (2.76 to 7.09 in) in height. The basal leaves are spatulate or broadly oblanceolate in outline, 2 to 5 cm (0.79 to 1.97 in) long and 0.6 to 0.9 cm (0.24 to 0.35 in) wide. Its cauline leaves are sessile or short-petiolate, alternately arranged on the stem, and they are well developed. The leaves are slightly reduced towards the tip, i.e., oblanceolate becoming lanceolate or narrowly ellipsoid apically. Both the leaves and stems are copiously covered with a spreading hirsute pubescence. One to three flower heads are borne at the end of each stem. The floral disc is 8 to 10 mm (0.32 to 0.39 in) wide; the involucre is 5 to 6.5 mm (0.20 to 0.26 in) high. Each floral head has 15 to 20 white or pinkish white colored ligules (ray flowers) about 6 to 8 mm (0.24 to 0.32 in) long and 1.5 to 2 mm (0.06 to 0.08 in) wide. The disk flowers are orange, about 3.5 to 3.8 mm (0.14 to 0.15 in) long. The seeds are 2-nerved achenes. (Cronquist 1947; Welsh 1983a, 1983b; Welsh et al. 1987).

Erigeron maguirei was described by Cronquist (1947) from a 1940 specimen collected by Dr. Bassett Maguire from Calf Canyon in the San Rafael Swell, Emery County, Utah. *Erigeron maguirei* var. *harrisonii* was first discovered at Hickman Natural Bridge in the Capitol Reef of Wayne County, Utah, by Dr. Bertrand Harrison in 1936, and it was finally described by Welsh (1983a) from a specimen that he collected in 1982. However, Welsh postulated that the morphological variations between *E. maguirei* var. *maguirei* in the San Rafael Swell and *E. maguirei* var. *harrisonii* from the Capitol Reef may represent only ecotypic variation (Welsh 1983a, 1983b; Welsh et al. 1987). Heil (1989) reported both varieties from Capitol Reef and postulated that *E. maguirei* var. *harrisonii* was an ecotypic shade variant of *E. maguirei*. Using DNA analysis, VanBuren (1993) demonstrated that *E. maguirei* var. *maguirei* and *E. maguirei* var. *harrisonii* were of the same taxonomic entity and that separation of the two at the varietal level was not warranted. This finding was of great interest to the U.S. Fish and Wildlife Service (Service), since *E. maguirei* var. *maguirei* was listed as an endangered species at that time.

Recent status surveys of endangered, threatened, and other rare plant species in the San Rafael Swell (Kass 1990) and Capitol Reef (Heil 1989) have shown a total population of about 3,000 *E. maguirei* plants in five populations that occur on both Federal and State lands. Although combining the two varieties into one type increased the total number of plants in the wild, *E. maguirei* still remains vulnerable to threats due to the loss of habitat.

Small and restricted populations of *E. maguirei* make this species vulnerable to alterations of its habitat. The plant already has been adversely affected by off-road vehicles and trampling by humans and livestock. Other potential threats to the species are due to mineral and energy exploration and development. The demographic stability of the various populations of the species is not well known, but some of the smaller populations may be at levels too low to ensure their long term survival. Although the effects of natural factors such as disease, parasitism, grazing by native species, natural erosion, and vegetative competition are usually not threatening to this species, any further losses in its existing numbers even may make natural conditions threatening.

Section 12 of the Act directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 *FR* 27823) of its acceptance of the report as a petition to list those taxa named therein under Section 4(c)(2) of the Act (petition acceptance is now governed by Section 4(b)(3) of the Act), and *E. maguirei* was included in the July 1, 1975, notice on list "A" as endangered.

Erigeron maguirei was proposed by the Service for listing as endangered along with some 1,700 other vascular plant taxa on June 16, 1976 (41 *FR* 24523). General comments received on the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 *FR* 17909). The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn, but proposals published before the date of enactment of the 1978 amendments could not be withdrawn before the end of a 1-year grace period beginning on the date of enactment. On December 10, 1979, the Service published a notice of withdrawal of that portion of the June 16, 1976, proposal that had not been made final (44 *FR* 70796) which included *E. maguirei*.

The July 1975 notice was updated by a notice in the **Federal Register** on December 15, 1980 (45 *FR* 82480), and that notice included *E. maguirei* is a category 1species. Category 1 comprises taxa for which the Service presently has significant biological information to support a proposal to list them as endangered or threatened. Section 4(b)(3)(B) of the 1982 amendments to the Act requires that the Secretary of the Interior make findings on certain petitions within 1 year of their receipt. Section 2(b)(1) of the 1982 amendments to the Act further required that all petitions pending as of October 13, 1982, be treated as having been newly submitted on that date. Since the 1975 Smithsonian report was accepted as a petition, all the taxa contained in those notices, including *E. maguirei*, were treated as being newly petitioned as of October 13, 1982. The deadline for a finding on such petitions, including that for *E. maguirei*, was October 13, 1983. On October 13, 1983, the Service made a 1-year finding that the petition to list the Maguire daisy was warranted, but precluded by other listing actions of higher priority. On July 27, 1984, the Service published a proposed rule proposing *E. maguirei* var. *maguirei* as an endangered species (49 *FR* 30211) and published a final rule designating the species as endangered on September 5, 1985 (50 *FR* 36090).

On September 27, 1985, the Service published a notice of review (50 *FR* 39526) replacing the 1980 notice and its 1983 supplement. This notice of review included *E. maguirei* var. *harrisonii* as a category 2 species. Category 2 comprises taxa for which the Service has information indicating that it may be appropriate to propose to list the taxa as endangered or threatened but that more substantial data are needed on biological vulnerability and threats to the species. The 1985 notice of review was replaced by the January 27, 1990 notice of review (55 *FR* 6184), which was replaced by the September 30, 1993, notice of review (58 *FR* 51144). Both notices retained *E. maguirei* var. *harrisonii* as a category 2 candidate species.

Recent status surveys and taxonomic evaluations (Heil 1989; Van Buren 1993; R. VanBuren, Brigham Young University, 1993, pers. comm.; Fish and Wildlife Service 1993) indicate that the varieties *E. maguirei* var. *maguirei* and *E. maguirei* var. *harrisonii* are

synonymous with *E. maguirei*. Synonymizing the two varieties into a full species results in *E. maguirei* var. *harrisonii* being removed from the candidate species list.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to *E. maguirei* (Maguire daisy) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Due to its inaccessible habitat, there are few threats to the populations of this daisy that occur on Bureau of Land Management (Bureau) lands. Livestock trampling has affected populations of this plant both in and outside of Capitol Reef National Park (the Park is not closed to livestock grazing). Off-road and foot traffic within the Park have affected one known population of *E. maguirei*. The range within which *E. maguirei* occurs is known to contain uranium ore deposits. The development of these deposits, and surface disturbance by annual assessment work on mineral claims for uranium and possibly other minerals, have the potential to adversely impact this species and its habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known.

C. Disease or Predation

Erigeron maguirei is vulnerable to livestock grazing and trampling. The effect of livestock grazing on the condition of the desert vegetation needs to be evaluated to determine if there are any impacts on the *E. maguirei* populations.

D. The Inadequacy of Existing Regulatory Mechanisms

The Act currently provides protection to *E. maguirei* var. *maguirei* as an endangered species. This protection would also continue for *E. maguirei* as a threatened species.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

There are few threats to populations of *E. maguirei* on Bureau lands because of their inaccessibility. The known populations are remote and it would require maximum effort by individuals in vehicles or on foot to gain access to these plant locales. Off road vehicles could pose a remote threat to this daisy. But due to its low numbers (about 3,000 specimens), the species could be vulnerable to any human disturbance.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Based on this evaluation, the preferred action is to list *E. maguirei* as a threatened species. With less than 3,000 plants remaining in only five known populations, the Service has determined that the species remains vulnerable to habitat destruction. A portion of the species' population is protected from some threats within Capitol Reef National Park, but even within the Park there are significant threats. The Service finds that *E. maguirei* is not in danger of extinction throughout all or a significant portion of its range, and therefore does not meet the requirements to be listed as endangered. However, the plant is likely to become an endangered species in the foreseeable future if the present threats and declines continue. Threatened status is an accurate assessment of the species' present condition. For the reasons given below, it is not prudent at this time to propose critical habitat.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent possible, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service finds that designation of critical habitat is not prudent at this time for *E. maguirei* because this designation might result in increased taking of the species. Designation of critical habitat would entail publication of a detailed description and map of its habitat in the **Federal Register**, thus exposing the species to the threat of vandalism. A person could easily vandalize the small populations of this daisy with aid of an off-road vehicle.

Moreover, few additional benefits would be provided to the species by the critical habitat designation which are not already provided by listing the species. Also most of the plants are located on lands under Federal jurisdiction. Any Federal action that would impact the plant or its habitat would be addressed through Section 7 consultation. Section 9(a)(2)(B) of the Act makes it unlawful to remove and reduce to possession any threatened species of plant from areas under Federal jurisdiction. The National Park Service and the Bureau are aware of the occurrence of *E. maguirei* on Federal lands and what their obligations for protection of this plant are under the Act. Protection of this species' habitat also will be accomplished through the recovery process.

Available Conservation Measures

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

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

Most of these daisies occur on Federal lands managed by the Bureau with remainder on Capitol Reef National Park. Both of these Federal Agencies are responsible for ensuring that all activities and actions on lands they

manage are not likely to jeopardize the continued existence of this daisy.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 for threatened species set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of Section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that a statement of "cultivated origin" appears on their containers. The Act and 50 CFR 17.72 provide for the issuance of permits to carry out otherwise prohibited activities involving threatened species under certain circumstances. Because of limited horticultural interest in wild daisies, including *E. maguirei*, trade permits may be sought, but few, if any, trade permits for plants of wild origin ever would be issued since the species is not common in the wild. If plants of cultivated origin are available, permits may, under certain circumstances, be issued for trade in them. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, Fish and Wildlife Service, P.O. Box 3507, Arlington, Virginia 22203–3507 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions concerning this proposed rule are hereby sought from the public, other governmental agencies, the scientific community, industry, or any other interested party. Comments are particularly sought concerning:

(1) biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *E. maguirei*;

(2) the location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided for under Section 4 of the Act;

(3) additional information concerning the range, distribution, and population size of this species; and

(4) current or planned activities in the subject area and their possible impacts on this species.

Final promulgation of the regulation on this species will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs significantly from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Ecological Services, Fish and Wildlife Service, Salt Lake City, Utah (see **ADDRESSES** above).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Act, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Cronquist, A. 1947. Revision of the North American species of Erigeron, north of Mexico. Brittonia 6(2):1–302.

Heil, K.D. 1989. A vegetation study of Capitol Reef National Park—endangered, threatened, rare and other plants of concern at Capitol Reef National Park. National Park Service, Torrey, Utah.

Kass, R.J. 1990. Final report—Habitat inventory of threatened and endangered and candidate plant species in the San Rafael Swell, Utah. USDI, Bureau of Land Management, Salt Lake City, Utah. 87 pp.

U.S. Fish and Wildlife Service. 1993. Maguire daisy (*Erigeron maguirei* var. *maguirei*) craft recovery plan. U.S. Fish and Wildlife Service, Salt Lake City, Utah. 27 pp.

Welsh, S.L. 1983a. A bouquet of daisies (*Erigeron*, Compositae). Great Basin Naturalist 43(2):365–368.

Welsh, S.L. 1983b. Utah flora: Compositae (Asteraceae). Great Basin Naturalist 43(2):365–368.

Welsh, S.L., N.D. Atwood, L.C. Higgins, and S. Goodrich. 1987. A Utah flora. Great Basin Naturalist Memoirs 9:1–894.

Author

The primary authors of this proposed rule are John L. England, botanist (see FOR FURTHER INFORMATION CONTACT:), and Harold M. Tyus, Denver Regional Office (303/236–7398).

List of Subjects in 50 CFR Part 17

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

Proposed Regulation Promulgation

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

PART 17—[AMENDED]

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

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

2. It is proposed to amend § 17.12(h) by removing *Erigeron maguirei* var. *maguirei* and adding the following, in alphabetical order under Asteraceae, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
* * * * *						
Asteraceae (Aster Family)						
* * * * *						
Erigeron maguirei	Maguire daisy	U.S.A. (UT)	T	202, (___)	NA	NA
* * * * *						

Dated: August 19, 1994.

Mollie H. Beattie,

Director, Fish and Wildlife Service.

[FR Doc. 94–22030 Filed 9–6–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 59, No. 172
Wednesday, September 7, 1994

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.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication

ACTION: Notice of Public Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of a meeting of the Committee on Adjudication of the Administrative Conference of the United States.

DATES: Monday September 19, 1994, at 10 a.m.

LOCATION: Office of the Chairman, Administrative Conference, 2120 L Street NW., suite 500, Washington, DC.

FOR FURTHER INFORMATION: Nancy G. Miller, Office of the Chairman, Administrative Conference of the United States, 2120 L Street, NW., suite 500, Washington, DC 20037. Telephone: (202) 254–7020.

SUPPLEMENTARY INFORMATION: The Committee on Adjudication will meet to begin discussion of a study by Professor Brian Shannon of Texas Tech University School of Law of procurement and nonprocurement debarment and suspension procedures. Attendance at the meeting is open to the interested public, but limited to the space available. Persons wishing to attend should notify the Office of the Chairman at least one day in advance. The chairman of the committee, if he deems it appropriate, may permit members of the public to present oral statements at the meeting. Any member of the public may file a written statement with the committee before, during, or after the meeting. Minutes of the meeting will be available on request.

Dated: September 1, 1994.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 94–22076 Field 9–6–94; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 940844–4244; I.D. 082394C]

RIN 0648–AG75

West Coast Salmon Fisheries; Northwest Emergency Assistance Plan

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

ACTION: Notice of proposed program for financial assistance.

SUMMARY: NMFS proposes a program, the Northwest Emergency Assistance Plan (NEAP), that would provide $12 million of assistance to salmon fishermen in the Pacific Northwest who have been affected by a fishery resource disaster during 1992 through 1994, while providing conservation benefits to salmon resources. NMFS proposes that these disaster relief funds, which were made available under the Interjurisdictional Fisheries Act (IFA), be applied toward the following three programs, administered by the following intermediaries: A vessel permit buyout program—Washington Department of Fish and Wildlife; and a habitat restoration program—Soil Conservation Service (SCS) of the U.S. Department of Agriculture (USDA), and a data collection program—Pacific States Marine Fisheries Commission (PSMFC), both of which would provide jobs to commercial salmon fishermen. The intent is to provide assistance to those fishermen who have recently participated in the salmon fisheries, who were substantially reliant on West Coast salmon resources for their income, and who suffered an uninsured loss as a result of a significant reduction in income because of the resource disaster.

DATES: Written comments must be received by September 22, 1994.

ADDRESSES: Comments should be sent to Stephen P. Freese, Northwest Emergency Assistance Plan, Trade and Industry Services Division, Northwest Regional Office, National Marine Fisheries Service, BIN C15700, 7600 Sand Point Way NE, Seattle, WA 98115.

FOR FURTHER INFORMATION CONTACT: Bruce Morehead, (301) 713–2358, or Stephen Freese, (206) 526–6113.

SUPPLEMENTARY INFORMATION:

Background

On May 26, 1994, the Secretary of Commerce (Secretary) declared a fishery disaster and, with the Office of Management and Budget (OMB), announced a $15.7 million emergency aid package for Oregon, Washington, and northern California. This aid is intended to alleviate the economic hardship imposed on individuals and communities by the collapse of salmon stocks in fishing areas along the Northwest coast. Included in this package is $12 million of aid that was made available, under the Secretary's declaration that a fishery resource disaster exists under section 308(d) of the Interjurisdictional Fisheries Act of 1986, 16 U.S.C. 4107(d), to undertake the NEAP program as described in this notice.

In addition, $3 million is being administered by the Rural Development Administration (RDA) of USDA. Grants by RDA will be made to public bodies and private nonprofit corporations to finance development of small business enterprises in cities under 50,000 in population. The Economic Development Administration (EDA) of the Department of Commerce is making $882,000 available, instead of the $700,000 originally announced as part of the $15.7 million aid package. Grants by EDA have been earmarked to communities for tourism development and to tribes for stream reclamation.

In addition to the $15.7 million package, aid to salmon fishermen is also being provided by the Small Business Administration (SBA) and the Farmers Home Administration, in the form of loans and debt restructuring programs, and by the Federal Emergency Management Agency (FEMA) and the Department of Labor (DOL) in the form of unemployment assistance, up to $14 million, to dislocated Washington and Oregon fishermen who are unemployed as a direct result of the continuing effects of El Niño on salmon fishing. A request for such aid for California fishermen is under review.

On behalf of the Secretary, NMFS published an advance notice of proposed rulemaking (ANPR) on June 3, 1994 (59 FR 28838), to solicit public comment on issues to be considered in development and implementation of the $12 million NEAP program. The comment period, as modified on July

13, 1994 (59 FR 35674), closed July 15, 1994; comments received are responded to in this notice. At the time the ANPR was prepared, NMFS anticipated implementing the assistance program through rulemaking. However, because codification of the program is unnecessary to comply with statutory requirements, implementation will be achieved through procedures proposed in this notice. Following consideration of all comments received, NMFS will publish a notice of the final NEAP program in the **Federal Register**.

In addition to the ANPR, NOAA's Office of Sustainable Development and Intergovernmental Affairs (SDI) arranged a series of eight town meetings designed to gather information about the effects of the decline in the salmon resources on local communities and fishermen. Meetings were held between June 1 and June 10, 1994, in Fort Bragg and Crescent City, CA; Coos Bay, Newport, Portland, and Astoria, OR; and Port Angeles and Westport, WA. More than 700 people attended the meetings and provided more than 37 hours of testimony.

The purpose of this notice is to solicit public comment on the limitations, terms, and conditions that the Secretary has determined are necessary to administer the program, within the conditions in section 308(d) of the IFA.

Fishery Resource Disaster

Although West Coast (Washington, Oregon, and California) salmon stocks experience annual fluctuations in abundance, stock abundances in the last few years have been exceptionally low. West Coast salmon species are coho, chinook, chum, sockeye, and pink salmon. Landings of chinook and coho, have declined significantly, from roughly 6.2 million fish in 1988 to 2 million fish in 1993. Additional information regarding the declines in chinook and coho can be found in the ANPR and is not repeated here.

Chinook salmon fisheries in the ocean waters off Washington and Oregon north of Cape Falcon were closed in 1994 by the Federal Government. Other salmon fisheries in the ocean waters off central and southern Oregon and northern California are at reduced levels and are closed to fishing for coho. It is predicted that 1994 ocean salmon landings, coastwide, will amount to only 289,000 chinook and zero coho. The fishing seasons for inside fisheries are the most restrictive ever imposed in many areas. Recent estimates of the 1994 ocean chinook and coho fisheries, compared to 1993 catches, indicate that, for the two species combined, cumulative catches through July are down 95 percent in Washington; down 76 percent in Oregon; and up 19 percent in California. California catches reflect increased availability of salmon off southern and central California, south of Point Arena. In general, California catches are significantly below 1988–89 catch levels, when environmental conditions were more favorable. Harvests of salmon off northern California have been extremely limited—commercial salmon fisheries are generally closed in this area for 1994, except for post-peak season openings in September.

Despite increasingly stringent management measures enacted in recent years to protect these salmon stocks, they have reached a critical stage of depletion, due in part to environmental conditions unfavorable to salmon survival that include: (1) An extended drought in California, in combination with the already depressed condition of northern California stocks; (2) less than normal snowpack throughout the western United States; (3) drought followed by extensive flooding in the State of Washington; and (4) poor upwelling, due to an extreme El Niño ocean warming event during 1992–1993, all of which are believed to have been responsible for extremely poor salmon survival.

Comments and Responses

Comments on the ANPR were received from 27 entities. Many of the comments described the hardships the salmon disaster has caused to individuals, Indian tribes, and communities. Several commenters stated that the proposed funds are inadequate. Several also expressed appreciation for the Department of Commerce's efforts. In addition, SDI received 59 letters from affected parties, mainly as a result of the series of town meetings held to get public input on ways to address the disaster. Correspondents included fishermen, trade associations, nonprofit organizations, state and local government officials and agencies (including the Governors of Oregon and Washington), and members of Congress.

The ANPR requested comments on six specific questions. The following comments were received in response to those questions.

1. What would be appropriate goals of the program? How might salmon abundance be increased through this program?

Comments: An Indian tribe, two individual members of another tribe, and a charterboat operator indicated that the goal should be complete restoration of salmon stocks. The two tribe members suggested coordinating emergency mandates to achieve this goal. The Indian tribe stated that loss of the salmon fishery cannot be mitigated by awarding money, and the individual noted that financial aid to commercial fishermen will not increase salmon numbers.

Another individual said that the program should destroy or modify dams to ensure salmon passage.

Response: The goal of the proposed program is to compensate individual fishermen for their uninsured losses, while also protecting the long-term viability of the fishery resources.

2. What should be additional eligibility criteria, within statutory constraints, to receive a grant?

Comments: A coastal zone management association and a state senator said that grants should go to individuals actively engaged in the commercial salmon fishery (ocean troll, ocean charterboat, and lower Columbia River gillnet). A separate allocation should be made to each state, based only on commercial economic data reflecting the relative economic declines, e.g., base years of 1986–90 compared with El Niño years of 1991–93. Non-charterboat recreational data should not be included.

The Pacific Fisheries Legislative Task Force commented that the maximum grant amount should be $15,000, not $100,000, to help more people; the $2 million ceiling for the past year's income, as contained in the IFA, is unrealistic; and, making fishermen eligible for unemployment compensation would be helpful.

One fisherman stated that aid should go to dislocated fishermen first, and not to related businesses. Criteria should include being a participant in the Lower 48 salmon fishery for 50 percent or more of income, with priority given to those who do not have an alternate fishery to fall back on, and those who need to update safety equipment.

Another fisherman suggested a buyout of $60,000 for current permit holders that have been active for the last 10 years, and a buyout of $20,000 for nonactive permit holders, defined as those who have not sold salmon within the last 3 years. Deckhands who can document work on a salmon troller within the last 3 years should receive a cash grant of $7,000. In addition, there should be a moratorium on fishing for 3 years, in exchange for a $25,000 grant per year.

A charterboat operator stated that criteria need to be consistent coastwide and that, to be eligible, fishermen should have at least 25 percent (up to 50 percent) of income averaged over the last 5 years from salmon fishing. Also,

salmon landing databases should be used to determine eligibility; meaningful levels of assistance should be provided to displaced ocean salmon fishermen prior to aid to inland participants; grants should be a minimum of $5,000; and qualification criteria should be generated by those directly involved in salmon fishing.

A boat puller stated that boat pullers/boat hands should receive consideration for aid.

One Indian tribe wrote to request that NMFS compensate each member of the tribe for the loss of the fishery.

A businessman (non-fisherman) commented that owners of failed troller operations should not receive preference over owners of other small businesses that have failed due to the salmon disaster.

A county economic development council commented that local government agencies should be eligible for assistance.

Three Indian tribes commented that tribal governments should be eligible for grants under the program.

An individual stated that aid should go only to those in commercial fishing for at least 10 consecutive years. Associations should not be eligible for awards, to prevent fishermen who are association members from getting double benefits.

A tribal individual recommended eligibility for tribal members of one of the four treaty tribes along the Columbia River and its tributaries.

Response: NMFS is proposing the following eligibility criteria: Participation in the commercial fishery in either 1992 or 1993; at least 50 percent of gross income from the commercial fishery in the base year, selected from 1986–1989, used to determine a loss; at least a 50 percent decline in commercial fishery income from the base year as compared to commercial fishery income in 1992 or 1993, whichever is greater; and, if single, 1993 gross income of less than $25,000, or if married, combined gross income of less than $50,000. Persons receiving a permit buyout would not be eligible for the jobs programs. The disaster relief funds are being made available under the IFA, which excludes government entities from receiving aid; tribal and local governments are ineligible for this program. However, individual tribal commercial fishermen are eligible to apply for the NEAP program.

3. If fishing permits are relinquished, how can their further reissuance be handled by the states?

Comments: A charterboat operator stated that the total number of permits should be reduced, beginning with the inactive permits. Under no circumstance should any new permits be issued.

An individual suggested waiting until salmon numbers increase, and then giving first priority for new permits to former permit holders who relinquished theirs.

A tribe member stated that this should be coordinated with the treaty tribes and other entities involved, after studying the natural and biological effects.

Response: NMFS is proposing that, as a condition for receipt of buyout funds under this program, the administering authority must ensure that reissuance of purchased permits will not be allowed.

4. What should be the basis for the valuation of the permits, and should inactive permits be valuated differently?

Comments: A fisherman stated that permit value should relate to the current market value of Alaska troll permits that are for sale.

A charterboat operator commented that this should be decided by industry as a function of criteria for a permit buyout. Valuation should logically reflect the level of activity in the fishery, i.e., greater value for the more active permits.

An individual stated that all active permits should have the same value; inactive permits should be valueless.

A tribal individual's response to this question was "economic hardship, and education."

Response: NMFS is proposing not to set a value for permits, but to use a sealed bid process for conducting a permit buyout. However, in no case may a buyout recipient receive benefits in excess of 75 percent of the total uninsured losses incurred for the disaster period, or $100,000, whichever is less.

5. What would be appropriate documentation to determine the extent of uninsured losses?

Comments: One fisherman stated that a notarized statement from the vessel's captain should be required for determining aid to deckhands.

Two commenters, a fisherman and a fisherman's wife, while not directly addressing this question, mentioned in their comments that they are willing to provide documentation such as tax records to demonstrate their need.

A charterboat operator stated that salmon landing tickets, income tax records, logbooks, charter office schedule logs, etc., would be appropriate documentation. Grant recipients must be willing to sign affidavits that the information is accurate.

An individual stated that applicants should provide a record of the number of fish caught in previous years and those presently caught, with a value assigned per fish species. Documentation should be in an affidavit, so that penalties could be imposed in case of perjury.

A tribe member stated that there is no way to determine accurately the overall extent of uninsured losses, the funds are insufficient, but that a "ballpark" figure could be used to establish economic basis.

Response: NMFS is proposing to consider any or all of the documentation suggested in the comments, and is also proposing to require an affidavit that the information provided is accurate.

6. What should be the starting and ending dates of the disaster period for purposes of awarding grants, and what factors should the Secretary consider in determining these dates?

Comments: A charterboat operator stated that the disaster period should begin as soon as administratively possible once criteria are decided on, and extend at least to the end of calendar year 1994.

An individual stated the disaster period should begin on January 1, 1995, and end "when the fish numbers equal those existing in 1972."

A tribe member stated that, for the four treaty tribes, the problems began in 1977.

A charterboat operator wanted assistance extended beyond 1994, until normal fishing seasons are established.

Response: For the purposes of the NEAP program, NMFS is proposing that the disaster period begin on January 1, 1992, and end on December 31, 1994. An ending date for the disaster is necessary in order to calculate the amount of the uninsured commercial losses eligible for disaster relief under the NEAP.

In addition to comments responding to the ANPR questions, the following comments were received:

Comments: Thirteen commenters, including two Indian tribes, a trade association, a coastal zone management association, the Pacific Fisheries Legislative Task Force, a state senator, four fishermen, two charterboat operators, and the California Department of Fish and Game (CDF&G), were in favor of direct grants to fishermen, for maintenance, moorage, safety improvements to vessels, or without any conditions for use. One of these commenters also recommended grants for facilities such as ports.

Several of these comments contained specific recommendations regarding the allocation of grant funds among the

three affected states; conditions for eligibility, emphasizing that grants should be provided to those most active in the Northwest salmon fishery and those most in need; minimum and maximum grant amounts; and organizations through which funds should be channeled. Two tribal governments requested direct aid under this proposal; one asked for funds for two specific programs; the other recommended tribal administration of grant funds. This latter tribe further recommended that 65 percent of the total aid go to Washington State, and of that allocation, 50 percent go to tribes in the State.

Response: Given the scope and limited financial resources available for NEAP, NMFS has attempted to devise a program to address both short-term individual needs and long-term needs of the industry and the resources. FEMA and the DOL program are accepting applications for direct grants from individuals affected by this situation. The IFA does not allow direct grants to tribal governments.

Comments: Eight commenters supported a program to employ fishermen in habitat restoration efforts, including a coastal zone management association, a State senator, an Indian tribe, and CDF&G. A trade association stated that funds should be administered through the Salmon Stamp Fund in California and the PSMFC in Oregon and Washington, and opposed use of the SCS or RCD or community agencies. One charterboat operator supported habitat restoration jobs. Another charterboat operator and a fisherman, while supporting habitat restoration, noted these are costly long-term projects; the charterboat operator recommended that Congress give habitat restoration at least equal priority to Super Fund projects. The Pacific Fisheries Legislative Task Force expressed support for nonprofit and citizen group efforts in this area. A trade association opposed retraining on the grounds that only low-paying jobs were available.

Response: NMFS concurs that a program employing fishermen to restore habitat would help address the short-term financial needs of the participants who lost income due to the disaster. NMFS also recognizes that habitat restoration is a long-term undertaking, but one that is needed to achieve recovery of the fishery. NMFS is proposing that the habitat restoration program be administered through the SCS, which has access to private lands in coastal areas where a need to restore habitat exists; an established track record in habitat restoration projects; and a history of working with Indian tribes.

Comments: One fisherman, a trade association, a coastal zone management association, and a State senator supported employing fishermen to conduct at-sea surveys, stream monitoring and data collection to compensate for lost income.

Response: NMFS concurs that a data collection jobs program would address some of the short- and long-term needs of the fishing industry and of the resource. Data collection jobs provide an option for those unable to do habitat restoration work. NMFS is proposing to use the PSMFC to administer the data collection jobs program.

Comments: Two fishermen commented in support of a permit buyout, with one recommending that all of the funds be used for this purpose, after determining how many permits can remain in the fishery. An economic development council favored buyout of both permits and vessels, to be implemented only if additional funds are made available. A charterboat operator supported an unspecified buyout for "businesses reliant on the salmon fishing." One individual noted that buying inactive permits is ineffective.

A trade association strongly opposed permit buyouts, citing lack of funds and the need to buy out both vessels and permits. However, this group stated that a permit leaseback for a fixed time period might be necessary. A charterboat operator stated that permit buyouts or leasebacks are impossible at this funding level, and would not reduce future harvests, since only the least active would turn in their permits. He also noted that, since charterboats in Oregon and California are not under limited entry permits, reduction of the charter fleet would not reduce recreational effort. A coastal zone management association and a state senator stated that buyout or leaseback was an inappropriate use of the limited funds.

Response: NMFS believes that a program to buy out fishing permits is needed to provide immediate relief to fishermen and to reduce the number of participants in the fishery. NMFS is proposing to allocate $4 million to a buyout program. NMFS recognizes that permit buyouts would be feasible only in Washington at this time, since it is the only one of the affected states that currently has a limited entry system without a fixed number of permits. California and Oregon laws provide that new permits be issued to replace permits lost, in order to maintain an established number of existing permits.

Comments: One fisherman supported a vessel buyout; another favored either a boat buyout or permit leaseback. A third fisherman was strongly opposed to vessel buyouts, citing lack of funds and his belief that Washington State is trying to eliminate the commercial industry in favor of recreational vessels. CDF&G also opposed a vessel buyout, as their State Code mandates restoration, not elimination, of fisheries.

Response: NMFS believes that, given the limited resources for the NEAP program, the buyout program should apply to permits and not to vessels. Vessels could potentially be used in other fisheries. Relinquishing permits would have the desired effect of removing participants from the commercial fishery for salmon.

Comments: A county economic development council supported efforts in development, diversification, and tourism promotion. However, two individuals involved in fishing opposed any funding of local governments, or businesses for tourism or other development projects. One of these expressed concern that tourism efforts would promote recreational opportunities in fisheries where commercial fishermen have been "regulated off the stocks."

Response: EDA has allocated $882,000, primarily for tourism development activities in local communities and for reclamation projects in tribal communities. Tourism projects will not be funded under the proposed NEAP program, the purpose of which is to compensate individual commercial fishermen for uninsured losses suffered as a direct result of the West Coast salmon fishery disaster.

Comments: Two individuals, one of these a member of an Indian tribe, commented that dams on spawning rivers are the main cause of the salmon disaster.

Response: NMFS recognizes that there are factors other than natural causes that are responsible for the decline in the West Coast salmon resources. The proposed NEAP program is intended to address some of these factors, including habitat restoration.

Comments: A fisherman, a member of an Indian tribe, and another individual questioned the quality of the data used by NMFS in the ANPR.

Response: NMFS reviewed several studies that attempted to determine impacts of the disaster on various sectors. NMFS used the best data available at the time the ANPR was drafted.

Comment: The Washington Department of Fisheries and Wildlife provided an economic analysis of the

impact of the salmon fishery, indicating that Washington's loss is approximately 65 percent of the total, and probably much greater when tribal impacts are considered.

Response: After careful consideration of many factors, which are discussed elsewhere in this document, NMFS is proposing total target distributions among the affected states as follows: For Washington, $6.6 million; for Oregon and California, $2.7 million each.

Comments: Two charterboat operators and a member of an Indian tribe made recommendations related to fishery management needs, including development of quotas and specific closure recommendations.

Response: NMFS recognizes that there are many management issues to be considered in rebuilding the salmon stocks. However, such issues are beyond the scope of this action and should be raised in the appropriate fishery management forums.

Comment: One Indian tribe noted that the conditions impacting the coho and chinook stocks also affect the availability of Fraser River sockeye to tribal fishermen.

Response: The sockeye salmon fishery is not excluded from the proposed program; all five species of salmon in the West Coast fisheries are included.

Comment: A member of an Indian tribe mentioned the increasing U.S interception of Canadian salmon.

Response: The United States and Canada are continuing to negotiate on this issue.

Proposed NEAP Program

I. Statutory Authority

Section 308(d) of the IFA, codified at 16 U.S.C. 4107(d), authorizes the Secretary to award grants to persons engaged in commercial fisheries, for uninsured losses determined by the Secretary to have been suffered as a direct result of a fishery resource disaster. Set forth below are the conditions and definitions established by the Secretary to implement the programs described in part III.

The IFA requires that "the Secretary shall determine the extent, and the beginning and ending dates of any fishery resource disaster" (16 U.S.C. 4107(d)(2)). Although there have been declining trends in landings from the salmon fisheries in recent years, a sharp decline did not occur until after 1991. This sharp decline coincided with an extreme El Nino ocean warming event during 1992–993. The 1994 season is the first season in which all ocean fisheries for coho were closed; the projected chinook harvest for ocean fisheries indicates a new record low will be achieved, eclipsing the previous record low in 1992. Therefore, for the purposes of the proposed NEAP program, the beginning and ending dates of the fishery resource disaster are January 1, 1992, and December 31, 1994, respectively.

The extent of this disaster includes the waters and habitat associated with the salmon fisheries of northern California, Oregon and Washington.

Proposed NEAP Program

II. Definitions

For the purposes of the proposed NEAP program:

Commercial fishermen are vessel owners, operators, or crew directly involved in the commercial fishery.

Commercial fishery is defined as the salmon fishery off the coasts and in the state waters of Washington, Oregon, and California for purposes of either selling the salmon harvested or providing a vessel for hire that carries recreational fishermen to engage in fishing for a fee (e.g., charterboats and headboats). Subsistence fisheries do not fall under this definition.

Commercial fishery income is earned income derived from participation in the commercial fishery.

Gross income includes all income received in the form of money, goods, property, and services that is not exempt from Federal income tax.

Loss is defined as a loss of income not subject to Federal or state compensation and determined by a multi-step procedure, as follows:

1. The applicant (commercial fisherman) selects a base year from the years 1986 through 1989.

2. The applicant determines his/her commercial fishery income from 1992 and 1993, and selects whichever is greater.

3. If the amount of the applicant's commercial fishery income from 1992 or 1993, as selected in step 2 above, is less than the applicant's commercial fishery income from the base year, then a loss has occurred. The amount of the annual loss is the difference between the applicant's base year commercial fishery income and that from 1992 or 1993, as selected in step 2 above.

4. The amount of the annual loss calculated in step 3 above is multiplied by three to determine the applicant's total loss for the disaster period.

(**Note:** The Federal assistance programs announced in this notice are limited to compensation to commercial fishermen for uninsured losses that have not been addressed through compensation from other state or Federal programs.)

Salmon means chinook (king) salmon (*Oncorhynchus tshawytscha*), coho (silver) salmon (*Oncorhynchus kisutch*), pink (humpback) salmon (*Oncorhynchus gorbuscha*), chum (dog) salmon (*Oncorhynchus keta*), and sockeye (red) salmon (*Oncorhynchus nerka*).

III. Program Descriptions

A. Vessel Permit Buyout Program

This program is intended to compensate commercial fishermen for uninsured lost income and to aid the long-term viability of the fishery resource by reducing fishing effort on the stocks. Federal support for a buyout program stems from recommendations for reducing long-term effects on the salmon resources, such as the recommendations of the Snake River Salmon Recovery Team, which was appointed by NMFS to develop, independently, a recovery plan for Snake River sockeye, spring/summer chinook, and fall chinook under the Endangered Species Act, and to take into account the conservation of other species in the Columbia River Basin. Federal support for this particular type of buyout system is also based on a review of various academic and governmental reports concerning past experiences with various buyout programs, and on discussions with state officials, some of whom have experience with past buyout programs. Given the high number of slightly active permit holders, a buyout program predicated on removing the maximum number of permits in order to reduce capacity is appropriate for the salmon fisheries.

The buyout program is generally modeled after the 1983–1986 Oregon Columbia River Gill Net Salmon Fleet Reduction Program Oregon Program. The Oregon program had low administrative costs and was instituted quickly; it avoided the difficult, contentious, and time-consuming task of assessing the market value of vessels and gear. The Oregon program was based on the premise that fishermen, rather than the government, are in the best position to determine suitable alternative uses or buyers for vessels after permits are sold. Also, the inherent difficulties in reducing effort by attempting to buy out the most productive vessels are avoided. There are many reported instances where "highliners" (the most successful vessels) have been bought out at a high price, only to return to the fleet via the purchase of a low-priced permit from a marginal producer. Consequently, the effort-reduction goals of the vessel buyout programs have been thwarted.

NMFS will enter into cooperative agreements with qualified government entities that will serve as administrative intermediaries. If more than one government entity wants to participate in this program, NMFS may select a primary administrative intermediary to undertake the administration of the entire program. Qualified government entities are those governments that administer limited-entry commercial salmon fisheries and can ensure that permits bought out will not be replaced.

Offers to sell gillnet or troll permits from commercial fishermen who participate under limited entry systems of qualified government entities will be solicited by the administrative intermediary. These commercial fishermen will need to demonstrate an uninsured loss as a result of the fishery resource disaster, as defined for the purposes of NEAP.

Permits will be selected for buyout based on a sealed bid process. Starting with the lowest offers, permits will be purchased until the funds are exhausted. Maximum purchase prices for these permits will be limited to amounts that ensure that the offerer (commercial fisherman) will not be receiving total benefits from this and any other program that exceed 75 percent of his or her uninsured and otherwise uncompensated commercial fishery loss resulting from this fishery resource disaster, and in no case more than $100,000 per individual. The administrative intermediary, in consultation with NMFS, reserves the right to reject any and all bids.

Only Washington State has indicated a strong interest in a buyout program and currently has a limited entry program that meets the program requirements. Therefore, NMFS proposes that Washington State would function as the sole administrative intermediary. However, if another state or tribal governmental entity has in place an appropriate limited-entry system and wants to participate in the buyout program, NMFS will consider expanding the program accordingly. Washington State, in consultation with NMFS, shall design a permit buyout program that is consistent with state and Federal management and grant regulations, including a "permit offer" application that allows assessment of the uninsured loss of the applicant, any receipt of benefits by the applicant from all other assistance programs associated with this disaster, and the gross income of the applicant in 1993 (or, if married, the combined gross income of both spouses). The administrative costs charged by Washington State shall be kept at a minimum; such costs should not exceed 7.5 percent of the total funds distributed for this program.

Based on estimates developed by the Washington Department of Fish and Game, approximately $4 million would be required to reduce the Washington State troll and gillnet fleets by 50 percent each, based on an allocation of $1 million for troll permit purchases and $3 million for gillnet permit purchases. It is anticipated that the final development of this program can be initiated in early October 1994.

B. Habitat Restoration Program

There is considerable support among commercial fishermen for a habitat restoration program that would hire eligible commercial fishermen (i.e., those who suffered uninsured losses as a result of the West Coast salmon fishery disaster), both tribal and non-tribal, at a "living wage" to perform work that has a long-term beneficial impact on the habitat of the salmon. Generally, "living wages" are wages commensurate with the prevailing rate for similar work conducted in a specific locality. Depending on the locality and the skills required, living wage may range up to $10–$15 per hour. The types of work fishermen might do under this program would involve the operation of backhoes and skiploaders, and undertaking the necessary plantings of vegetation. Generally, fishermen will need 1 to 2 days of training. Commercial fishermen who meet the eligibility criteria would be hired on a first-come, first-served basis by contractors associated with projects that have been solicited and approved by the administrative intermediary.

Habitat restoration projects are to take place in areas geographically accessible to displaced fishermen, which include the coastal counties from Mendocino County, CA, to Whatcom County, WA; Clallam County, WA; and counties bordering on Puget Sound or the Columbia River. If in close commuting distance, projects can be undertaken in other counties, if they contain habitat important to the salmon resources associated with the fishery resource disaster.

NMFS intends to enter into an agreement with the SCS to serve as the administrative intermediary for the habitat restoration program. The SCS would enter into agreements with the appropriate state conservation agency, conservation commission, or association of conservation districts, who, in turn, would develop: A grant solicitation process, including guidelines for making a grant application; a grant application review process; deadlines for grant applications; and a monitoring and evaluation process. Each state conservation agency, conservation commission, or association of conservation districts would develop agreements with state employment departments to establish a program to determine the eligibility of commercial fishermen according to the criteria described elsewhere in this notice.

NMFS has selected the SCS as the administrative intermediary because it has the necessary expertise, experience, and other desirable features, as well as the ability to implement this program quickly by making use of existing governmental organizations, while avoiding duplication of effort. The SCS has an established relationship with conservation districts, which have project selection networks that extend to the local level and can be used for soliciting proposals. SCS provides technical assistance to the conservation districts through its district offices, which are widely distributed and are typically at the county level. Many of these conservation districts have previously received Federal grants, and arrangements are in place to receive grants under this project. For each district, there are approximately five officials who are landowners and are either appointed or elected via the general election process. These officials make recommendations concerning private lands. The SCS reviews these recommendations and provides technical expertise in the areas of forestry, range management, conservation, agronomy, etc.

The SCS has significant expertise in habitat restoration and enhancement on private lands and on the grounds contracting capability. This is important, since almost all Federal funding has gone toward restoration of habitat on public lands. The SCS has demonstrated the capability and the flexibility to work with diverse organizations and proposal applicants, such as other Federal agencies, state agencies, and local governments. The SCS is already involved in the prevention of soil erosion through its watershed identification, habitat restoration, preservation, and enhancement projects in Oregon, California, and Washington. The SCS is also already aware of Northwest salmon habitat issues, as evidenced in working relationships with the Bonneville Power Administration and the Northwest Power Planning Council (Council), and has initiated a program for habitat restoration in response to the Council's comprehensive strategy for salmon and steelhead restoration in the Columbia River Basin.

A number of SCS studies have already been developed that might be submitted for the review process. For example, in the California Trinity River District, there is a project that may employ up to 75 fishermen. A similar project, which could employ another 40 fishermen, has been developed for the Garcia River.

While it is NMFS' intention and desire to make financial assistance available as soon as possible, it should be noted that, due to the season and the need for project review, planning, and implementing, it is unlikely that many fishermen will start receiving wages in this program prior to April 1, 1995. Every effort to expedite the program will be made.

C. Data Collection Jobs Program

Commercial fishermen have voiced considerable interest in a jobs program associated with collecting information or performing tasks that would be of use to scientists and fishery managers. Under this proposed program, eligible commercial fishermen, both tribal and non-tribal, would be hired on a first-come, first-served basis, at a "living wage," up to $10–15 per hour, to perform various tasks by contractors associated with approved projects. Examples of these tasks include collecting tissue samples for genetic research, measuring parameters of the ocean environment (temperature, upwelling, etc.), performing baseline surveys of habitat, participating in test fisheries to determine ocean fish distribution, and assisting hatchery technicians in collecting information or in improving hatchery operations. Commercial fishing vessels may also be chartered to do research. For some tasks, as with the habitat restoration program, training of fishermen will be required.

Proposals would be competitively solicited by the administrative intermediary from states, tribes, academia, and industry or conservation organizations for projects to be considered under this data collection jobs program. These proposals would be ranked according to criteria established in section IV of this announcement. To ensure that this program complements the habitat restoration program and does not duplicate other Federal assistance programs, representatives from NMFS and SCS will be members of this review panel. Priority will be given to projects that provide the greatest benefits to displaced fishermen; address the sustainability or rebuilding of anadromous species, especially threatened or endangered salmon stocks; address Federal, Pacific Fishery Management Council, PSMFC, or state fishery research needs; are based on sound scientific methodology; and have low administrative costs. Applicants must demonstrate ability to manage and account for Federal funds.

NMFS has chosen the PSMFC as the administrative intermediary for the data jobs program in the three affected states. The PSMFC is an interstate fisheries commission established by Federal statute in 1947. It is a federally authorized forum, wherein its member states (California, Oregon, Washington, Idaho, and Alaska) can legally enter into agreements and programs extending beyond state boundaries. The PSMFC is run by 15 Commissioners (three per member state), who include the state fishery agency director, a state legislator, and an appointee by the Governor from each state. The goal of the PSMFC is "to promote the conservation, development and management of Pacific coast fishery resources through coordinated regional research, monitoring, and utilization."

The Commissioners have set as one of the objectives of the PSMFC the facilitation of research and management projects relating to interstate fisheries. To achieve this objective, they have directed the PSMFC staff to provide administrative, fiscal, and field coordination and support for interstate and state/Federal research, data collection and management projects.

NMFS proposes the PSMFC as the administrative intermediary because PSMFC goals, objectives, and organizational structure coincide largely with the implementation needs of this program. The PSMFC has a good track record of project administration, and experience with project coordination with the three states and the tribes. Because of its proven fiscal ability and low overhead, PSMFC regularly serves as a primary contractor on grants, projects, and contracts for states and other organizations. The PSMFC is in an ideal position to implement the Data Collection Jobs Program, because it already has knowledge of state, Federal, tribal and industry research priorities (recreational and commercial) as coastwide data collection efforts and research are at the very core of the PSMFC's objectives. Additionally, the PSMFC is well respected by fishermen because of its capabilities in reaching consensus and coordinating efforts between the states. As a coordinator of the individual state catch statistics systems, which include salmon landings by individual commercial fishing vessels, PSMFC should be able to verify much of the information that fishermen will need to provide to PSMFC showing that they meet the eligibility criteria.

The short-term benefits of this program would be to provide compensation to fishermen for uninsured lost income due to the closed or restricted salmon seasons. The long-term advantages would be to improve collection of information important to sustaining salmon stocks. An additional benefit is that it could foster a better understanding between fishermen, scientists, and fishery managers. The timing of the actual employment of fishermen will depend on the planning and proposal selection process, as well as the best seasons in which to undertake research.

IV. Eligibility Criteria

For purposes of the proposed habitat restoration and data collection programs under NEAP, job applicants must meet all of the following eligibility criteria to receive assistance:

1. The applicant must show an uninsured loss.

2. In the base year used by the applicant in determining loss, the applicant must have earned at least 50 percent of gross income from the commercial fishery.

3. The applicant must have earned commercial fishery income in either 1992 or 1993.

4. The applicant's 1992 or 1993 commercial fishery income, whichever is greater, must have declined by at least 50 percent from the applicant's commercial fishery income from the base year selected.

5. If single, the applicant's 1993 gross income must have been less than $25,000. If married, the applicant's 1993 gross combined income of the applicant and his/her spouse must have been less than $50,000.

No person may receive financial assistance under NEAP that exceeds 75 percent of any uninsured and otherwise uncompensated commercial fishery loss resulting from the fishery resource disaster, and no person may receive more than $100,000 in the aggregate for all losses resulting from the disaster.

The intent of these criteria is to provide the available assistance to those commercial fishermen who have been most heavily dependent on salmon fishing and who have suffered the greatest losses. In order to comply with the requirements of the IFA, an uninsured loss must be shown. The second criterion is intended to determine those applicants that have been dependent on the commercial fishery for most of their livelihood. The third criterion is intended to limit eligibility to those who commercially fished during the disaster period. The final two criteria are intended to focus

the available financial assistance on those commercial fishermen who have suffered the greatest losses due to the disaster and who do not have significant income from other sources.

In applying for any of the proposed programs, a commercial fisherman must submit documentation, including salary, earnings, or crew-share statements and affidavits that demonstrate eligibility.

NMFS believes the proposed eligibility criteria are reasonable. Two studies that produced socio-economic profiles on non-tribal Oregon trollers and California fishermen (the majority of which were salmon fishermen) for 1988 found: The average commercial fisherman received 34 to 56 percent of total family income from salmon fishing; total family income ranged from $50,000 to $54,000; 78 to 82 percent were married; if married, there were 2.8 children to support, with less than 50 percent of their spouses working; and West Coast salmon fishermen had a weekly income of $1,200 to $1,500 from salmon landings. Oregon trollers who fish in Alaska may earn 45 percent of their income from Alaskan salmon. The percentage of trollers who fish off Alaska is not available. A third study showed that more than one-third of the Washington fleet may have Alaskan salmon permits. This fleet appears to harvest off Alaska two to three times the value of the entire Washington State commercial landings, based on a review of 1985 and 1988 statistics.

The proposed criteria also appear reasonable based on an analysis of fish ticket data for non-tribal and non-charterboat vessels for all species of fish landed in California, Washington, and Oregon. Of the 12,009 vessels that earned at least $1 in any of the years 1986 through 1993, only 2,879 appear to meet the proposed eligibility criteria. During 1993, these vessels collectively earned $9 million in West Coast salmon revenues, averaging almost $4,000 each, compared to a peak year average of $24,268. Data on non-fishing and Alaska fishing income are unavailable, but, when that income is included, it is expected to reduce the number of vessels that would meet the proposed eligibility criteria below 2,879. Assuming that crew size for trollers and gillnetters averages 1.4 crew members per vessel, potentially 4,700 fishermen may be eligible for the jobs program under the first four proposed criteria.

Approximately 519 charterboats are licensed in Washington, Oregon, and California. If charterboats have an average crew size of 2.4, approximately 1,200 individuals could potentially apply for aid. California charterboats have been classified as either active—those that landed more than 100 salmon, or casual—those that landed from 1 to 100 salmon. Based on 1993 landings, 47 percent of the California charterboat fleet was designated casual. If casual charterboats are not likely to meet the proposed eligibility criteria, then applying the 53-percent estimate for active charterboats to the entire charterboat fleet within the area of the fishery disaster suggests that approximately 600 charterboat operators and crew members may be eligible to receive financial assistance under the proposed NEAP program.

In Washington State, 2,000 tribal fishermen made landings in 1993, compared to 3,000 in 1990. This decline is largely attributed to salmon fishery closures. The current tribal population is approximately 17,500. Information supplied by the Northwest Indian Fisheries Commission suggests that tribal revenues from salmon catches in Puget Sound declined by $13 million, comparing averages for 1990–92 to 1993. According to 1990 Bureau of Census data, Native Americans in the State of Washington had an average per-capita income of $6,646 in 1990. Tribal salmon catches in the other states indicate that there may be fewer than 500 additional tribal fishermen along the remaining coast. This is an uncertain estimate; NMFS specifically requests information on tribal participation in commercial salmon fisheries in response to this notice.

V. Program and State Funding Targets

NMFS anticipates that the proposed NEAP program would result in the following distribution of available financial assistance among the affected states and programs: 55 percent of available funds would be distributed to the State of Washington and 22.5 percent of available funds would be distributed to each of the States of Oregon and California.

Northwest Emergency Assistance Plan

PROPOSED PROGRAM AND STATE FUNDING TARGETS WITHIN STATES

[Dollars in millions]

	Permit buyout	Habitat restoration	Data collection	State total
WA	4.0	1.6	1.0	6.6
CA	0.0	2.2	0.5	2.7
OR	0.0	2.2	0.5	2.7
Total	4.0	6.0	2.0	12.0

NMFS emphasizes that these are "target" distributions, not fixed percentages, and are flexible; redistributions could be made, if increased total benefits can be achieved. The final distribution would depend on the needs of the commercial fishermen. For example, should other governmental entities besides Washington State want to participate in the proposed buyout program, a portion of the buyout funds currently proposed to be distributed to Washington would have to be redistributed. In the project selection phase of the habitat restoration program, it may be recognized that total benefits will be greater by shifting more of the projects toward one state than another. However, there is a need to distribute initially a sufficient amount of funds to operate the programs effectively in each state.

Program distributions are largely based on the following considerations: Habitat needs are found in all three states, and habitat restoration is critical to increase the long-term sustainability of salmon resources; only Washington State has indicated a willingness to participate in a permit buyout program; and fishermen have voiced desires to participate in programs to collect needed habitat, conservation, and management information.

Because additional listings of West Coast salmon stocks under the

Endangered Species Act are expected, and closures of salmon fisheries are likely to continue as a result, a phase-down of the fishing industry via a buyout program is needed. A phase-down of the industry needs to be initiated to increase the long-term economic health of the industry, as suggested by the Snake River Recovery Team (Snake River Salmon Recovery Team: Final Recommendations to the National Marine Fisheries Service, May 1994).

Information on landings, commercial revenues, recreational expenditures, and estimates of jobs associated with the various sectors of the industry were reviewed. Recognizing various uncertainties, this information was reviewed in the context of: The definition of commercial fisherman, as defined by the IFA; the realization that coho and chinook are the prime species associated with the fishery resource disaster; and the availability of alternative opportunities to commercial fishermen.

Because of the large Puget Sound and tribal fisheries, available data and information imply that fishermen in Washington State should have the greatest share of the funds, given the State's share of the industry. Providing equal shares to California and Oregon is partially based on economic analyses developed for the Pacific Fishery Management Council. Trends in estimated community/local personal income impacts of the California and Oregon fisheries were compared. Comparing 1986–90 averages to 1993 levels indicates that Oregon has had a greater loss (approximately $50 million) compared to California (approximately $42 million). So, while California has a larger fishery, Oregon appears to have had a greater loss on a percentage basis. In addition, commercial fishermen in Oregon may have fewer alternative fishing opportunities than those who reside in California and Washington. Northern California commercial fishermen can fish on salmon stocks for which fishing has not been prohibited, while many Washington vessels have permits to fish off Alaska.

The state targets do not necessarily reflect the ultimate distribution of benefits. For example, should only Washington State vessel permit holders participate in the buyout program, commercial fishermen from all three states would benefit, because there would be fewer commercial fishermen competing for shared salmon resources. In addition, the results of the proposed jobs program in each state are expected to provide coastwide benefits.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

This action proposes a financial assistance program that would contain collection-of-information requirements subject to the Paperwork Reduction Act. The necessary information collection forms and specific reporting requirements have not been identified at this time, and will need to be developed in conjunction with the intermediaries administering the program. When the requirements have been established, NMFS will submit them to OMB for approval prior to their implementation.

Dated: September 2, 1994.

Gary Matlock,

Program Management Officer, National Marine Fisheries Service.

[FR Doc. 94–22078 Filed 9–2–94; 1:03 pm]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in the People's Republic of China

August 31, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing and carryforward. As a result of these actions, the limits for Category 315 and Group II, which are currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 3847, published on January 27, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU dated January 17, 1994, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 31, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on January 24, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 8, 1994, you are directed to amend further the directive dated January 24, 1994 to adjust the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated January 17, 1994 between the Governments of the United States and the People's Republic of China. The limits for Category 315 and Group II, which are currently filled, will re-open:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433–436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847 as a group,.	1,384,934,353 square meters equivalent.
Sublevels in Group I	
315	159,860,546 square meters.
335	389,874 dozen.
340	844,679 dozen of which not more than 422,339 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340–Z [12].
607	303,113 kilograms.
617	16,284,253 square meters.
634	587,370 dozen.
635	613,558 dozen.
636	541,163 dozen.
642	308,875 dozen.
643	494,495 numbers.
648	1,110,156 dozen.
649	867,413 dozen.
652	2,180,255 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [13], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [14], as a group.	127,057,448 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [15], 224–O [16], 225, 227, 229, 369–O [17], 400, 414, 464, 465, 469, 600, 603, 604–O [18], 606, 618–622, 624–629, 665, 669–O [19] and 670–O [20], as a group.	268,310,932 square meters equivalent.
Level not in a Group 870	30,294,070 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[12] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[13] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[14] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[15] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010, 5801.36.0020.

[16] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36,0020 (Category 224–V).

[17] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[19] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[20] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–21959 Filed 9–6–94; 8:45 am]

BILLING CODE 3510–DR–F

Increase of a Guaranteed Access Level for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

August 31, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: September 8, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to increase the 1994 Guaranteed Access Level (GAL) for Categories 338/339/638/639.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff

Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 62328, published on November 26, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 31, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 18, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1994 and extends through December 31, 1994.

Effective on September 8, 1994, you are directed to increase the current Guaranteed Access Level for Categories 338/339/638/639 to 2,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–21958 Filed 9–6–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will hold a closed meeting on Wednesday, September 14, 1994, from 9:00 a.m. until 1:00 p.m. in Pentagon Room 2E687A, Washington, DC.

The Commission meeting will consist of a briefing from the Secretary and Chief of Staff of the Army discussing operational missions of the United States Army. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two. In accordance with Section 552b(c)(1) of Title 5 U.S.C., disclosure of such classified information would be contrary to the interests of national defense; therefore, this meeting will be closed to the public.

Extraordinary circumstances created by scheduling conflicts compel notice of this meeting to be posted in less than the 15 day requirement.

For further information, contact 1LT Michael Bob Starr, (703) 696–4250.

Dated: September 1, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–22005 Filed 9–6–94; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will hold a closed meeting on Wednesday, September 14, 1994, from 2:30 p.m. until 6:30 p.m. in Pentagon Room 4E871, Washington, DC.

The Commission meeting will consist of a briefing from the Secretary and Chief of Staff of the Air Force discussing operational missions of the United States Air Force. Material to be presented and discussed will consist of both classified and unclassified information in a format that makes it impractical to separate the two. In accordance with Section 552b(c)(1) of Title 5 U.S.C., disclosure of such classified information would be contrary to the interests of national defense; therefore, this meeting will be closed to the public.

Extraordinary circumstances created by scheduling conflicts compel notice of this meeting to be posted in less than the 15 day requirement.

For further information, contact 1LT Michael Bob Starr, (303) 696–4250.

Dated: September 1, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–22006 Filed 9–6–94; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense (DoD) Commission on Roles and Missions of the Armed Forces

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: The Commission on Roles and Missions of the Armed Forces will hold a closed meeting on Wednesday, September 7, 1994, from 11:00 p.m. until 12:30 p.m. in Pentagon Room 2E877, Washington, DC.

The Commission meeting will consist of a briefing from the Chairman and the Vice Chairman of the Joint Chiefs of Staff discussing operational missions assigned to each Service. Material presented will include both classified and unclassified information in a format that makes it impractical to separate the two. In accordance with section 552b(c)(1) of Title 5 U.S.C. disclosure of such classified information would be contrary to the interests of national defense, therefore this meeting will be closed to the public.

Extraordinary circumstances created by scheduling conflicts compel notice of this meeting to be posted in less than the 15 day required.

For further information, contact CDR Gregg Hartung, USN, Director for Public Affairs, (703) 696–4250.

Dated: August 31, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–21917 Filed 9–6–94; 8:45 am]

BILLING CODE 5000–4–M

Defense Policy Board Advisory Committee

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Policy Advisory Committee will meet in closed session on 4–5 October 1994 from 0800 until 1700 in the Pentagon, Washington, DC.

The mission of the Defense Policy Board is to provide the Secretary of Defense, Deputy Secretary of Defense and the Under Secretary of Defense for Policy with independent, informed advice and opinion concerning major matters of defense policy. At this meeting the Board will hold classified discussions on national security matters.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended [5 U.S.C. App. II, (1982)], it has been determined that this Defense Policy Board meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that

accordingly his meeting will be closed to the public.

Dated: September 1, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–22004 Filed 9–6–94; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to the Office of Management and Budget (OMB) for Review

ACTION: Notice.

The Department of Defense (DoD) has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., Chapter 35).

Title and OMB Control Number: Request for Visit Authorization; OMB Control Number 0704–0221

Type of Request: Extension

Number of Respondents: 84

Responses Per Respondent: 714

Annual Responses: 59,976

Average Burden Per Response: 12 minutes

Annual Burden Hours: 11,995

Needs and Uses: The information collected hereby, provides the DoD approving authority with the data necessary to coordinate and evaluate for decision purposes, requests from foreign governments and international organizations to visit U.S. Defense installations, activities and contractor locations.

Affected Public: Foreign governments and international organizations

Frequency: On occasion

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Mr. Edward C. Springer

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William Pearce

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: August 31, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–21918 Filed 9–6–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0011]

Clearance Request for Preaward Survey Forms (Standard Forms 1403, 1404,1405, 1406, 1407, and 1408)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0011).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Preaward Survey forms (Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

To protect the Government's interest and to ensure timely delivery of items of the requisite quality, contracting officers, prior to award, must make an affirmative determination that the prospective contractor is responsible, *i.e.*, capable of performing the contract. Before making such a determination, the contracting officer must have in his possession or must obtain information sufficient to satisfy himself that the prospective contractor (i) has adequate financial resources, or the ability to obtain such resources, (ii) is able to comply with required delivery schedule, (iii) has a satisfactory record of performance, (iv) has a satisfactory record of integrity, and (v) is otherwise qualified and eligible to receive an award under appropriate laws and regulations. If such information is not in the contracting officer's possession, it is obtained through a preaward survey conducted by the contract administration office responsible for the plant and/or the geographic area in which the plant is located. The necessary data is collected by contract administration personnel from available data or through plant visits, phone calls, and correspondence and entered on Standard Forms 1403, 1404, 1405, 1406, 1407, and 1408 in detail commensurate with the dollar value and complexity of the procurement. The information is used by Federal contracting officers to determine whether a prospective contractor is responsible.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the date needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW, Room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows:

Respondents, 12,000; responses per respondent, 5; total annual responses, 6,000; preparation hours per response, 24; and total response burden hours, 144,000.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), Room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0011, Preaward Survey Forms, in all correspondence.

Dated: August 30, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–21825 Filed 9–6–94; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0104]

Clearance Request for Computer Generation of Forms by the Public

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0104).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management

and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Computer Generation of Forms by the Public.

FOR FURTHER INFORMATION CONTACT:

Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

This rule allows computer generation of forms prescribed by the FAR and by FAR supplements. The rule will ultimately affect several existing OMB clearances and will require re-estimation of the burden associated with those clearances. It is anticipated that this rule will reduce the burden on the public associated with acquisition procedures. This rule affects all firms which do business or seek to do business with the Government. Use of computer generated forms is optional. No penalties or incentives are associated with use of the forms.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1; responses per respondent, 1; total annual responses, 1; preparation hours per response, 1; and total response burden hours, 1.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0104, Computer Generation of Forms by the Public, in all correspondence.

Dated: August 30, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–21826 Filed 9–6–94; 8:45 am]

BILLING CODE 6820–34–M

[OMB Control No. 9000–0006; FAR Case 92–39]

Clearance Request for Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294)

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for a revision to an existing OMB clearance (9000–0006).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Subcontracting Plans/Subcontracting Reporting for Individual Contracts (Standard Form 294).

FOR FURTHER INFORMATION CONTACT:

Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631 *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract of a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7. FAR case 92–39 proposes to increase the effective period for master subcontracting plans from 1 year to 3 years (FAR 19.704). This change is expected to decrease the number of subcontract plans per year and associated hours by approximately 10 percent.

In conjunction with these plans, contractors must submit semiannual reports of their progress on Standard Form 294, Subcontracting Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on Standard Form 294 is used to assess contractors' compliance with their subcontracting plans.

B. Annual Reporting Burden

Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets NW., room 4037, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1,625; responses per respondent, 14; total annual responses, 22,750; preparation hours per response, 11; and total response burden hours, 250,250.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1,625; hours per recordkeeper, 121; and total recordkeeping burden hours 196,625.

OBTAINING COPIES OF PROPOSALS:

Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006, FAR case 92–39, Master Subcontracting Plans, in all correspondence.

Dated: August 13, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–22013 Filed 9–6–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF EDUCATION

Recognition of Accrediting Agencies, State Agencies for Approval of Public Postsecondary Vocational Education, and State Agencies for Approval of Nurse Education

AGENCY: Department of Education.

ACTION: Request for comments on Agencies applying to the Secretary of Initial Recognition or Renewal of Recognition.

DATES: Commentors should submit their written comments by October 24, 1994 to the address below.

FOR FURTHER INFORMATION CONTACT: Carl S. Person, Chief, Accrediting Agency Evaluation Branch, U.S. Department of Education, 600 Independence Avenue, SW., room 3036 ROB–3, Washington, DC 20202–5171, telephone: (202) 708–7417.

SUBMISSION OF THIRD-PARTY COMMENTS: The Secretary of Education recognizes, as reliable authorities as to the quality of education offered by institutions or programs within their scope, accrediting agencies and State approval agencies for public postsecondary vocational education and nurse education that meet certain criteria for recognition. The purpose of this notice is to invite interested third parties to present written comments on the agencies listed in this notice that have applied for initial or continued recognition.

The National Advisory Committee on Institutional Quality and Integrity (the "Advisory Committee") advises the Secretary of Education on the recognition of accrediting agencies and State approval agencies. The Advisory Committee is scheduled to meet December 5–6, 1994 in Washington, DC. All written comments received regarding the agencies listed in this Notice will be considered by both the Advisory Committee and the Secretary.

The following agencies will be reviewed during the December 1994 meeting of the Advisory Committee:

Nationally Recognized Accrediting Agencies and Associations

Petitions for Initial Recognition

1. American Board for Accreditation in Psychoanalysis (requested scope of recognition: the accreditation of free-standing psychoanalytic training institutes that confer postgraduate certificates in psychoanalysis).

2. National Environmental Health Science and Protection Accreditation (requested scope of recognition: the accreditation of baccalaureate programs in environmental health science and protection).

Petitions for Renewal of Recognition

1. Accrediting Council for Continuing Education and Training, Accrediting Commission (requested scope of recognition: the accreditation of non-collegiate continuing education institutions and programs).

2. Distance Education and Training Council (formerly the National Home Study Council) (requested scope of recognition: the accreditation of institutions whose programs are designed for distance learning or training in a discipline or skill that leads to either a certificate or an academic degree from the associate to the master's level).

Interim Reports

(An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted recognition to the agency)—

1. American Bar Association, Council of the Section of Legal Education and Admission to the Bar
2. Accrediting Commission of Career Schools and Colleges of Technology [formerly the National Association of Trade and Technical Schools]
3. American Optometric Association, Council on Optometric Education
4. American Psychological Association, Committee on Accreditation
5. American Veterinary Medical Association, Committee on Veterinary Technician Education and Activities
6. American Veterinary Medical Association, Council on Education
7. Commission on Opticianry Accreditation
8. Middle States Association of Colleges and Schools, Commission on Secondary Schools
9. National Council for Accreditation of Teacher Education
10. North Central Association of Colleges and Schools, Commission on Schools

State Agencies Recognized for the Approval of Public Postsecondary Vocational Education

Petitions for Renewal of Recognition

1. Oklahoma State Board of Vocational and Technical Education
2. Oklahoma State Regents of Higher Education
3. Utah State Board of Vocational Education

State Agencies Recognized for the Approval of Nurse Education

Petitions for Renewal of Recognition

1. Maryland State Board of Nursing

In accordance with the Federal policy governing the granting of academic degrees by Federal agencies (approved by letter from the Director, Bureau of the Budget, to the Secretary, Health, Education, and Welfare, dated December 23, 1954), the Secretary of Education is required to establish a review committee to advise the Secretary concerning any legislation that may be proposed which would authorize the granting of degrees by a Federal agency. The review committee forwards its recommendation concerning a Federal agency's proposed degree-granting authority to the Secretary, who then forwards the committee's recommendation and the Secretary's recommendation to the Office of Management and Budget for review and transmittal to the Congress. The Secretary uses the Advisory Committee as the review committee required for this purpose. Accordingly, the Advisory Committee will review the following institution at its December meeting:

Proposed Master's Degree-Granting Authority

1. Command and Staff College, Marine Corps University, Quantico, Virginia (for the Master of Military Studies degree)

Public Inspection of Petitions and Third-Party Comments

All petitions and interim reports, and those third-party comments received in advance of the meeting, will be available for public inspection at the U.S. Department of Education, ROB–3, Room 3036, 7th and D Streets, SW., Washington, DC 20202–5171, telephone (202) 708–7417 between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m., Eastern time, Monday through Friday.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–21985 Filed 9–6–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Advisory Committee on Human Radiation Experiments; Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Advisory Committee on Human Radiation Experiments.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Advisory Committee on Human Radiation Experiments (ACHRE) has submitted the information collections listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed by September 15, 1994. If you anticipate that you will be submitting comments but find it difficult to do so within the time allowed by this notice, you should advise OMB's Tim Hunt of your intention to do so, as soon as possible. He may be telephoned at (202) 395–5871. (Also, please notify the ACHRE contact listed below.)

ADDRESSES: Address comments to Tim Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place N.W., Washington, D.C. 20503. (Comments should also be addressed to the ACHRE at the address below.)

FOR FURTHER INFORMATION CONTACT: Kathy Taylor, Advisory Committee on Human Radiation Experiments (ACHRE), 1726 M Street, N.W., Suite 600, Washington, DC 20036. Ms. Taylor may be telephoned at (202) 254–9795. FAX 202–254–9827.

SUPPLEMENTARY INFORMATION: The first collection submitted to OMB for review was:

1. Advisory Committee on Human Radiation Experiments;
2. ACHRE–1;
3. N.A.;
4. Patient Interview Study;
5. New;
6. One-time;
7. Voluntary;
8. Individuals or households; Federal agencies or employees; non-profit institutions;
9. 1,050 respondents;
10. 1.29 responses per respondent;
11. .2259 hours per response;
12. 305 hours total annual burden;
13. The ACHRE–1 will be used to collect data concerning whether oncology patients seeking medical care at major research institutions believe they are participants in research; the perceived voluntariness of this participation; and patients' reasons for agreeing to participate. Data collected will be used by ACHRE in its deliberations and its final report which may include recommendations for future policies involving research with human beings.

The second information collection submitted was:

1. Advisory Committee on Human Radiation Experiments;
2. ACHRE–2;
3. N.A.;
4. Research Proposal Review Project;
5. New;
6. One-time;
7. Voluntary;
8. Federal agencies or employees; non-profit institutions;
9. 100 respondents;
10. 1 response per respondent;
11. 2.5 hours per response;
12. 250 hours total annual burden;
13. The ACHRE–2 will collect data on contemporary research protocols and materials. Data will be used by the ACHRE in its deliberations and final report, which may include recommendations for future policies involving research with human subjects. Respondents will be agencies and grantee institutions.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980, (Pub. L. 96–511), which amended Chapter 35 of Title 44 United States Code (See 44 U.S.C. 3506(a) and (c)(1)).

Issued in Washington, D.C., August 31, 1994.

Yvonne M. Bishop,

Director, Office of Statistical Standards, Energy Information Administration.

[FR Doc. 94–22010 Filed 9–6–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance for Utility Battery Storage Program

AGENCY: Department of Energy, Albuquerque Operations Office.

ACTION: Notice of Intent to Award a Noncompetitive Financial Assistance.

SUMMARY: The Albuquerque Operations Office (AL), pursuant to 10 CFR 600.7(b)(2), intends to award, on a noncompetitive basis, a cooperative agreement to Omnion Power Engineering Corporation of East Troy, Wisconsin.

DATES: Award to be effective September 1, 1994.

FOR FURTHER INFORMATION CONTACT: Address comments to the attention of Erwin E. Fragua, Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, NM 87185–5400 (505) 845–6442.

SUPPLEMENTARY INFORMATION: The purpose to be served by this award is to advance the Department's goal of cooperating with the electric utility and manufacturing industries to develop battery storage systems as an economically attractive utility resources option by the end of this decade. Battery energy storage can help utilities address: increased competition with respect to electricity supply, greater required energy efficiency, and more restrictive environmental regulations by improving: cost-effectiveness, reliability, and power quality, and by reducing the environmental impact of electricity generation and distribution. The particular significance of the development to be funded is a demonstrable battery storage system that can be evaluated and tested by an electric utility. It is anticipated that the cost-shared cooperative agreement will be funded annually for a total project period of two years. The government's funding of this cooperative agreement is subject to the availability of funds.

This noncompetitive action is based on continuation of this program which is presently funded by the DOE and for which competition for support would have a significant adverse effect on continuity or completion of the program.

Issued in Albuquerque, New Mexico, on August 12, 1994.

Richard A. Marquez,

Assistant Manager for Management and Administration.

[FR Doc. 94–22008 Filed 9–6–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. EG94–91–000, et al.]

Entergy Power Development Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 30, 1994.

Take notice that the following filings have been made with the Commission:

1. Entergy Power Development Corporation

[Docket No. EG94–91–000]

On August 23, 1994, Entergy Power Development Corporation, Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged directly or indirectly and exclusively in owning or operating, or both owning and operating, several electric power facilities and engaging in project development. The applicant has previously been found to be an exempt wholesale generator. The applicant intends to acquire an interest in a 1292 MW oil-fired electric power production facility located in Pakistan.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Entergy Pakistan, Ltd.

[Docket No. EG94–92–000]

On August 23, 1994, Entergy Pakistan, Ltd., Three Financial Centre, Suite 210, 900 South Shackleford Road, Little Rock, Arkansas 72211, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to section 32(a)(1) of the Public Utility Holding Company Act of 1935, as amended by section 711 of the Energy Policy Act of 1992.

The applicant is a corporation that is engaged indirectly and exclusively in owning and operating a 1292 MW oil-fired electric power production facility located in Pakistan and engaging in project development.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Destec Operating Canada, Inc.

[Docket No. EG94–93–000]

August 24, 1994, Destec Operating Canada, Inc. (Destec), c/o Alisa B. Speck, Esq., Destec Energy, Inc., 2500 CityWest Blvd., Houston, TX 77210–4411, 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.

Destec is an Ontario corporation formed to operate an eligible facility located in the Province of Ontario, Canada. The eligible facility is a nominally-rated 109 MW electric generating facility consisting of one combustion gas turbine generator and one steam turbine generator and related facilities.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Altresco Pittsfield, L.P.

[Docket No. EG94–96–000]

On August 25, 1994, Altresco Pittsfield, L.P. ("Altresco"), with its address at One Bowdoin Square, Boston MA 02114, filed with the Federal Energy Regulatory Commission (the "Commission") an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Altresco is the lessee and operator of an approximately 165 MW (net) gas-fired cogeneration facility (the "Facility") located in Pittsfield, Massachusetts. The Facility commenced commercial operation in September, 1990. Altresco will sell all of the electric energy produced by the Facility at wholesale. Electric energy produced by the Facility is sold to New England Power Company, Commonwealth Electric Company and Cambridge Electric Light Company.

Comment date: September 19, 1994, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Southern California Edison Company

[Docket Nos. ER84–75–019, ER86–271–000 and ER87–365–000]

Take notice that on August 24, 1994, Southern California Edison Company tendered for filing its compliance refund report in the above-referenced dockets.

Comment date: September 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PSI Energy, Inc.

[Docket No. ER94–1401–000]

Take notice that PSI Energy, Inc. (PSI) on August 23, 1994, tendered for filing an amended Service Schedule in the FERC Filing in Docket No. ER94–141–000 to comply with a FERC Staff request.

Copies of the filing were served to the Louis Dreyfus Electric Inc., Connecticut Department of Public Utility Control and the Indiana Utility Regulatory Commission.

Comment date: September 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER94–1412–000]

Take notice that PacifiCorp, on August 8, 1994, tendered for filing an amendment to its filing of the June 28, 1994, First Amendment to Transmission to Service and Operating Agreement between Utah Associated Municipal Power Systems (UAMPS) and PacifiCorp.

PacifiCorp is amending its filing in consultation with Commission Staff in order to clarify designated rate schedule supplements to PacifiCorp Rate Schedules, FERC Nos. 280 and 297. PacifiCorp requests that a waiver of prior notice be granted and that an effective date of July 1, 1994, be assigned to the filing.

Copies of this amended filing were supplied to UAMPS, the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment date: September 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Puget Sound Power & Light Company

[Docket No. ER94–1415–000]

Take notice that on August 15, 1994, Puget Sound Power & Light Company tendered for filing an amendment to its June 30, 1994, filing in the above-referenced docket.

Comment date: September 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Detroit Edison Company

[Docket No. ER94–1458–000]

Take notice that on July 15, 1994, Detroit Edison Company (Detroit) tendered for filing a letter agreement concerning certain payments made by Detroit to its five wholesale customers.

Comment date: September 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Black Hills Power and Light Company

[Docket No. ER94–1542–000]

Take notice that on August 24, 1994, Black Hills Power and Light Company (Black Hills) and Executed Service Agreement with Basin Electric Power Cooperative.

Comment date: September 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Upper Peninsula Power Company

[Docket No. ES94–36–000]

Take notice that on August 24, 1994, Upper Peninsula Power Company filed an application under § 204 of the Federal Power Act seeking authority to issue up to $18 million of unsecured promissory short-term notes to be issued on or before October 1, 1996, with final maturity date no later than October 1, 1997.

Comment date: September 23, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Baltimore Gas and Electric Company

[Docket No. ES94–37–000]

Take notice that on August 25, 1994, Baltimore Gas and Electric Company filed an application under § 204 of the Federal Power Act seeking authority to issue not more than $600 million of short-term unsecured promissory notes, commercial paper notes, and/or medium-term notes to be issued not later than December 31, 1996, with final maturity date no later than December 31, 1997.

Comment date: September 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Tenaska Washington Partners, L.P.

[Docket No. QF92–91–004]

On August 19, 1994, Tenaska Washington Partners, L.P. (Tenaska) of 1044 North 115 Street, Suite 400, Omaha, Nebraska 68154, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility is located at the BP Oil Refinery in Ferndale, Washington. The facility consists of two combustion turbine generators, two supplementary-fired heat recovery boilers, and an extraction/condensing steam turbine generator (STG). Steam recovered from the STG is used in the heating of hydrocarbons and the evaporation of liquid hydrocarbons for distillation and refining. The primary energy source is natural gas. The maximum net electric power production capacity of the facility is 245 MW.

The certification of the facility was originally issued to Tenaska on June 3, 1992, (59 FERC ¶ 62,235 (1992)), and the recertification issued on November 23, 1993, (65 FERC ¶ 62,171 (1993)). The instant recertification is requested by the applicant to reflect a recent restructuring of the ownership of the partnership. All other facility characteristics remain unchanged as described in the previous certification and recertification.

Comment date: October 7, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21988 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–327–001, et al.]

Koch Gateway Pipeline Company, et al.; Natural Gas Certificate Filings

August 29, 1994.

Take notice that the following filings have been made with the Commission:

1. Koch Gateway Pipeline Company

[Docket No. CP94–327–001]

Take notice that on August 24, 1994, Koch Gateway Pipeline Company (KGPC), 600 Travis Street, P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–327–001 an amendment to the pending application for a certificate of public convenience and necessity filed on April 1, 1994, in Docket No. CP94–327–000 pursuant to Section 7(c) of the Natural Gas Act, to reflect revised tariff sheets containing the proposed Pooling Rate Schedule, Pooling Service Agreement and certain amendments to the General Terms and Conditions relating to the incorporation of the Pooling Service into KGPC's tariff, all as more fully set forth in the amendment which is on file with the Commission and open to public inspection.

By the pending application in Docket No. CP94–327–000, KGPC requests authorization to establish Rate Schedule PS (Pooling Service), which will create 10 paper pooling points across KGPC's system, subject to Section 20 of the General Terms and Conditions of KGPC's tariff and the Imbalance Resolution Procedures of KGPC's tariff.

KGPC states that after meeting with intervenors in this docket, KGPC has made certain revisions to its initial proposal which reflect changes modifying the priority accorded pooling service, revisions to the characterization of the liability of KGPC in the event the pooling service is utilized, and clarifications of a non-substantive nature in the text of the tariff sheets.

Comment date: September 19, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP94–712–000]

Take notice that on August 12, 1994, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35203, filed in Docket No. CP94–712–000 an application pursuant to §§ 157.205 and 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for permission to abandon certain measurement facilities under the certificate issued in Docket No. CP82–406–000, all as more fully set forth in the request on file with the Commission and is open to public inspection.

Southern proposes to abandon their Oakman Delivery Point meter station which was used as an offsystem submeasurement point to determine the specific volumes flowing to the Towns of Oakman and Parrish in Walker County Alabama. Southern states that it is currently authorized to deliver natural gas to Alabama Gas Corporation (Alagasco) at the Parrish-Oakman Delivery Point pursuant to a service agreement under Rate Schedule FT. Southern states that as of October 31, 1993, the sales service agreements that Southern had with the two towns terminated, however, Alagasco has now acquired the gas systems of the two towns, and would be able to deliver the natural gas to the two towns with the natural gas it receives from Southern.

Southern states that the abandonment of facilities proposed in this application would not result in any termination of service and would not result in a change to any volumes delivered to Alagasco.

Comment date: October 13, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Northern Natural Gas Company

[Docket No. CP94–726–000]

Take notice that on August 19, 1994, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–726–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon and transfer by sale to Peoples Natural Gas Company (Peoples) certain facilities and install and operate a delivery point in Dubuque County, Iowa, under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern proposes to (1) abandon and transfer by sale to Peoples about 7.94 miles of line with easements and the existing Dubuque, Iowa TBS #1A; and (2) install and operate a delivery point and related facilities to allow Northern to make deliveries to Peoples, in Dubuque County, Iowa. It is stated that the proposed volumes are 6,809 Mcfd and 528,915 annually, and the cost would be $156,000.

Comment date: October 13, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Pipeline Company

[Docket No. CP94–732–000]

Take notice that on August 23, 1994, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–732–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point under Tennessee's blanket certificate issued in Docket No. CP82–413–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee proposes to reverse the existing meter tube and associated check valve at existing Receipt Meter No. 1–1651 located at Side Valve 220F–101.1 on Line 200–1 in Mercer County, Pennsylvania, to provide a new delivery point for service to Vista Resources Inc. (Vista). Tennessee states that Receipt Meter No. 1–1651 was installed under Tennessee's budget certificate issued in Docket No. CP80–83. Tennessee further states that Vista would reimburse Tennessee approximately $4,000 to establish the new delivery point. Tennessee explains that natural gas would be transported for Visa under Tennessee's Part 284 blanket transportation certificate in Docket No. CP87–115.

Comment date: October 13, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21987 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM95–1–1–000]

Alabama-Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1994.

Take notice that on August 26, 1994, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet with a proposed effective date of October 1, 1994:

Sixth Revised Sheet No. 4

Alabama-Tennessee states that the purpose of this filing is to reflect a $0.0002 per dekatherm decrease in Alabama-Tennessee's rates under its Annual Charge Adjustment ("ACA") clause that results from a corresponding decrease in the annual charge assessed Alabama-Tennessee by the Commission.

Alabama-Tennessee requests any waiver that may be required in order to accept and approve this filing as submitted.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional sales and transportation customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rule 211 or Rule 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 September 8, 1994. 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 to the proceeding must file a motion to intervene. Copies of this filing are on

file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21937 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER94–1409–000 and EL94–88–000]

Cambridge Electric Light Company; Notice of Initiation of Proceeding and Refund Effective Date

September 1, 1994.

Take notice that on August 26, 1994, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL94–88–000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL94–88–000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 94–21991 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM95–1–21–000]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1994.

Take notice that on August 26, 1994, Columbia Gas Transmission Corporation (Columbia) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective October 1, 1994:

Fifth Revised Sheet No. 25
Fifth Revised Sheet No. 26
Fifth Revised Sheet No. 27
Fifth Revised Sheet No. 28
Third Revised Sheet No. 29
Third Revised Sheet No. 30
Fourth Revised Sheet No. 30A

Columbia states that the listed tariff sheets set forth the adjustment to its rates applicable to the Annual Charge Adjustment, pursuant to the Commission's Regulations and Section 34 of the General Terms and Conditions of its FERC Gas Tariff, Second Revised Volume No. 1.

Columbia states that it is cancelling certain tariff sheets and removing references on other tariff sheets regarding the terms "Settling Parties" and "Non-Settling Parties" since there are no "non-settling parties" by virtue of the Commission's Order issued June 22, 1994, in Docket Nos. RP91–160–009 and RP91–161–012, et al.

Columbia states that copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 8, 1994. 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 Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21941 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. EL93–44–000 and EC93–13–001]

Official Bondholders' Committee of EUA Power Corporation; Notice of Filing

August 31, 1994.

Take notice that on August 30, 1994, the Official Bondholders Committee of EUA Power Corporation tendered for filing a request for approval of the amended plan of reorganization for Great Bay Power Corporation, that is to be filed with the United States Bankruptcy Court for the District of New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol 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 18 CFR 385.214). All such motions or protests should be filed on or before September 9, 1994. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21989 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–371–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1994.

Take notice that on August 29, 1994, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet, proposed to be effective September 29, 1994:

First Revised Sheet No. 291

Northern states that such tariff sheet is being submitted to provide that a system overrun limitation cannot be called after 3:00 p.m. of the gas day.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before September 8, 1994. Protests will be considered by the Commission in determining the appropriate 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21938 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–65–000]

Texas Eastern Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 31, 1994.

Take notice that on August 29, 1994, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that on July 8, 1994, the Commission issued an Order on Settlements for Algonquin Gas Transmission Company (Algonquin) in Docket No. RP93–14–017, et al. (July 8 Order). Pursuant to the July 8 Order, certain current customers of Algonquin will become direct customers of Texas Eastern (Converting Customers),[1] effective September 1, 1994, by taking assignment of their respective service rights attributable to Algonquin's Rate Schedule CDS Service Agreements with Texas Eastern as of August 31, 1994, under Texas Eastern's Rate Schedule CDS and by executing the relevant Rate Schedule CDS Service Agreements with Texas Eastern.

Texas Eastern states that in order to reflect the elimination of Algonquin's entitlements under its affected service agreements and to reflect the relevant entitlements of the Converting Customers, it is submitting Seventh Revised Sheet Nos. 547, 548, 550, 551, 554, 555, 557, 558, 561, 562, 564, 565, 568, 569, 571, 572, 576, 577, 579, 580, 582, 583, 600 and 601 and Eighth Revised Sheet Nos. 546, 549, 553, 556, 560, 563, 567, 570, 575, 578, 581 and 599 to reflect necessary modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that in addition to the changes discussed above, it is submitting Seventh Revised Sheet Nos. 547, 550, 554, 557, 561, 564, 568, 571, 576, 579, 582 and 600 to reflect the modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 necessary to reflect a new firm customer under Texas Eastern's Rate Schedule FT–1. Base and Operational Segment Capacity Entitlements have been reallocated from Available Firm capacity to James River Paper Company, Inc. (James River Paper). The Rate Schedule FT–1 Service Agreement for James River Paper is effective on September 1, 1994.

Texas Eastern states that in addition to the changes discussed above, it is submitting the tariff sheets listed on Appendix A to reflect a modification to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1 which aggregates each customer's multiple lines of Base and Operational Segment Capacity Entitlements, as previously shown, into a single line. The total Base and Operational Segment Capacity Entitlements for each customer have not changed as a result of such aggregation.

The proposed effective date of the tariff sheets is September 1, 1994, the date approved by the Commission in the July 8 Order and the effective date of the Rate Schedule FT–1 Service Agreement for James River Paper.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been served on the Converting Customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before September 8, 1994. 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.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21939 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[1] Bay State Gas Company, Boston Gas Company, Bristol and Warren Gas Company, Colonial Gas Company, Commonwealth Gas Company, Connecticut Natural Gas Corporation, Consolidated Edison Company of New York, Inc., Dartmouth Power and Associates, Fall River Gas Company, New Jersey Natural Gas Company, North Attleboro Gas Company, Northern Utilities, Inc., Orange and Rockland Utilities, Inc., The Providence Gas Company, and Yankee Gas Services Company.

[Docket No. RP94–161–003]

U–T Offshore System; Motion to Place Suspended Tariff Sheets Into Effect

August 31, 1994.

Take notice that on August 25, 1994, U–T Offshore System (U–TOS) filed, pursuant to Section 4(e) of the Natural Gas Act and § 154.67 of the Commission's Regulations, filed to place into effect on September 1, 1994, subject to refund, the tariff sheets reflecting a change in rates and charges that were suspended in this proceeding by the Commission's Order of March 31, 1994.

In addition, in accordance with the Commission's May 31, 1994, order clarifying the March 31, 1994, suspension order, U–TOS moves to place into effect on September 1, 1994, the suspended tariff sheets, without refund condition, which eliminate its Interruptible Revenue Crediting Mechanism.

On March 1, 1994, U–TOS filed revised tariff sheets with the Commission that provided for a general increase in the rates for U–TOS' jurisdictional transportation services. In such filing, U–TOS also included tariff sheets which eliminated its Interruptible Revenue Crediting Mechanism. On March 31, 1994, the Commission issued an order that, among other things, accepted U–TOS' tariff sheets and suspended them for five months, or until September 1, 1994. As to the tariff sheets which eliminated U–TOS' Interruptible Revenue Crediting Mechanism, the Commission provided in its March 31, 1994, suspension that they could go into effect on September 1, 1994, subject to refund and hearing. However, in its June 23, 1994, "Order Clarifying Previous Order and Denying Rehearing" the Commission clarified that the tariff sheets which eliminated the Interruptible Revenue Crediting Mechanism could go into effect on September 1, 1994, without refund condition and without being subject to a hearing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedures, 18 CFR 385.211. All such protests should be filed on or before September 8, 1994. 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. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21940 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–740–000]

Williams Natural Gas Company; Notice of Request Under Blanket Authorization

September 1, 1994.

Take notice that on August 26, 1994, Williams Natural Gas Company (WNG), One Williams Center, P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–740–000, a request pursuant to §§ 157.205 and 157.212(b) of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to install additional measuring and appurtenant

facilities for Western Resources, Inc. (WRI) in Johnson and Wyandotte Counties, Kansas and for Missouri Gas Energy (MGE) in Johnson County, Kansas under the blanket certificate issued in Docket No. CP82–479–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

WNG states that as a result of WRI selling its Missouri distribution assets to MGE, effective January 31, 1994, it is necessary for WNG to reconfigure its measurement facilities to more accurately determine the volumes delivered to WRI and MGE. WNG asserts that the gas delivered through the new facilities is not additional volume, but rather individual measurement of existing volumes, which will not exceed the total volume authorized prior to this request.

WNG proposes (1) to install measurement and appurtenant facilities at a new site in Johnson County, Kansas for WRI/Roe, and at a new site in Wyandotte County, Kansas for WRI/Fairfax; (2) to replace measurement and appurtenant facilities size for size in Johnson County, Kansas for WRI/Metcalf; (3) to replace measurement and appurtenant facilities with larger facilities in Johnson County, Kansas for WRI/Antioch; and (4) to install new measurement and appurtenant facilities in Johnson County, Kansas for MGE/Stateline. WNG indicates that MGE/Stateline and WRI/Roe will share the new site. WNG estimates that the total cost to construct these facilities will be approximately $1,303,600, to be paid with available funds.

WNG states that inasmuch as this is a request to install measuring and appurtenant facilities for existing customers at new locations in order to more accurately measure volumes of transportation gas delivered, these changes are not prohibited by an existing tariff, and it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to WNG's other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21990 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–296–000]

Williams Natural Gas Company; Notice of Technical Conference

August 31, 1994.

Take notice that on Wednesday, October 19, 1994, at 10 a.m., the Commission's staff will convene a technical conference to allow the parties to address the issues outlined in the Commission's July 20, 1994, order in the above-captioned proceeding.[1] The technical conference will be held in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–21936 Filed 9–6–94; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Notice of Cases Filed During the Week of June 24 Through July 1, 1994

During the week of June 24 through July 1, 1994, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: August 30, 1994.

Thomas O. Mann,

Acting Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of June 24 through July 1, 1994]

Date	Name and location of applicant	Case No.	Type of submission
6/27/94	Howard W. Spaletta	LWA–0010 Idaho Falls, Idaho	Request for Hearing under DOE Contractor Employee Protection Program. If granted: A hearing under 10 C.F.R. Part 708 would be held on the complaint of Howard W. Spaletta that reprisals were taken against him by management officials of EG&G Idaho, Inc. as a consequence of his having disclosed safety concerns to EG&G Idaho, Inc., the Department of Energy and to members of Congress.
6/27/94	Little River Village Campground, Inc., Townsend, TN.	LEE–0127	Exception to the Reporting Requirements. If granted: Little River Village Campground, Inc. would not be required to file Form EIA–782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report."

[1] Williams Natural Gas Co., 68 FERC ¶ 61,102 (1994).

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 24 through July 1, 1994]

Date	Name and location of applicant	Case No.	Type of submission
6/27/94	Schwebel Petroleum Company, Bakersfield, CA.	LEE–0126	Exception from the Reporting Requirements. If granted: Schwebel Petroleum Company would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Product Sales Report."
6/27/94	Texas Instruments Incorporated, Rockville, MD.	LFA–0395	Appeal of an Information Request Denial. If granted: The May 25, 1994 Freedom of Information Request Denial issued by the Office of Oak Ridge Operations would be rescinded, and Texas Instruments Incorporated would receive access to DOE information.
6/28/94	Alaska Aerofuel, Inc., Fairbanks, Alaska	LEE–0129	Exception to the Reporting Requirements. If granted: Alaska Aerofuel, Inc. would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Product Sales Report."
6/28/94	Keith E. Downard, Carrollton, OH	LEE–0128	Exception to the Reporting. If granted: Keith E. Downard would not be required to file DOE Form EIA 782B.
6/28/94	Wheless Drilling Company, Shreveport, LA	RR272–138	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The March 7, 1991 Dismissal Letter (Case No. RF272–32264) issued to Wheless Drilling Company would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
6/29/94	Betty M. Daley, Oak Ridge, TN	LFA–0396	Appeal of an Information Request Denial. If granted: The June 9, 1994 Freedom of Information Request Denial issued by the Office of Oak Ridge Operations would be rescinded, and Betty M. Daley would receive access to her husband's additional medical history records from March 1994 to June 1947.
6/29/94	Brennan Oil & Heating Company, Inc., Providence, RI.	LEE–0130	Exception to the Reporting Requirements. If granted: Brennan Oil & Heating Company, Inc. would not be required to file DOE Form EIA–782B.
6/30/94	Covered Wagon Train, Inc., Memphis, TN	RR272–143	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The April 28, 1994 Decision and Order (Case No. RF272–80179) issued to Covered Wagon Train, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
6/30/94	Interstate Van Lines, Inc., Memphis, TN	RR272–140	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The April 28, 1994 Decision and Order (Case No. RF272–80170) issued to Interstate Van Lines, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
6/30/94	Robert Heitmann, Brookeville, MD	LFA–0397	Appeal of an Information Request Denial. If granted: The June 14, 1994 Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Robert Heitmann would receive access to all documents regarding the relationship and activities since 1950 of the Fairfield Air Station, Travis Air Force Base, the Federal Security Agency and the Atomic Energy Commission with respect to Travis School.
6/30/94	Lou-Jak Trucking Service, Memphis, TN	RR272–139	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The February 3, 1994 Decision and Order (Case No. RC272–226) issued to Lou-Jak Trucking Service would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
6/30/94	Martin Trucking, Inc., Memphis, TN	RR272–142	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted. The April 28, 1994 Decision and Order (Case No. RF272–80172) issued to Martin Trucking, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of June 24 through July 1, 1994]

Date	Name and location of applicant	Case No.	Type of submission
6/30/94	Osborne Truck Line, Inc., Memphis, TN	RR272–141	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The April 28, 1994 Decision and Order (Case No. RF272–80171) issued to Osborne Truck Line, Inc. would be modified regarding the firm's application for refund submitted in the Crude Oil refund proceeding.
7/1/94	Government Accountability Project, Washington, D.C.	LFA–0398	Appeal of an Information Request Denial. If Granted: The May 17, 1994 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded, and Government Accountability Project would receive access to all records reflecting legal fees paid to Oak Ridge Operation's contractors and their counsel since January 1, 1987, along with copies of correspondence between the contractors, their counsel and DOE regarding claims for indemnification, and copies of the billing statements from the law firms and/or the contractors.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
6/24/94 thru 7/1/94	Crude Oil Refund Applications Received	RF272–97230 thru RF272–98155
6/28/94	Glen Petroleum Corporation	RF336–43
6/28/94	AA Awnings International, Inc	RF351–20
6/28/94	LPS Laboratories, Inc	RF351–21
6/28/94	Pascoe Building Systems	RF351–22
6/28/94	Tri County Oil Company, Inc	RF351–23
6/29/94	Randy's Service Station	RF304–15458
6/30/94	Quaker State Corporation	RF345–28

[FR Doc. 94–22009 Filed 9–6–94; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5066–8]

M.A. Norden Company Site, AL; Modification of June 15, 1984, Clean Water Act Section 404(c) Final Determination

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of modification of section 404(c) final determination and notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) has modified the June 15, 1984, Clean Water Act section 404(c) Final Determination concerning the Norden site in Mobile, Alabama. The modification means that the M.A. Norden Company, Inc. may apply for a section 404 permit to discharge dredged or fill material into waters of the United States in order to construct an access road across the section 404(c) prohibited site. EPA concludes that these proposed activities will not result in unacceptable adverse effects under section 404(c).

EFFECTIVE DATE: The modification is effective August 29, 1994, upon signature of EPA's Assistant Administrator for Water.

FOR FURTHER INFORMATION CONTACT: Specific details are available from Paul Minkin (EPA) at (202) 260–1901. Copies of the modification are available through the EPA Wetlands Hotline at (800) 832–7828.

SUPPLEMENTARY INFORMATION: Section 404(c) of the Clean Water Act authorizes EPA to prohibit or restrict the use of portions of waters of the United States for discharging dredged or fill material. In October, 1992, M.A. Norden Company, Inc. petitioned EPA to modify its 1984 section 404(c) Final Determination concerning the Norden site to enable it to construct a road across the site to access adjacent uplands.

EPA announced Norden Company's request for modification of the Norden Final Determination and requested public comment in the May 13, 1994, **Federal Register** (59 FR 25050). EPA formally notified the U.S. Army Corps of Engineers Headquarters (Corps Headquarters) of the Norden Company petition and requested any comments on the Norden Company proposal. EPA also mailed copies of the **Federal Register** notice to other parties believed to be interested in the proposed action.

EPA received no comments from the public in response to the **Federal Register** notice. Corps Headquarters responded in a July 1, 1994, letter to EPA and indicated that they had no comment at this time so that they might maintain their ability to make an objective and independent decision on a permit application from Norden Company, should EPA modify their Final Determination. The U.S. Fish and Wildlife Service, Alabama Field Office (FWS), submitted comments in a June 7, 1994, letter. While neither supporting nor objecting to reconsideration of the Final Determination, they indicated that there may be less environmentally damaging alternatives to the proposed road fill and that these alternatives should be fully explored.

EPA carefully reviewed Norden Company's proposal, comments submitted by Corps Headquarters and FWS, and the existing Norden section 404(c) record. Based on this review, EPA concluded that environmental impacts associated with the proposed

road construction would not result in unacceptable adverse effects to the Norden 404(c) area. In reaching this decision, EPA considered that the impacts of the current Norden Company proposal are significantly less than those of the original proposal which precipitated the section 404(c) action. The original Final Determination noted that the Norden site was a "productive wetland, typical of the area, that contributes organic material to the fish and shellfish communities of the Mobile Bay estuary, provides valuable habitat for wildlife, and acts as a pollutant filtering mechanism which helps to reduce degradation of water quality in the adjacent open water system." The originally proposed 25 acres of impacts to waters of the United States have been reduced through the modification of the project so that approximately 1.5 acres will be impacted. In addition, the project will be constructed in such a way as to allow for downstream transport of detritus and continued connection to the Mobile Bay estuary.

The Norden Company has made a prima facie showing that there are no practicable alternatives which are less environmentally damaging. Alternate routes which would avoid the wetlands do not seem to be practicable based on the information available. If the Final Determination is modified, the project must still go through the Corps' permit process, where the issue of practicable, less damaging alternatives will receive thorough investigation. Under the circumstances, the theoretical possibility of alternatives does not make the limited impacts of the revised project unacceptable.

For these reasons, EPA has concluded that it is appropriate to modify the original June 15, 1984, Final Determination to allow M.A. Norden Company, Inc. to seek authorization from the U.S. Army Corps of Engineers to discharge dredged or fill material into waters of the United States associated with the construction of the road described in the Norden Company's submissions to EPA on October 5, 1992, and August 5, 1993, and summarized above. Prior to any discharge activities, however, the project must be authorized pursuant to applicable permits issued by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act and section 10 of the Rivers and Harbors Act.

Dated: August 29, 1994.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 94–21999 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–5066–6]

Public Meeting on the Draft National Waste Minimization Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Announcement of meeting.

SUMMARY: On May 18, 1993, EPA Administrator Carol Browner announced, with the release of the Draft Hazardous Waste Minimization and Combustion Strategy, that EPA was taking a leadership role in reducing the amount of hazardous waste produced in this country and strengthening federal controls governing hazardous waste incinerators, boilers, and industrial furnaces.

As part of that Strategy, EPA developed and released a Draft RCRA Waste Minimization National Plan in May of 1994. EPA's goal is to finalize the Phase I portion of the Plan by November 1994. Phase I is the primary vehicle for promoting source reduction and, secondarily, environmentally sound recycling of waste streams containing persistent, bioaccumulative, and toxic compounds, and particularly metals and/or halogens that are likely to be combusted in boilers and industrial furnaces or hazardous waste incinerators. Phase II of the Plan will focus beyond hazardous wastes managed in combustion units to promote source reduction and recycling for wastes managed by other practices.

In order to gain early and substantive input on Phase I, EPA will hold a three-day focus group meeting September 20–22, 1994, with invited participants. Participants will include individuals from federal, state and local government, industry, public interest and environmental groups, technical assistance centers, and labor.

EPA will convene separate Focus Group sessions on:

(1) Prioritization of Wastes. Discussions will focus on the methodology that EPA has developed to prioritize waste minimization efforts associated with wastes that are combusted. A **Federal Register** Notice, 59FR 41442, dated August 12, 1994 announced the availability of a Draft Methodology Document and asked for comments on the draft by September 9, 1994.

(2) Goals. Topics will include: development of a goal statement for minimizing hazardous wastes that are combusted, particularly when such reductions will lead to multi-media environmental benefits and will reduce persistent, bioaccumulative, and toxic constituents; expediting continual improvement in seeking source reduction and environmentally sound recycling options at the top of the waste management hierarchy; and improving the recycling and management of wastes that cannot be reduced in a way that results in a net reduction of environmental loadings to all media.

(3) Voluntary Programs and Incentives. Topics will include discussion of currently existing voluntary programs/incentives and how they either overlap with the goals of Phase I, or do not meet Phase I objectives; and options, both pro and con, of using existing programs/incentives versus new initiatives to get real reductions of wastes of concern.

(4) Incorporating waste minimization in RCRA permits. Discussions will include the status of federal and state efforts to incorporate waste minimization into RCRA permits, inspections and enforcement actions. Comments will be invited regarding the pros and cons of these approaches.

Members of the public are invited to attend the meeting as observers. Written comments will be accepted at the meeting. Additionally, there will be time allotted following participants discussions to take comments from observers. The Meeting will be held Tuesday, September 20 through Thursday, September 22 at the Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, Maryland (301) 652–2000. Please contact the hotel directly for further information on the meeting facilities and lodging. For information on the meeting (e.g. the agenda and issues) or to request special needs services for observers such as sign language interpretation, contact Sandra Farrell at (703) 308–8402.

An Executive Summary of the proceedings of the Focus Groups Meeting will be prepared and made publicly available following the Meeting.

Dated: August 30, 1994.

Elizabeth Cotsworth,

Acting Director, Office of Solid Waste.

[FR Doc. 94–22000 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–300357; FRL–4906–6]

Bacteriophages of Xanthomonas campestris subsp. vesicatoria; Establishment of Temporary Exemption from Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established an exemption from the requirement of a tolerance for bacteriophages isolated from *Xanthomonas campestris* subsp. *vesicatoria* in or on the raw agricultural commodities tomatoes and peppers. This exemption has been established by the Agency on its own initiative.

DATES: This temporary exemption expires August 15, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Steve Robbins, Acting Product Manager (PM) 21, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 305–6900.

SUPPLEMENTARY INFORMATION: EPA received from AgriPhi, Inc., 160 North Main, Logan, Utah 84321, an application for an Experimental Use Permit for proposed field testing of the efficacy of a product containing bacteriophages isolated from bacterial lesions on tomato and pepper plants produced by *Xanthomonas campestris* subsp. *vesicatoria*. In order to further the research efforts of this small company in the development of innovative biological pest control technology, the Agency has established a temporary exemption from the requirement for a tolerance of these bacteriophages in or on the raw agricultural commodities tomatoes and peppers. This temporary exemption will permit the marketing of the above raw agricultural commodities when treated in accordance with the provisions of the Experimental Use Permit 67986–EUP–1 which is being issued under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated and it was determined that establishment of a temporary tolerance is not necessary to protect the public health. Public literature citations were referenced which indicate that bacteriophages are specific to their bacterial host and present no unique toxicity hazards to humans or wildlife. Research has been conducted on bacteriophages for the past 80 years with no documented cases of adverse effects to man or the environment. Bacteriophages are commonly occurring in nature and would normally be found on raw agricultural commodities. Therefore, a temporary tolerance has been established on the condition that the pesticide be used in accordance with the Experimental Use Permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the Experimental Use Permit.

2. AgriPhi, Inc., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary exemption from tolerance requirements expires August 15, 1996. Residues remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit. This tolerance exemption may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this biological pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 2 of Executive order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: August 29, 1994.

Stephen L. Johnson,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–21867 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30372; FRL–4908–7]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by October 7, 1994.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30372] and the registration/file number, attention Product Manager (PM) 21, to: Public Response and Program Resources Branch, Field Operations Divisions (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: PM 21, Steve Robbins, Rm. 227, CM #2, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 100–TLO Applicant: Ciba-Geigy Corporation, P.O. Box 18300, Greensboro, NC. Product name: CGA 173506 Technical. Fungicide. Active ingredient: 4-(2,2-Difluoro-1,3-benzodioxol-4-yl-)-1*H*-pyrrole-3-carbonitrile at 96 percent. Proposed

classification/Use: None. For formulation into end-use fungicide products. (PM 21)

2. File Symbol: 100–TLI. Applicant: Ciba-Geigy Corp. Product name: Maxim 4FS. Fungicide. Active ingredient: 4-(2,2-Difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile at 40.3 percent. Proposed classification/Use: None. For seed treatment of certain diseases of corn and sorghum. (PM 21)

3. File Symbol: 55638–EI. Applicant: Ecogen, Inc., 2005 Cabot Boulevard West, Langhorne, PA 19047–1810. Product name: I-182 Technical Powder. Biofungicide. Active ingredient: *Candida oleophila* isolate I-182 at 80 percent, not less than 4 X 10^{10} cells/g. Proposed classification/Use: None. For manufacture of biofungicide end-use products; for application on citrus and pome fruit. (PM 21)

4. File Symbol: 55638–EO. Applicant: Ecogen Inc. Product name: I-182 Biofungicide. Biofungicide. Active ingredient: *Candida oleophila* isolate I-182 at 80 percent, not less than 4 X 10^{10} cells/g. Proposed classification/Use: None. For the control of pathogens that cause post harvest decay. (PM 21)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Written comments filed pursuant to this notice, will be available in the Public Response and Program Resources Branch, Field Operation Division office at the address provided from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays. It is suggested that persons interested in reviewing the application file, telephone the FOD office (703–305–5805), to ensure that the file is available on the date of intended visit.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: August 26, 1994.

Lois Rossi,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–21866 Filed 9–6–94; 8:45 am]
BILLING CODE 6560–50–F

[OPP–34063; FRL 4905–7]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on December 6, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Delete From Label
000572–00326	Rockland Fly Rid	Mosquito control
003095–00061	PIC Room Fogger II	Mosquito control
005602–00159	Duracide EC	Mosquito control
005785–00058	Chloropicrin	Structural fumigation, aquatic, forestry & post harvest use
011678–00045	Pyrinex Insecticide	Mosquito control
059639–00026	ORTHENE 75-S Soluble Powder	Soybean use

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the six pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before December 6, 1994 to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000572	Rockland Corporation, P.O. Box 809, 686 Passaic Ave., West Caldwell, NJ 07007.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Company No.	Company Name and Address
003095	PIC Corporation, 23 S. Essex Ave., P.O. Box 543, Orange, NJ 07050.
005602	Hub States Corp., 8455 Keystone Crossing, Suite 150, Indianapolis, IN 46240.
005785	Great Lakes Chemical Corp., P.O. Box 2200, West Lafayette, IN 47906.
011678	Makhteshim-Agan of North America Inc., 551 Fifth Ave., Suite 1100, New York, NY 10176.
059639	Valent U.S.A. Corporation, 1333 N. California Blvd., Suite 600, P.O. Box 8025, Walnut Creek, CA 94596.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 23, 1994.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–21690 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–300355; FRL–4905–9]

Propargite; Request for Comment on Petition to Revoke Certain Food Additive Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; receipt and availability of petition.

SUMMARY: This document announces the receipt of a petition proposing the revocation of the section 409 food additive regulations established under the Federal Food, Drug and Cosmetic Act (FFDCA) for propargite on raisins and dry grape pomace. The petitioner also requests that EPA not pursue a section 409 food additive regulation for propargite in raisin waste. This notice sets forth the basis for the petitioner's proposal and provides opportunity for public comment.

DATES: Written comments, identified by the document control number [OPP-300355], must be received on or before October 7, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Copies of the petition will be available for public inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays in: Information Services Branch, Program Management and Support Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703-305-5805. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted and any comment(s) concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. All written comments will be available for public inspection at the address and hours given above.

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. WF32C5, CS #1, 1921 Jefferson Davis Hwy., Arlington, VA, (703)–308–8028.

SUPPLEMENTARY INFORMATION:

I. Introduction

Statutory Framework

Section 408 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a) authorizes establishment of tolerances and exemptions from tolerances for the residues of pesticides in or on raw agricultural commodities (RAC's), and section 409 of the act authorizes promulgation of food additive regulations for pesticide residues in processed foods.

Under section 408 of the act, EPA establishes tolerances, or exemptions from tolerances when appropriate, for pesticide residues in raw agricultural commodities. Food additive regulations setting maximum permissible levels of pesticide residues in processed foods are established under section 409 of the act. Section 409 food additive regulations are required, however, only for certain pesticide residues in processed food. Under section 409(a)(2) of the FFDCA, no section 409 food additive regulation is required if any pesticide residues in a processed food resulting from use on a RAC has been removed to the extent possible by good manufacturing practices and is below the tolerance for that pesticide in or on that RAC. This exemption in section 402(a)(2) is commonly referred to as the "flow-through" provision because it allows the section 408 raw food tolerance to flow through to processed food. Thus, a section 409 food additive regulation is only necessary to prevent foods from being deemed adulterated when despite the use of good manufacturing practices the concentration of the pesticide residues in a processed food is greater than the tolerance prescribed for the raw agricultural commodity, or if the processed food itself is treated or comes in contact with a pesticide. Monitoring and enforcement are carried out by the Federal Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA).

The establishment of a food additive regulation under section 409 requires a finding that use of the pesticide will be "safe" (21 U.S.C. 348(c)(3)). Section 409 also contains the "Delaney Clause," which specifically provides that, with limited exceptions, no additive may be approved if it has been found to induce cancer in man or animals (21 U.S.C. 348(c)(5)).

EPA reviews residue chemistry and toxicology data in setting both section 408 tolerances and section 409 food

additive regulations. To be acceptable, tolerances must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling and low enough to protect the public health. With respect to section 408 tolerances, EPA determines the highest levels of residues that might be present in a raw agricultural commodity based on controlled field trials conducted under the conditions allowed by the product's labeling that are expected to yield maximum residues. Generally, EPA's policy concerning whether a section 409 food additive regulation is needed depends on whether there is a possibility that the processing of a raw agricultural commodity containing pesticide residues would result in residues in the processed food at a level greater than the raw food tolerance.

II. Petitions

Uniroyal Chemical Co. has submitted a petition requesting the revocation of the food and feed additive regulations established under section 409 of the FFDCA for propargite on raisins and dry grape pomace. In addition, the petitioner requests that EPA withdraw its petition to establish a section 409 food additive regulation for propargite in raisin waste. Propargite is the active ingredient in Omite miticides registered by Uniroyal. Uniroyal claims that Omite is a nonsystemic contact miticide that acts primarily by surface contact and that surface residues are susceptible to release through mechanical and/or washing processes.

To support these claims, the Petitioner submitted two studies: A propargite Market Basket study, which was submitted on September 15, 1992, and a processing study submitted with this petition. The petition involves raisins, dry grape pomace as animal feed, and raisin waste as animal feed. The following sets forth the basis for the petitioner's request.

The Petitioner asserts that the processing study shows that propargite residues do not concentrate in raisins. The Petitioner also asserts that the processing study supports the results of Uniroyal's Market Basket study showing residues of propargite in raisins to be in the range of 0.02 to 0.69 part per million (ppm). The section 408 tolerance for propargite in grapes is currently established at 10 ppm (40 CFR 180.259). Therefore, the Petitioner asserts that the section 409 food additive regulation is not needed at this time.

In regard to dry grape pomace, again the Petitioner claims that the section 409 food additive regulation for dry grape pomace is not needed because residues of propargite do not concentrate above the level of section 408 tolerance in grapes. Furthermore, Uniroyal contends that since dry grape pomace is not "intended for use as a substantial source of nutrients in the diet of the animal," it does not meet the definition of "animal feed" in section 201(x) of the FFDCA. Finally, the Petitioner asserts that even if dry grape pomace is used, it would be diluted with other food matter and when "ready to eat" would not exceed the section 408 tolerance for grapes. For these reasons, Uniroyal believes that the section 409 food additive regulation for propargite on dry grape pomace is not needed. The section 409 food additive regulation for propargite on dry grape pomace is 40 ppm (40 CFR 186.5000).

In regard to raisin waste, Uniroyal presents two reasons why EPA should not pursue a section 409 food additive regulation for propargite in raisin waste. First, Uniroyal maintains that residues of propargite in raisin waste would not be expected to exceed the section 408 tolerance in grapes. Second, since raisin waste has low nutritional value and is usually discarded, it does not meet the definition of an "animal feed" under FFDCA section 201(x). Therefore, the Petitioner requests that EPA not pursue a section 409 food additive regulation for propargite on raisin waste.

It should be noted that in the **Federal Register** of July 1, 1994 (59 FR 33941), EPA issued a proposed rule to revoke the section 409 food additive regulation for propargite in raisins because the Agency has determined that propargite induces cancer in animals. Thus, the regulation violates the Delaney Clause in section 409 of the FFDCA. The Agency has not yet proposed similar actions for the feed additive regulations for propargite.

Pursuant to 40 CFR 177.125 and 177.30, EPA may issue an order ruling on the petition or may issue a proposal in response to the petition and seek further comment. If EPA issues an order in response to the petition, any person adversely affected by the order may file written objections and a request for a hearing on those objections with EPA on or before the 30th day after the date of publication of the order (40 CFR 178.20).

Authority: 21 U.S.C. 346a and 348.

Dated: August 24, 1994.

Danile M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 94–21691 Filed 9–6–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 800 North Capitol Street, N.W., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in section 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–007680–085.

Title: The American West African Freight Conference.

Parties:

Joint Service of Societe Navale ET Commerciale Delmas-Vieljeix and America-Africa-Europe Line GMBH D/B/A Delmas AAEL, Inc.

Farrell Lines, Inc.

Maersk Line

Societe Ivoirienne De Transport Maritime, SITRAM

Torm West Africa Line

Westwind Africa Line

Wilhelmsen Lines A/S

Synopsis: The proposed amendment modifies Article 7.6 to establish a reduced security bond for a member that conforms with the requirements of paragraph (c) of the Agreement.

Agreement No.: 232–011431–001.

Title: Neptune Orient Lines, Ltd., and Nippon Yusen Kaisha Space Charter and Sailing Agreement in the Far East, Southeast Asia, Australasia, Southwest Asia and Mid-East—U.S. Atlantic Coast Trades.

Parties:

Neptune Orient Lines, Ltd.

Nippon Yusen Kaisha

Synopsis: The proposed amendment adds Hapag-Lloyd as a member to the Agreement; changes the name of the Agreement to include Hapag-Lloyd's name; and makes other administrative changes to incorporate Hapag-Lloyd's name within the Agreement.

By Order of the Federal Maritime Commission.

Dated: August 31, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–21920 Filed 9–6–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BankAmerica Corporation, San Francisco, California; Application to Engage in Nonbanking Activities

BankAmerica Corporation, San Francisco, California (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its wholly owned subsidiary, BA Securities, Inc., San Francisco, California (Company), a broker-dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), in underwriting and dealing, to a limited extent, in all types of debt and equity securities, including without limitation, corporate debt securities, sovereign debt securities, and securities issued by a trust or other vehicle secured by or representing interests in debt obligations, and common stock, American Depositary Receipts, Global Depository Receipts, securities convertible into equity securities and options, and other direct and indirect equity ownership interests in domestic and foreign corporations and other entities, warrants and other rights issued in connection with the above securities, and securities issued by closed-end investment companies, but not including ownership interests in open-end investment companies.

Applicant also proposes to engage through Company in the following activities that it maintains are incidental to the proposed underwriting and dealing activities: (1) providing investment advice to issuers of securities regarding such matters as the timing and structure of particular issues; (2) risk management activities respecting its underwriting and dealing activities, including the purchase and sale of futures, options, and options on futures to the extent permitted under applicable Board interpretation, as well as the purchase and sale of foreign currencies in spot or forward markets as may be necessitated by Company's underwriting or dealing in foreign currency-denominated securities; and (3) underwriting debt and equity securities on a best efforts basis. Applicant proposes to conduct these activities throughout the United States and the world.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

The Board previously has approved, by order, underwriting and dealing in, to a limited extent, all types of debt and equity securities. *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order) and the Order dated January 4, 1990 (Foreign Bank Order). Applicant has stated that, except as described below, it will conduct the proposed underwriting and dealing activities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities. For this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

Applicant also maintains that the Board has determined that the proposed investment advisory, risk management, and best efforts underwriting activities are incidental to the proposed underwriting and dealing activities. *See First Chicago Corporation*, 80 Federal Reserve Bulletin 449, 451 n.7 (1994); *BankAmerica*, 79 Federal Reserve Bulletin 1163 (1993) (investment advisory activities); *see, e.g.*, 12 CFR 225.142; *Deutsche Bank AG*, 79 Federal Reserve Bulletin 133, 139 (1993) (risk management); *see J.P. Morgan & Co. et al.*, 75 Federal Reserve Bulletin 192, 213 n.59 (1989) (best efforts underwriting).

Applicant has submitted a request for a confirmation that foreign subsidiaries, including the foreign bank subsidiaries, of Company's bank affiliates (Foreign Affiliates) are not subject to the section 20 firewalls relating to cross-marketing activities. *See J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192, 215 (1989). Applicant also proposes to permit the Foreign Affiliates to sell bank-ineligible securities underwritten by, dealt in, or placed by Company to institutional customers as defined in Regulation Y and accredited investors as defined in Regulation D of the Securities and Exchange Commission. Applicant also proposes to permit the Foreign Affiliates to recommend bank-ineligible securities to institutional customers and accredited investors provided that disclosure of Company's role in underwriting, dealing in, or placing the securities is made to the customers. Applicant argues that the scope of these firewalls should be limited to U.S. affiliates of section 20 companies and that the extension of these firewalls to the foreign subsidiaries, including the foreign bank subsidiaries, of Company's bank affiliates is not warranted in light of the regulatory framework applicable to these foreign subsidiaries, and that to do so would impose serious competitive disadvantages on Applicant.

Applicant also proposes to have Company enter into certain transactions with certain foreign affiliates and with Applicant subject to the limitations previously imposed by the Board in letters to J.P. Morgan Securities, Inc., dated June 19, 1989 (Morgan Letters), except for the parent company guarantee described in the Morgan Letters in connection with certain repurchase and reverse repurchase transactions involving U.S. Treasury securities. Applicant otherwise would

continue to comply with the Section 20 Firewalls set forth in *J.P. Morgan, supra*, as modified subsequently by the Board.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition, lower financing costs, and more innovative financing. Applicant also believes that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 28, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, August 31, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-21971 Filed 9-6-94; 8:45 am]

BILLING CODE 6210-01-F

Dauphin Deposit Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 30, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Dauphin Deposit Corporation, Harrisburg, Maryland; to acquire 33.3 percent of the voting shares of Loans USA, Incorporated, Pasadena, Maryland, and thereby engage as co-venturer in consumer finance lending, mortgage lending, insurance agency and underwriting activities, data processing services and tax preparation services, as pursuant to § 225.25(b)(1)(ii), (b)(1)(iii), (b)(8)(i) and (ii), (b)(7), and (b)(21), respectively of the Board's Regulation Y.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Busey Corporation, Urbana, Illinois; to acquire from a subsidiary bank, First Busey Securities, Inc., Urbana, Illinois, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 31, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-21972 Filed 9-6-94; 8:45 am]

BILLING CODE 6210-01-F

First of America Bank Corporation, Kalamazoo, Michigan; Application to Engage in Nonbanking Activities

First of America Bank Corporation, Kalamazoo, Michigan (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through a wholly owned subsidiary, First of America Securities, Inc., Kalamazoo, Michigan (Company), in the following securities-related activities: (1) underwriting and dealing in, to a limited extent, rated and unrated debt securities, including only municipal revenue bonds (including industrial development bonds), mortgage-related securities, consumer receivable-related securities, commercial paper, and securities issued by a trust or other vehicle secured by or representing interests in such debt obligations (bank-ineligible securities); (2) acting as agent for issuers in the private placement of all types of debt and equity securities, including providing related advisory services; (3) buying and selling securities on the order of investors as a "riskless" principal; (4) intermediating in the swaps markets by acting as an originator and principal in interest rate and currency swap transactions, and transactions in "swap derivative products" such as caps, floors and collars, and options on swaps, caps, floors and collars, (a) acting as broker and agent with respect to the foregoing transactions and instruments, and (b) acting as adviser to institutional customers regarding financing strategies involving interest rate and currency swaps and derivative swap products; (5) providing foreign exchange advisory and transactional services; and (6) providing advice in connection with merger, acquisition, divestiture, recapitalization and financing

transactions, including feasibility studies and structuring and arranging loan syndications, for financial and nonfinancial institutions and high net worth individuals, and to provide ancillary services or functions incidental to these activities; valuations for financial and nonfinancial institutions and high net worth individuals; fairness opinions in connection with merger, acquisition and similar transactions for financial and nonfinancial institutions and high net worth individuals and ancillary services or functions incidental to the foregoing advisory activities (collectively "financial advisory activities"). Company has previously received Federal Reserve System approval to engage in full-service brokerage activities, providing financial advice to state and local governments, and underwriting and dealing in bank-eligible securities. Applicant proposes to conduct these activities throughout the United States.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board has previously approved, by regulation, financial advisory activities and providing foreign exchange transactional and advisory services. *See*, 12 CFR 225.25(b)(4)(vi) and (17). Applicant has stated that it will conduct these proposed activities subject to the requirements and limitations of the Board's Regulation Y.

The Board also has previously approved, by order, underwriting and dealing in, to a limited extent, bank-ineligible securities. *See, e.g., Citicorp, et al.*, 73 Federal Reserve Bulletin 473 (1987) (1987 Section 20 Order), *aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir.), *cert. denied*, 486 U.S. 1059 (1988); *J.P. Morgan & Co. Incorporated, et al.*, 75 Federal Reserve Bulletin 192 (1989) (1989 Section 20 Order), *aff'd sub nom. Securities Industries Ass'n v. Board of Governors of the Federal Reserve System*, 900 F.2d 360 (D.C. Cir. 1990), *as modified by* Order dated September 21, 1989, 75 Federal Reserve Bulletin 751 (1989) (Modification Order). Applicant has stated that it will conduct the proposed underwriting and dealing activities in bank-ineligible securities using the same methods and procedures, and subject to the same prudential limitations established by the Board in the 1987 Section 20 Order, and the 1989 Section 20 Order, as modified by the Modification Order, including the Board's 10 percent revenue limitation on such activities.[1] For this reason, Applicant contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), which prohibits the affiliation of a state member bank with any company principally engaged in the underwriting, public sale, or distribution of securities.

The Board also has previously approved, by order, the proposed private placement and riskless principal activities, and Applicant has stated that it will conduct these proposed activities using the same methods and procedures and subject to the prudential limitations established by the Board in its previous orders. *See Dauphin Deposit Corporation*, 77 Federal Reserve Bulletin 672 (1991); *J.P. Morgan & Company Incorporated*, 76 Federal Reserve Bulletin 26 (1990); and *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989).

The Board also has previously approved acting as originator, principal, broker or agent with respect to interest rate and currency swaps, caps, floors, collars, and options on swaps, caps, floors and collars, including providing advice to institutional customers regarding such financial instruments. *See, e.g., The Sanwa Bank, Limited*, 77 Federal Reserve Bulletin 64 (1991); *The Fuji Bank, Limited*, 76 Federal Reserve Bulletin 768 (1990); *The Sumitomo Bank, Limited*, 75 Federal Reserve Bulletin 582 (1989). Applicant proposes to engage in these swap activities subject to the provisions and conditions established by the Board in its previous orders.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by increasing customer convenience, increasing competition in the market for the proposed services, and promoting gains in efficiency. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than September 28, 1994. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be

[1] Applicant is proposing that Company have two director interlocks with Applicant's subsidiary banks. These directors would not be officers of Company or the subsidiary banks, would not have authority to handle day-to-day business of the banks or handle individual bank transactions. These directors would not make up a majority of Company's board of directors. *See, e.g., Synovus Financial Corp., 77 Federal Reserve Bulletin 954, 955 (1991); Banc One Corporation*, 76 Federal Reserve Bulletin 756, 758 (1990). Applicant is also proposing that affiliate banks of Company broker or act as riskless principal for bank-eligible securities underwritten or dealt in by Company in a manner previously approved by the Board. *See BankAmerica Corporation*, 79 Federal Reserve Bulletin 1163, 1165 (1993).

accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Chicago.

Board of Governors of the Federal Reserve System, August 31, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–21973 Filed 9–6–94; 8:45 am]

BILLING CODE 6210–01–F

Marshall & Ilsley Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 30, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Marshall & Ilsley Corporation, Milwaukee, Wisconsin; to acquire 100 percent of the voting shares of Bank of Burlington, Burlington, Wisconsin.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hemisphere Financial, Ltd., Road Town, Tortola, British Virgin Islands; to become a bank holding company by acquiring 100 percent of the voting shares of Mercantile Financial Enterprises, Inc., Wilmington, Delaware, and thereby indirectly acquire Mercantile Bank, N.A., Brownsville, Texas. In connection with this application Mercantile Financial Enterprises, Inc., Wilmington, Delaware; also has applied to become a bank holding company by acquiring 95.78 percent of the voting shares of Mercantile Bank, N.A., Brownsville, Texas.

Board of Governors of the Federal Reserve System, August 31, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–21974 Filed 9–6–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research.

Meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation

AGENCY: Agency for Health Care Policy and Research.

ACTION: Notice of meeting.

SUMMARY: The open meeting of the National Advisory Council for Health Care Policy, Research, and Evaluation scheduled for September 26–27, 1994, will be postponed until mid-fall. Notice of dates will be published as soon as they are scheduled.

DATES: A closed meeting to review some categories of grant applications will be conducted through a telephone conference call on Monday, September 26, 1994, at 11:00 a.m.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S. Code, and section 10(d) of the Federal Advisory Committee Act, the September 26 meeting is closed to the public. The discussion and review of grant applications could reveal confidential personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

FOR FURTHER INFORMATION CONTACT: Deborah L. Queenan, Executive Secretary of the Advisory Council at the Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 603, Rockville, Maryland 20852, (301) 594–1459.

Dated: August 31, 1994.

Richard J. Greene,

Acting Administrator.

[FR Doc. 94–21984 Filed 9–6–94; 8:45 am]

BILLING CODE 4160–90–P

Food and Drug Administration

[Docket No. 94N–0310]

Animal Drug Export; Immiticide® (Melarsomine Dihydrochloride) Sterile Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rhone Merieux, Inc., has filed an application requesting approval for export to France, solely for the purpose of further export to Italy and Australia, of the animal drug Immiticide® (melarsomine dihydrochloride) sterile powder for use as an injectable for dogs.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of nonfood animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Rhone Merieux, Inc., 115 Transtech Dr., Athens, GA 30601, has filed application number 6203 requesting approval for

export to France of the animal drug Immiticide® (melarsomine dihydrochloride) sterile powder. The product is intended for use in dogs for treatment of *Dirofilaria immitis* infections. The application was received and filed in the Center for Veterinary Medicine on August 10, 1994, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by September 19, 1994, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: August 24, 1994.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 94–22034 Filed 9–6–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94E–0236]

Determination of Regulatory Review Period for Purposes of Patent Extension; Prograf™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Prograf™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Prograf™. Prograf™ (tacrolimus) is indicated for the prophylaxis of organ rejection in patients receiving allogeneic liver transplants. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application of Prograf™ (U.S. Patent No. 4,894,366) from Fujisawa Pharmaceutical Co., Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 6, 1994, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Prograf™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Prograf™ is 1,290 days. Of this time, 1,033 days occurred during the testing phase of the regulatory review period, while 257 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective*: September 28, 1990. The applicant claims April 2, 1990, as the date the Investigationl New Drug (IND) became effective. The IND was received on March 30, 1990. It was placed on clinical hold April 26, 1990 and was removed from hold on September 28, 1990. Therefore, the IND effective date is September 28, 1990 (the date IND 34,654 was removed from hold).

2. *The date the application was initially submitted with respect to the human drug product under section 507 of the Federal Food, Drug, and Cosmetic Act*: July 26, 1993 (NDA 50–708) and August 4, 1993, (NDA 50–709). The applicant claims July 23, 1993 (NDA 50–708) and August 3, 1993 (NDA 50–709), as the dates the New Drug Applications (NDA's) for Prograf™ were initially submitted. However, FDA records indicate that the NDA's for Prograf™ were submitted on July 26, 1993 (NDA 50–708) and August 4, 1993 (NDA 50–709).

3. *The date the application was approved*: April 8, 1994. FDA has verified the applicant's claim that NDA's 50–708 and 50–709 were approved on April 8, 1994.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 448 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before November 7, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before March 6, 1995, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition

must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 25, 1994.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 94–22036 Filed 9–6–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94N–0243]

Certification for Exports; Revised Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a revised Compliance Policy Guide (CPG) 7150.01 entitled, "Certification for Exports." Firms exporting products from the United States are often asked by foreign customers or foreign governments to supply a certification relating to products subject to the Federal Food, Drug, and Cosmetic Act and other acts that FDA administers. FDA has historically issued a number of different types of such certificates, e.g., Certificates of Free Sale, Certificates for Export, Certificates to Foreign Governments, and most recently the European Union Health Certificate for Fishery Products. With expanding world trade, ongoing international harmonization initiatives, and developing international agreements, pressures on FDA to issue more certificates for U.S. products are escalating. Therefore, FDA has revised the CPG to clarify that it is the responsibility of the certificate requestor to provide information that will allow FDA to issue a Certificate for Export and to provide guidance on the preparation of such certificates, including model forms. The revised guidance will improve agency uniformity and consistency in providing export certifications for FDA-regulated commodities.

ADDRESSES: CPG 7150.01 may be ordered from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Rd., Springfield, VA 22161. Orders must reference NTIS order number PB94–204401 and include payment of $9 for each copy of the document plus $2 shipping and handling. Payment may be made by check, money order, charge card (American Express, Visa, or Mastercard), or billing arrangements made with NTIS. Charge card orders must include the charge card account number and expiration date. For telephone orders or further information on placing an order, call NTIS at 703–487–4650. CPG 7150.01 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Steven M. Solomon, Office of Regulatory Affairs (HFC–230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1500.

SUPPLEMENTARY INFORMATION: This revised CPG describes current agency views on certificates requested by U. S. firms to facilitate the exports of FDA regulated products to other countries. The agency recognizes the current importance of fulfilling requests for export certificates, however, FDA's long-term policy is to work towards the reduction or elimination of export certificates by finding other means to satisfy other countries' need for reassurance about imported products. The new guide replaces CPG 7150.01 entitled "Certificates of Free Sale" that was issued in 1989.

The statements made in CPG 7150.01 are not intended to bind the courts, the public, or FDA or to create or confer any rights, privileges, immunities, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: August 15, 1994.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–22033 Filed 9–6–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94D–0242]

Nonparenteral Animal Drugs Packaged for Parenteral Use; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a new Compliance Policy Guide (CPG) 7125.39 entitled "Drugs Packaged for Infusion or Injection of Food-Producing Animals." This CPG provides policy and regulatory action guidance to the Food and Drug Administration (FDA) field and headquarters staff regarding the status of products labeled for nonparenteral use in animals with packaging appropriate for parenteral use in food-producing animals.

ADDRESSES: Submit written requests for single copies of CPG 7125.39 entitled "Drugs Packaged for Infusion or Injection of Food-Producing Animals" to the Industry Information Staff (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855. Requests should be identified with the CPG number and title, as well as the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7125.39 is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Judith A. Gushee, Center for Veterinary Medicine (HFV–236), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1785.

SUPPLEMENTARY INFORMATION: FDA had determined that a number of products are packaged in parenteral-like packaging although labeled for topical, oral, or other route of administration. The policy states that oral and topical preparations for food-producing animals should not be packaged to facilitate parenteral administration. FDA is concerned about safety of these unapproved products when infused or injected into food-producing animals. Serious animal and human health consequences can result from this practice. Products packaged as if for parenteral administration that do not bear adequate directions for parenteral administration will be deemed misbranded.

The statements made in CPG 7125.39 are not intended to bind the courts, the public, or FDA, or to create or confer any rights, privileges, immunities, or benefits on or for any private person, but are intended merely for internal FDA guidance.

Dated: August 31, 1994.

Ronald G. Chesemore,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 94–22035 Filed 9–6–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPO–123–GNC]

Medicare Program; Criteria and Standards for Evaluating Intermediary and Carrier Performance During FY 1995

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice with comment period.

SUMMARY: This notice describes the criteria and standards to be used for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program beginning October 1, 1994. The results of these evaluations are considered whenever HCFA enters into, renews, or terminates an intermediary agreement or carrier contract or takes other contract actions (for example, assigning or reassigning providers of services to an intermediary or designating regional or national intermediaries).

This notice is published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act. We are publishing for public comment in the **Federal Register** those criteria and standards against which we evaluate intermediaries and carriers.

EFFECTIVE DATE: The criteria and standards are effective October 1, 1994.

COMMENTS: Comments will be considered if we receive them at the appropriate address as provided below no later than 5 p.m. (EDT) on October 7, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPO–123–GNC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPO–123–GNC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's office at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Bob Loyal, (410) 966–7403.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1816 of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services. These agencies or organizations, known as fiscal intermediaries, determine whether medical services are covered under Medicare and determine correct payment amounts. The intermediaries then make payments to the health care providers on behalf of the beneficiaries. Section 1816(f) of the Act requires us to develop criteria, standards, and procedures to evaluate an intermediary's performance of its functions under its agreement. We evaluate intermediary performance through the contract management process.

Under section 1842 of the Act, we are authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians, and suppliers of services submit claims to these carriers. The carriers determine whether the services are covered under Medicare and the payable amount for the services or supplies and then make payment to the appropriate party. Under section 1842(b)(2) of the Act, we are required to develop criteria, standards, and procedures to evaluate a carrier's performance of its functions under its contract. We also evaluate carrier performance through the contract management process.

We are publishing the criteria and standards in the **Federal Register** in order to allow the public an opportunity to comment before implementation. In addition to the statutory requirement, our regulations at 42 CFR 421.120 and 421.122 provide for publication of a **Federal Register** notice to announce criteria and standards for intermediaries prior to implementation. Regulations at 42 CFR 421.201 provide for publication of a **Federal Register** notice to announce criteria and standards for carriers prior to implementation. The current criteria and standards were published in the **Federal Register** on September 30, 1993 (58 FR 51085).

To the extent possible, we make every effort to publish the criteria and standards prior to the beginning of the Federal fiscal year, which is October 1st.

If we do not publish a **Federal Register** notice before the new fiscal year begins, readers may presume that until and unless notified otherwise, the criteria and standards which were in effect for the previous fiscal year remain in effect.

In those instances where we are unable to meet our goal of publishing the subject **Federal Register** notice before the beginning of the fiscal year, we may publish the criteria and standards notice at any subsequent time during the year. If we choose to publish a notice in this manner, the evaluation period for any such criteria and standards which are the subject of the notice will be revised to be effective on the first day of the first month following publication. Hence, any revised criteria and standards will measure performance prospectively; that is, we will not apply new measurements to assess performance on a retroactive basis.

Also, it is not our intention to revise the criteria and standards which will be used during the evaluation period once this information has been published in a **Federal Register** notice. However, on occasion, either because of Administrative mandate or Congressional action, there may be a need for changes which have direct impact upon the criteria and standards previously published, or which require the addition of new criteria or standards, or that cause the deletion of previously published criteria and standards. Should such changes be necessitated, we will issue a **Federal Register** notice prior to implementation of the changes.

In all instances, necessary manual issuances will be published each year to ensure that the criteria and standards are implemented uniformly and accurately. Also, as in previous years,

the **Federal Register** notice will be republished and the effective date revised if changes are warranted as a result of the public comments received on the criteria and standards.

II. Incentive Payments to Carriers

In accordance with section 1842(c)(1)(B) of the Act, this notice also describes the current methodology that will be used to award incentive payments to carriers that successfully increase the proportion of physicians in the carrier's service area who are participating physicians, or the proportion of payments to participating physicians.

Section 1842(h) of the Act sets forth the Medicare participating physician program. "Participating" means accepting assignment on all Medicare claims. "Accepting assignment" means physicians accept Medicare's approved amount as full payment, with the beneficiary responsible for only the Medicare deductible and coinsurance amounts. The main goal of the program is to reduce the financial impact of medical costs upon beneficiaries by establishing incentives for physicians to accept assignment on all Medicare claims. The provisions give all physicians an annual opportunity to enroll or disenroll as a Medicare participating physician.

Section 1842(b)(3)(H) of the Act requires Medicare carriers to implement programs to recruit and retain physicians as participating physicians. These programs include educational and outreach activities and the use of professional relations personnel to handle billing and other problems relating to payment of claims of participating physicians. These programs are also designed to familiarize beneficiaries with the participating physician program and to assist the beneficiaries in locating participating physicians. Carriers also increase participation through the use of public relations, literature, and training in the physician community. We believe carriers continue to perform these activities because they are advantageous to their operations. By properly educating the provider community, carriers save staff time and produce cleaner claims which result in fewer inquiries as well as fewer exceptions.

Also, we believe that the implementation of the resource-based relative value scale (RBRVS) fee schedule has contributed largely to the increase in the number of physicians participating in the Medicare program. Nonparticipation is discouraged by the "limiting charges" imposed under physician payment reform.

We will continue to pay incentive bonuses to any carrier that achieves an increase of at least one-tenth of one percent in the participating physicians' rate or proportion of payments for participating physicians' services in the carrier's total service area. Carriers that achieve an increase in physicians' participation or payments for participating physician services of less than 2 percentage points will be paid a partial incentive payment. Carriers that achieve an increase of at least 2 percentage points, but less than 4 points, will be paid the full incentive payment. Carriers that achieve an increase equal to or greater than 4 percentage points will be paid a bonus for each additional 2 percentage point increase over and above the initial 2 percentage point increase.

As required by section 1842(c)(1)(B) of the Act, the amount of the total incentive payable to carriers is one percent of the total payments to carriers for claims processing costs for the fiscal year. The total incentive pool is calculated by summing the total claims processing costs reported by each carrier in fiscal year (FY) 1985 and multiplying the total by one percent. The total claims processing costs in that fiscal year amounted to $380 million. Therefore, carrier bonuses in FY 1995 will be one percent of this amount or $3.8 million. Fiscal year 1985 has been used as a base because it reflects the claims processing costs and workload at the inception of the participating physician program.

For the purpose of determining each carrier's eligibility for an incentive payment, we make two comparisons. We compare the carrier's physician participation rate after the latest enrollment period with the physician participation rate after the prior enrollment date. We make a similar comparison of the proportion of covered charges for services by participating physicians during the quarter following the enrollment period with those of the quarter following the prior enrollment period. We intend to use whichever difference yields the higher percentage increase to determine eligibility for award of the incentive payment. Currently, we issue carrier incentive payments by September 30 following each annual enrollment period. The amount of these payments will be included in line 11 (other) of the carrier's Notice of Budget Approval, Form HCFA–1524.

III. Criteria and Standards—General

Basic tenets of the Medicare program are to pay claims promptly and accurately and to foster good beneficiary and provider relations. Contractors must administer the Medicare program efficiently and economically. We have developed a contractor management program for FY 1995 that sets expectations for the contractor; measures the performance of the contractor; evaluates the performance against the expectations; and, takes appropriate contract action based upon evaluation of the contractor's performance. The goal of performance evaluation is to ensure that contractors meet their contractual obligations. We measure contractor performance to ensure that the following objectives are met: contractors do what is required of them by law, regulation and HCFA directive; do it well; and continually improve what they do. We have restructured contractor evaluation into five criteria, designed to meet those objectives. This restructuring effort considered comments from HCFA components as well as beneficiary and provider groups which have commented on past **Federal Register** notifications.

The first criterion in the FY 1995 contractor performance evaluation is "Claims Processing", which measures contractual performance against claims processing accuracy and timeliness requirements. Within the Claims Processing criterion, we have identified those performance standards which are mandated by either legislation, regulation or judicial decision. These standards include claims processing timeliness, the rate of cases reversed by an Administrative Law Judge, the timeliness of intermediary reconsideration cases, and the accuracy and timeliness of carrier reviews and hearings. Further evaluation in the Claims Processing criterion may include, but is not limited to, the accuracy of bill and claims processing, the level of electronic claims payment, and the accuracy of intermediary reconsideration cases.

The second criterion is "Customer Service", which assesses the completeness of the service provided to customers by the contractor in its administration of the Medicare program. Mandated standards in the Customer Service criterion include the accuracy of Explanations of Medicare Benefits, and the accuracy and timeliness of carrier replies to beneficiary telephone inquiries. In FY 1995, customer feedback may be used to collect comparable data on customer satisfaction and identify areas in need of improvement. Among the specific contractor services that may be included in the evaluation process under the Customer Service criterion are: beneficiary relations; provider

education; appropriate telephone inquiry responses; and the tone and accuracy of all correspondence.

The third criterion is "Payment Safeguards", which evaluates whether the Medicare trust fund is safeguarded against inappropriate program expenditures. Intermediary and carrier performance may be evaluated in the areas of medical review, Medicare secondary payer, fraud and abuse, and audit and reimbursement. Mandated performance standards in the Payment Safeguards criterion are the accuracy of decisions on skilled nursing facility (SNF) demand bills, and the timeliness of processing Tax Equity and Fiscal Responsibility Act (TEFRA) target rate adjustments, exceptions, and exemptions. Further evaluation in this criterion may include, but is not limited to, the efficient and effective compilation and analysis of data to bring about continuous improvement in contractor efforts to safeguard Medicare program dollars.

The fourth criterion is "Fiscal Responsibility", which evaluates the contractor's efforts to protect the Medicare program and the public interest. Contractors must effectively manage Federal funds for both payment of benefits and cost of administration under the Medicare program. Proper financial and budgetary controls must be in place to ensure contractor compliance with its agreement with HHS and HCFA. Additional functions reviewed under this criterion may include, but are not limited to, bottom line unit cost, compliance with the Budget and Performance Requirements, adherence to Chief Financial Officer's Act.

The fifth and final criterion is "Administrative Activities", which measures a contractor's administrative management of the Medicare program. A contractor must efficiently and effectively manage its operations to assure constant improvement in the way it does business. Proper systems security, ADP maintenance, and disaster recovery plans must be in place. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, establishment, application, documentation, and effectiveness of internal controls. Internal controls include all aspects of a contractor's operation. It can include implementation reviews of corrective action plans, task management plans, data and reporting requirements, and management improvement plans.

We have also developed separate measures for evaluating unique activities of Regional Home Health Intermediaries (RHHIs).

Section 1816(e)(4) of the Act requires the Secretary to designate regional agencies or organizations, which are already Medicare intermediaries under section 1816, to perform bill processing functions with respect to freestanding home health agency (HHA) bills. The law requires that we limit the number of such regional intermediaries (i.e., RHHIs) to not more than ten; there are currently nine (see 42 CFR 421.117 and the **Federal Register** published on May 19, 1988 (53 FR 17936) for more details about the RHHIs).

In addition, section 1816(e)(4) of the Act requires the Secretary to develop criteria and standards in order to determine whether to designate an agency or organization to perform services with respect to hospital affiliated HHAs. We have developed separate measures for RHHIs in order to evaluate the distinct RHHI functions. These functions include the processing of freestanding HHA, hospital affiliated HHA, and hospice bills. Through an evaluation using these criteria and standards we may determine whether the RHHI functions should be moved from one intermediary to another in order to ensure effective and efficient administration of the program benefit.

Below we list the criteria and standards to be used for evaluating the performance of intermediaries and carriers. In a number of instances, we identify a HCFA manual as a source of more detailed requirements. Intermediaries and carriers have copies of the various Medicare manuals referenced in this notice. Members of the public also have access to our manualized instructions.

Medicare manuals are available for review at local Federal Depository Libraries (FDLs). Under the FDL Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Finally, all HCFA regional offices maintain all Medicare manuals for public inspection. To find the location of the nearest available HCFA regional office, individuals may contact the individual listed at the beginning of this notice. That individual can also provide information about purchasing or subscribing to the various Medicare manuals.

IV. Criteria and Standards for Intermediaries

Claims Processing Criterion

The Claims Processing criterion contains 4 mandated standards.

Standard 1—95% of clean electronically submitted non-Periodic Interim Payment (PIP) bills paid within statutorily specified time frames. Specifically, clean, non-PIP electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 2—95% of clean paper non-PIP bills paid within specified time frames. Specifically, clean, non-PIP paper claims can be paid as early as the 27th day (26 days after the date of receipt), and must be paid by the 31st day (30 days after the date of receipt).

Standard 3—Reversal rate by Administrative Law Judges (ALJ) is at or below 5.0%.

Standard 4—75% of reconsiderations are processed within 60 days and 90% are processed within 90 days.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to:

- Accurate Bill Processing;
- Attainment of Electronic Media Claims goals;
- Accurate processing of reconsideration cases with clear responses and appropriate customer-friendly tone and clarity;
- Management of shared processing sub-contract;
- Relationship with Common Working File Host;
- Data analysis and validation.

Customer Satisfaction Criterion

We may review the intermediary's efforts to enhance customer satisfaction through the use of customer feedback. Results of the feedback may be used to establish comparable data on customer satisfaction and to identify areas in need of improvement. The results may be summarized for publication in the report of contractor performance and shared with individual contractors.

We may also evaluate, but are not limited to, the following functions:

- The accuracy, timeliness and appropriateness of responses to telephone inquiries;
- The accuracy, clearness and timeliness of responses to written inquiries with appropriate customer-friendly tone and clarity;
- Relationships with professional and beneficiary organizations and use of focus groups;
- Educational and outreach efforts.

Payment Safeguards Criterion

The Payment Safeguard criterion contains 2 mandated standards.

Standard 1—Decisions of SNF demand bills are accurate.

Standard 2—TEFRA target rate adjustments, exceptions, and exemptions are processed within mandated timeframes.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to:

- Medical Review: We may assess the ability of the Medicare contractors to apply their analytical skills and focus resources on particular providers or claim types which represent unnecessary or inappropriate care. We may review contractor efforts in developing local and national data that identify aberrancies and form the basis of corrective actions, such as educating the provider, and/or become the basis of medical review policies or review screens as directed by the Medicare Intermediary Manual (MIM) § 3939 and Budget and Performance Requirements. We may also review the effectiveness of the contractor's identification and corrective action. We may also review a sample of a contractor's medical review decisions to assure that the decisions comply with current coverage guidelines and that the contractor's use of each medical review screen is supported by sufficient documentation. We may assess contractors' medical review efforts at developing effective means of addressing aberrancies identified during the analysis of all local and national data, and take action to assure that the focused medical review procedures and systems designed and utilized by the contractor have allowed it to meet program requirements. We may also review a contractor's efforts to review information or documentation located in the fraud unit.
- Audit and Reimbursement: We may assess the quality of fiscal intermediaries' activities in the audit and settlement of Medicare cost reports. We may assess the timeliness of Medicare cost report settlements and the accuracy by which fiscal intermediaries have established interim provider payments.
- Medicare Secondary Payer: The Medicare Secondary Payer (MSP) program may use the MSP review guide to review the intermediary's MSP processes in administering the program and for identifying and recovering mistaken Medicare payments in accordance with MIM, Part 3, §§ 3400ff and 3600ff, and pertinent HCFA instructions and transmittals. We may develop outcome measures to assess the intermediary's accuracy in reporting savings and to determine if claim development procedures are followed. We may also evaluate the accuracy and timeliness of claims payment and determine if the Common Working File, internal systems and required software are utilized as prescribed. We may also evaluate the contractor's ability to prioritize and process recoveries in compliance with instructions, determine if recoveries of all payers are processed equally, and ensure that audit trail documentation exists.
- Fraud and Abuse: The Fraud and Abuse program may use the formally established mechanism to review the intermediaries in the basic level of fraud detection, deterrence and development as described in MIM, Part 3, § 3950ff, and pertinent HCFA instructions and transmittals. We may assess the ability of the contractor to identify fraud cases that exist within its service area, and to take appropriate action to dispose of these cases. We may review the contractor's efforts in investigating allegations of fraud made by beneficiaries, providers, HCFA, OIG, and other sources. We may develop an outcome measure to assess the contractor's ability to put in place an effective fraud detection and deterrence program.

Fiscal Responsibility Criterion

We may review the intermediary's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with HCFA.

Additional matters to be reviewed under the Fiscal Responsibility criterion may include, but are not limited to:

- Bottom line unit cost;
- Compliance with the Budget and Performance Requirements;
- Adherence to Chief Financial Officer's Act;
- Overall control of administrative cost and benefit payments.

Administrative Activities Criterion

We may measure a contractor's administrative ability to manage the Medicare program. We may address the efficiency and effectiveness of their operation, their system of internal controls and the compliance with HCFA directives and initiatives. A contractor's evaluation under the Administrative Activities criterion may include, but is not limited to, implementation reviews of:

- Proper systems security;
- ADP maintenance;
- Disaster recovery plan;
- Corrective action plans;
- Task management plans;
- Data and reporting requirements;
- Management improvement plans.

V. Criteria and Standards for Carriers

Claims Processing Criterion

The Claims Processing criterion contains 4 mandated standards.

Standard 1—95% of clean electronically submitted claims processed within statutorily specified time frames. Specifically, clean electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 2—95% of clean paper claims processed within specified time frames. Specifically, clean paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 3—95% of reviews are accurate and clear with appropriate customer-friendly tone and clarity and are completed within 45 days.

Standard 4—90% of carrier hearings are accurate and clear with appropriate customer-friendly tone and clarity and are completed within 120 days.

Additional functions may be evaluated under this criterion. These functions include, but are not limited to:

- Accuracy of Claims Processing;
- Attainment of Electronic Media Claims goals;
- Management of shared processing sub-contract;
- Relationship with Common Working File Host;
- Data analysis and validation.

Customer Satisfaction Criterion

The Customer Satisfaction criterion contains 2 mandated standards.

Standard 1—98% of Explanations of Medicare Benefits (EOMBs) are properly generated.

Standard 2—Telephone inquiries are timely answered.

Telephone calls are to be answered within 120 seconds and callers are not to get a busy signal more than 20% of the time.

We may review the carrier's efforts to enhance customer satisfaction through the use of customer feedback. Results of the feedback may be used to establish comparable data on customer satisfaction and to identify areas in need of improvement. The results may be summarized for publication in the report of contractor performance and shared with individual contractors.

We may also evaluate, but are not limited to evaluating, the following functions:

- The accuracy and appropriateness of responses to telephone inquiries;
- The accuracy, clearness and timeliness of responses to written inquiries with appropriate customer-friendly tone and clarity;
- Relationships with professional and beneficiary organizations and use of focus groups;
- Educational and outreach efforts.

Payment Safeguards Criterion

Carrier functions that may be reviewed under this criterion include, but are not limited to:

- Medical Review: We may assess the ability of the Medicare contractors to apply their analytical skills and focus resources on particular providers or claim types which represent unnecessary or inappropriate care. We may review contractor efforts in developing effective means of addressing aberrancies identified through analyzing data to target prepay and postpay review. This forms the basis of corrective actions such as educating the provider and/or become the basis of medical review policies or review screens as directed by the carrier manual and Budget and Performance Requirements. We may also review a sample of the contractor's use of medical coverage guidelines to determine if the contractor's use of each medical review screen is supported by sufficient documentation. We may assess the effectiveness of contractors' medical review efforts at developing means of addressing aberrancies identified during the analysis of all local and national data and take action to assure that the focused medical review procedures and systems designed and utilized by the contractor have allowed it to meet program requirements. We may also review a contractor's efforts to review information or documentation located in the fraud unit.
- Medicare Secondary Payer: The Medicare Secondary Payer (MSP) program may use the MSP review guide to review the carrier's MSP processes in administering the program and for identifying and recovering mistaken Medicare payments in accordance with the Medicare Carrier Manual (MCM), Part 3, §§ 3375, 4306.3, and 4307–4308.1, and pertinent HCFA instructions and transmittals. We may develop outcome measures to assess the carrier's accuracy in reporting savings and to determine if claim development procedures are followed. We may also evaluate the accuracy and timeliness of claims payment and determine if the Common Working File, internal systems and required software are utilized as prescribed. We may also evaluate the contractor's ability to prioritize and process recoveries in compliance with instructions, determine if recoveries of all payers are processed equally, and ensure that audit trail documentation exists.
- Fraud and Abuse: The Fraud and Abuse program may use the formally established mechanism to review the carriers in the basic level of fraud detection, deterrence and development as described in MCM, Part 3, § 14000ff, and pertinent HCFA issued instructions and transmittals. We may assess the ability of the contractor to identify fraud cases that exist within its service area, and to take appropriate action to dispose of these cases. We may review the contractor's efforts in investigating allegations of fraud made by beneficiaries, providers, HCFA, OIG, and other sources. We may develop an outcome measure to assess the contractor's ability to put in place an effective fraud detection and deterrence program.

Fiscal Responsibility Criterion

We may review the carrier's efforts to establish and maintain appropriate financial and budgetary internal controls over benefit payments and administrative costs. Proper internal controls must be in place to ensure that contractors comply with their agreements with HCFA.

Additional matters to be reviewed under the Fiscal Responsibility criterion may include, but are not limited to:

- Bottom line unit cost;
- Compliance with the Budget and Performance Requirements;
- Adherence to Chief Financial Officer's Act;
- Overall control of administrative cost and benefit payments.

Administrative Activities Criterion

We may measure a carrier's administrative ability to manage the Medicare program. We may address the efficiency and effectiveness of their operation, their system of internal controls and compliance with our directives and initiatives. A carrier's evaluation under this criterion may include, but is not limited to, implementation reviews of:

- Proper systems security;
- ADP maintenance;
- Disaster recovery plan;
- Corrective action plans;
- Task management plans;
- Data and reporting requirements;
- Management improvement plans.

VI. Regional Home Health Intermediaries (RHHIs) Criterion

The following standards are mandated for the Regional Home Health Intermediaries criterion:

Standard 1—95% of clean electronically submitted non-PIP HHA/hospice bills paid within statutorily specified time frames. Specifically, clean, non-PIP electronic claims can be paid as early as the 14th day (13 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 2—95% of clean paper non-PIP HHA/hospice bills paid within specified time frames. Specifically, clean, non-PIP paper claims can be paid as early as the 27th day (26 days after the date of receipt) and must be paid by the 31st day (30 days after the date of receipt).

Standard 3—75% of HHA/hospice reconsiderations are processed within 60 days and 90% are processed within 90 days.

We may use this criterion to review a RHHI's performance with respect to handling the HHA/hospice workload. This includes processing HHA/hospice bills timely and accurately, properly paying and settling HHA cost reports, and timely and accurately processing reconsiderations from beneficiaries, HHAs, and hospices.

VII. Action Based on Performance Evaluations

A contractor's performance is evaluated against applicable program requirements for each criterion. Each contractor must certify that all information submitted to HCFA relating to contractor management process, including without limitation all records, reports, files, papers and other information, whether in written, electronic, or other form, is accurate and complete to the best of the contractor's knowledge and belief. A contractor will also be required to certify that its files, records, documents, and data have not been manipulated or falsified in an effort to receive a more favorable performance evaluation. A contractor must further certify that, to the best of its knowledge and belief, the contractor has submitted, without withholding any relevant information, all information

required to be submitted with respect to the contractor management process under the authority of applicable law(s), regulation(s), contracts, or HCFA manual provision(s). Any contractor that makes a false, fictitious, or fraudulent certification may be subject to criminal and/or civil prosecution, as well as appropriate administrative action. Such administrative action may include debarment or suspension of the contractor, as well as the termination or nonrenewal of a contract.

If a contractor meets the level of performance required by operational instructions, it meets the requirements of that criterion. Any performance measured below basic operational expectations constitutes a deficiency. The contractor may be required to develop and implement a corrective action plan when performance problems are identified. The contractor will be monitored to assure effective and efficient compliance with the corrective action plan and improved performance where requirements are not met.

The results of performance evaluations and assessments under all five criteria will be used for contract management activities and will be published in the contractor's annual performance report. We may initiate administrative actions as a result of the evaluation of contractor performance based on these performance criteria. Under sections 1816 and 1842 of the Act, we consider the results of the evaluation in our determinations on:

- Entering into, renewing, or terminating agreements or contracts with contractors.
- Decisions concerning other contract actions for intermediaries and carriers (such as deletion of an automatic renewal clause). These decisions are made on a case-by-case basis and depend primarily on the nature and degree of performance. More specifically, they depend on:

+ Relative overall performance compared to other contractors;
+ Number of criteria in which deficient performance occurs;
+ Extent of each deficiency;
+ Relative significance of the requirement for which deficient performance occurs within the overall evaluation program; and
+ Efforts to improve program quality, service, and efficiency.

- Decisions concerning the assignment or reassignment of providers and designation of regional or national intermediaries for classes of providers.

We make individual contract action decisions after considering these factors in terms of their relative significance and impact on the effective and efficient administration of the Medicare program.

In addition, if the cost incurred by the intermediary or carrier to meet its contractual requirements exceeds the amount which the Secretary finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated intermediary or carrier, such high costs may also be grounds for adverse action.

VIII. Response to Public Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are unable to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the DATES section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble of that document.

In accordance with Executive Order 12866, this notice has not been reviewed by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 11, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–21914 Filed 9–6–94; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

National Heart, Lung, and Blood Institute; Closed Meeting

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Heart, Lung, and Blood Special Emphasis Panel (SEP) meeting:

Name of SEP: RFP for the Clinical Trial of Management Strategies of Atrial Fibrillation in an Elderly Population.

Date: September 13, 1994.

Time: 8:00 a.m.

Place: Bethesda Holiday Inn, Bethesda, Maryland.

Contact Person: Dr. Andre Premen, 5333 Westbard Avenue, Room 5A10, Bethesda, Maryland 20892, (301) 594–7481.

Purpose/Agenda: To review and evaluate contract proposal(s).

The meeting will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

This notice is being published less than fifteen days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: August 31, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–22038 Filed 9–6–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–920–04–4120–04]

Availability of Environmental Assessment and Decision Record for Six Coal Lease Applications and One Application for Coal Lease Modification, Southeast Oklahoma Coal Leasing Area, 30-Day Appeal Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of environmental assessment and decision record, 30-day appeal period.

SUMMARY: The Bureau of Land Management (BLM), New Mexico State Office, announces the availability to the public of the Environmental Assessment (EA) and Decision Record (DR) for Six Coal Lease Applications and One Application for Coal Lease Modification in the Southeast Oklahoma Coal Leasing Area (LeFlore and Lattimer counties, Oklahoma). This EA analyzes the potential impacts on the environment of five alternatives, including the no action alternative, for issuing the six coal leases and modifying an existing lease to avoid bypassing federal coal reserves. On June 29, 1994, a public meeting was held in Poteau, Oklahoma to solicit comments on the EA and to obtain public input on BLM's determination of fair market value and maximum economic recovery of the coal. No

comments were received on the adequacy of the EA and no public input indicated opposition to the proposed leasing.

The Bureau of Land Management, in cooperation with the Office of Surface Mining (OSM) has selected Alternative B, the Sale of Revised Tracts to Mine by Pass Coal and also the agency's preferred alternative, for implementation.

ADDRESSES: Questions or concerns on this project can be directed to: Bureau of Land Management, New Mexico State Office (NM–921), Attn: Gary Stephens, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Copies of the subject EA and Decision Record are also available from this address.

FOR FURTHER INFORMATION CONTACT: Gary Stephens, Oklahoma Coal ETA Team Leader, at the above address or telephone (505) 438–7451 or (505) 438–7442.

SUPPLEMENTARY INFORMATION: Any person adversely affected by this decision may appeal such action to the Interior Board of Land Appeals pursuant to 43 Code of Federal Regulations (CFR) Part 4. An appeal must be filed in the office of the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, within 30 days of the publication of this Notice of Availability in the **Federal Register**. The decision will become effective on the day after expiration of the 30 days unless a petition for a stay pursuant to 43 CFR 4.21 is filed together with a timely notice of appeal.

Dated: August 26, 1994.

Mike Ford,

Acting State Director.

[FR Doc. 94–21942 Filed 9–6–94; 8:45 am]

BILLING CODE 4310–FB–M

[NV–060–4191–03; N64–93–001P]

Notice of Availability of the Pipeline Project Mining Plan of Operations Draft Environmental Impact Statement (DEIS)

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability of Draft Environmental Impact Statement for a mining Plan of Operations (POO) for the Cortez Gold Mines' Pipeline Project, Lander County, Nevada.

SUMMARY: Pursuant to section 102 (2)(c) of the National Environmental Policy Act of 1969, notice is given that the Bureau of Land Management (BLM) has prepared by a third party contractor, a DEIS on the Cortez Gold Mines' Pipeline Project in Lander County, Nevada, and has made copies available for public review.

DATES: Written comments on the DEIS must be postmarked by November 4, 1994. Public hearings for oral and written testimony have been scheduled for September 28 and 29, 1994 in Reno and Elko, Nevada. Both meetings will be held from 7:00 to 9:00 p.m. Testimony concerning the issues will be accepted at these hearings.

ADDRESSES: A copy of the DEIS can be obtained from: District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, NV 89820 ATTN. Pipeline Team Leader. The DEIS is available for inspection at the following locations: BLM State Office in Reno; Lander, Elko and Eureka County Libraries; and the University of Nevada libraries in Reno and Las Vegas.

The meeting in Reno will be held at the Airport Plaza Inn located at 1981 Terminal Way and the meeting in Elko will be held at the Elko County Library, 720 Court Street.

FOR FURTHER INFORMATION CONTACT: Dave Davis, Pipeline EIS Team Leader, at the Battle Mountain address or telephoning (702) 635–4000.

SUPPLEMENTARY INFORMATION: The Cortez Gold Mines' Pipeline Project is proposed by Cortez Gold Mines, Inc. of Cortez, Lander County, Nevada. The proposal consists of: Developing of a new open pit mine with associated dewatering system and reinfiltration ponds, waste dumps, constructing a new combined heap leach/tailings impoundment facility, and constructing a new 5,000 ton-per-day ore processing facility complete with appurtenant facilities. The total number of acres that would be affected by the Pipeline Project is approximately 1,880 acres.

The DEIS focuses on the environmental impacts projected to result from implementation of the proposed action and viable alternatives to the proposal. Specific subjects receiving emphasis in the DEIS are: (1) The proposed dewatering rate of up to 30,000 gallons per minute (GPM) and the associated affects related to the dewatering; (2) socioeconomic impacts to the regional infrastructure from the construction work force and increased permanent work force; (3) air quality issues; (4) and cumulative impacts resulting from the extensive mining in the area.

A copy of the DEIS will be sent to all individuals, agencies and groups who have expressed interest in the Pipeline Project EIS process, and a limited number of copies are available upon request from the District Manager at the above address.

Dated: August 29, 1994.

James D. Currivan,

District Manager.

[FR Doc. 94–22031 Filed 9–6–94; 8:45 am]

BILLING CODE 4310–HC–M

[UT–942–4210–06; U–016603 et al.]

Proposed Continuation of Withdrawals; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Forest Service proposes that several withdrawals embracing 4,144.9 acres be continued. The lands will remain closed to the mining laws, and in some instances to surface entry, but have been and will remain open to mineral leasing.

DATES: Comments should be received by December 6, 1994.

ADDRESSES: Comments should be sent to the State Director, Utah State Office, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Utah State Office, 801–539–4119.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawals identified below, be continued for various time periods, as delineated below, pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988). The land is described as follows:

Salt Lake Meridian, Utah

Manti-LaSal National Forest

U–016603, PLO 1391—February 13, 1957
Orange Olsen Administrative Site (Joe's Valley Administrative Site)
T. 17 S., R. 6 E.,
Sec. 31, S½ lot 6, N½ lot 11;
Containing 40 acres, continue for 30 years.

U–010062A, PLO 2564—December 15, 1961

Gooseberry Administrative Site

T. 34 S., R. 20 E.,
Sec. 18, S½S½NE¼NW¼, NE¼NE¼SW¼NW¼, S½NE¼SW¼NW¼, SE¼NW¼SW¼NW¼, E½SW¼SW¼NW¼, SE¼SW¼NW¼, W½NE¼SE¼NW¼, NW¼SE¼NW¼, N½SW¼SE¼NW¼;
Containing 55 acres, continue for 30 years.

Stuart Guard Station Administrative Site

T. 15 S., R. 7E.,
Sec. 8, S½NE¼NE¼SE¼, SE¼NE¼SE¼;
Sec. 9, N½SW¼NW¼SW¼, S½NW¼NW¼SW¼,

S½N½NW¼NW¼SW¼, NE¼NW¼SW¼, NW¼NE¼SW¼;

Containing 47.5 acres, continue for 30 years.

Pack Creek Administrative Site

T. 27 S., R. 23 E.,
Sec. 24, SW¼NW¼SW¼SE¼, NW¼SW¼SW¼SE¼;

Containing 5 acres, continue for 30 years.

U–021426, PLO 1725—September 2, 1958

Dalton Springs Campground

T. 33 S., R. 23 E.,
Sec. 30, S½SE¼;

Containing 80 acres, continue for 40 years.

U–092145A, PLO 3145—July 30, 1963

Spring Ridge Administrative Site

T. 11 S., R. 5 E.,
Sec. 22, E½SE¼SE¼SW¼, W½SW¼SW¼SE¼;
Sec. 27, W½NW¼NW¼NE¼, E½NE¼NE¼NW¼;

Containing 20 acres, continue for 20 years.

Uinta National Forest

U–019139, PLO 1725—September 2, 1958

Cascade Springs Recreation Area

T. 4 S., R. 3 E.,
Sec. 24, SE¼NE¼SW¼NE¼, NE¼SE¼SW¼NE¼, S½N½ of lot 2, N½S½ of lot 2;

Containing approximately 22.40 acres, continue for 30 years.

Alpine Loop Highway

A strip of land 200 feet on each side of the centerline of Alpine Loop Highway (Utah No. 80), through the following legal subdivisions:

T. 4 S., R. 2 E.,
Sec. 24, that part of the road in the SE¼ from the west subdivisional line east of its junction with the North Fork American Fork Highway;
Sec. 26, NW¼;
Sec. 27, that part in S½NE¼ outside the Timpanogos Cave National Monument;
Sec. 28, lots 7, 8, SE¼SW¼, SE¼;
Sec. 33 lots 1, 2, NE¼NW¼;

Containing approximately 166.0 acres, continue for 30 years.

Ashley National Forest

U–092145, PLO 3145—July 30, 1963

Sheep Creek Canyon Geological Area

T. 2 N., R. 19 E.,
Sec. 3, lots 7, 9, 10, SE¼ of lot 8, NW¼SE¼, W½SW¼SE¼;
Sec. 4, SE¼SE¼SE¼;
Sec. 7, S½ of lot 4, S½SE¼SW¼, S½S½SE¼;
Sec. 8, S½S½SW¼, S½NE¼SE¼, S½SE¼;
Sec. 9, E½NE¼, SW¼NE¼, SE¼SE¼NW¼, S½;
Sec. 10, lots 3, 4, S½NW¼, N½SW¼, SW¼SW¼;
Sec. 15, NW¼NW¼, NW¼SW¼NW¼;
Sec. 16, N½, SW¼, N½SE¼, W½SW¼SE¼;
Sec. 17, All;
Sec. 18, E½, E½W½;
Sec. 20, N½, N½N½S½;
Sec. 21, N½NW¼, SW¼NW¼, N½NW¼SW¼;

Containing 3,609 acres, continue for 25 years.

Uintah Meridian

U–0103154, PLO 3073—May 7, 1963

White Rocks Cave

T. 2 N., R. 1 W.,
Sec. 1, W½SW¼NE¼, S½NW¼;

Containing 100 acres, continue for 20 years.

The purpose of the withdrawals is to protect recreation areas, roadside zones, and administrative sites. The withdrawals segregate the land from location and entry under the mining laws, but not the mineral leasing laws, and in some instances, also segregates the land from settlement, sale, location, and entry. No change is proposed in the purpose or segregative effect of the withdrawals.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuations may present their views in writing to the Chief, Branch of Lands and Minerals Operations, in the Utah State Office.

The authorized office of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will be prepared for consideration by the Secretary of the Interior, the President, and Congress, who will determine whether or not the withdrawals will be continued, and, if so, for how long. The final determination on the continuation of the withdrawals will be published in the **Federal Register**. The existing withdrawals will continue until such final determination is made.

Terry Catlin,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 94–21919 Filed 9–6–94; 8:45 am]

BILLING CODE 4310–DQ–M

Fish and Wildlife Service

Availability of a Draft Revised Recovery Plan for the Sonoran Pronghorn for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft revised recovery plan for the Sonoran pronghorn (*Antilocapra americana sonoriensis*) which the Service listed as an endangered species on March 11, 1967 (32 FR 4001). This animal's population is estimated to be less than 800 animals; less than 300 in the United States and no more than 500 in the State of Sonora, Mexico. Distribution is limited primarily to Sonoran desert habitats. Factors that limit population growth are not well understood. However, loss of habitat due to drying of extended reaches of the Gila and Sonoyta Rivers, competition from domestic livestock, and human encroachment are believed to be limiting factors. Illegal hunting and predation on fawns may also limit growth of some populations. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before November 7, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the Refuge Manager, Cabeza Prieta National Wildlife Refuge, 1611 North Second Avenue, Ajo, Arizona 85321. Written comments and materials regarding the plan should be addressed to the Refuge Manager. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Laura A. Thompson-Olais, U.S. Fish and Wildlife Service Biologist, (602) 387–6483, or at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point that it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe site-specific management actions considered necessary for conservation and survival of the species, establish objective, measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless

such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment prior to approval of each new or revised recovery plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

Sonoran pronghorn habitat in the United States consists of broad alluvial valleys separated by blocked-faulted mountains. Creosote and white bursage are the dominate vegetation in these valleys. Sonoran pronghorn are found in the creosote-bursage plant association throughout the year, but utilize areas containing palo verde-mixed cacti plant associations during spring and summer months. The requirement of water for drinking has not been verified. In Mexico, Sonoran pronghorn are found in areas where permanent water is not available, and there is no evidence of them traveling long distances to obtain water. The Recovery Plan has been revised to include research results obtained since the original recovery plan was completed in 1982 and to reflect recovery objectives that reflect current information known about the species.

The Sonoran Pronghorn Recovery Plan has been reviewed by the appropriate Service staff in the Southwest Region. The plan will be finalized and approved following incorporation of comments and materials received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The Authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: August 30, 1994.

Lynn B. Starnes,

Acting Regional Director.

[FR Doc. 94–21964 Filed 9–6–94; 8:45 am]

BILLING CODE 4310–55–P

Conference of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora; Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: With this notice The U.S. Fish and Wildlife Service (Service) announces a second public meeting to discuss the provisional agenda items, proposed resolutions, and proposed amendments to the Appendices for the upcoming ninth regular meeting of the Conference of the Parties (COP9) to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The first public meeting to discuss the above will be held on September 14, 1994. In order to accommodate everyone who wants to participate in the development of the U.S. positions for COP9, the Service is scheduling a second public meeting which will be identical in format and content to the first one.

DATES: The public meeting will be held on September 16, 1994, from 9:30 a.m. to 1:00 p.m. The Service will consider information and comments from the public on the provisional agenda for COP9.

ADDRESSES: The public meeting will be held in the Buffet Room adjacent to the cafeteria of the Department of the Interior, 18th and C Streets, NW., Washington, DC. Requests for information concerning the proposals and comments should be sent to the Director, U.S. Fish and Wildlife Service, c/o Office of Management Authority, 4401 N. Fairfax Drive, Room 420–C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones or Susan S. Lieberman, Office of Management Authority, at the above address; telephone 703/358–2093.

SUPPLEMENTARY INFORMATION:

Background

The Convention on International Trade in Endangered Species of Wild Fauna and Flora, hereinafter referred to as CITES or the Convention, is an international treaty designed to control international trade in certain animal and plant species which are or may become threatened with extinction, and are listed in Appendices to the treaty. Currently, 123 countries, including the United States, are CITES Parties. CITES calls for biennial meetings of the Conference of the Parties which review its implementation, make provisions enabling the CITES Secretariat (in Switzerland) to carry out its functions, consider amending the list of species in Appendices I and II, consider reports presented by the Secretariat, and make recommendations for the improved effectiveness of the Convention.

This is part of a series of notices which, together with public meetings, provide the public with an opportunity to participate in the development of the U.S. positions for the ninth regular meeting of the Conference of the Parties to CITES (COP9) to CITES, which the U.S. will be hosting in Fort Lauderdale, Florida, from November 7 to 18, 1994. A **Federal Register** notice published on July 15, 1993 (58 FR 38112), requested information and comments from the public on animal or plant species the United States might consider as possible amendments to the Appendices. A **Federal Register** notice published on November 18, 1993 (58 FR 60873), requested public comments on possible revisions to the criteria for listing species in the CITES Appendices. A **Federal Register** notice published on January 27, 1994 (59 FR 3832), requested additional comments from the public on animal or plant species the United States was considering submitting as amendments to the Appendices. A **Federal Register** notice published on January 28, 1994 (59 FR 4096), published the time, place, and provisional agenda for COP9, announced a public meeting, and requested information and comments from the public. A **Federal Register** notice published on September 1, 1994 (59 FR 45307), announced a public meeting to be held on September 14, 1994. A **Federal Register** notice published on September 6, 1994, described the proposed U.S. position on proposals to amend the CITES Appendices. Another **Federal Register** notice will be published prior to the September 16 public meeting describing proposed U.S. positions on all other agenda items and resolutions to be taken up at the meeting. Information concerning the proposals will be available at the meeting. For those unable to attend, information may be obtained from the contact noted above. The Service's regulations governing this public process are found in Title 50 of the Code of Federal Regulations §§ 23.31–23.39.

Author

This notice was prepared by Mark R. Albert, Office of Management Authority, U.S. Fish and Wildlife Service (703/358–2095; FAX 703/358–2280).

Dated: September 2, 1994.

Richard N. Smith,

Director, Fish and Wildlife Service.

[FR Doc. 94–22103 Filed 9–6–94; 8:45 am]

BILLING CODE 4310–55–P–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32556]

Illinois Central Corporation; Common Control; Illinois Central Railroad Company and The Kansas City Southern Railway Company

A Notice by the Commission, in the above proceeding, served and published in the **Federal Register** on August 26, 1994 at 59 FR 44155, omitted the name and address of the representative of one of the applicants from the second paragraph of the **FOR FURTHER INFORMATION CONTACT** section. The following is substituted: In addition, one copy of all documents in this proceeding must be sent to applicants' representatives (1) Robert P. vom Eigen, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006, and (2) William A. Mullins, 601 Pennsylvania Avenue, N.W., Suite 640, North Building, Washington, DC 20004.

All other information, including the effective date, remains the same.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–21996 Filed 9–6–94; 8:45 am]

BILLING CODE 7035–01–P

Release of Waybill Data

The Commission has received a request from Harkins Cunningham and Consolidated Rail Corporation for permission to use certain data from the Commission's 1992 and 1993 I.C.C. Waybill Samples. A copy of the request (WB454–8/26/94) may be obtained from the I.C.C. Office of Economic and Environmental Analysis.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to this request, they should file their objections with the Director of the Commission's Office of Economic and Environmental Analysis within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 927–6196.

Vernon A. Williams,

Acting Secretary.

[FR Doc 94–21995 Filed 9–6–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether Section 3504(h) of Public Law 96–511 applies.

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 OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Robert B. Briggs, on (202) 514–4319. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible.

Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Robert B. Briggs, Department of Justice Clearance Officer, Systems Policy Staff/Information Resources Management/Justice Management Division, Suite 850, WCTR, Washington, DC 20530.

Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(1) Claim for Damage, Injury, or Death.

(2) Standard Form 95. Civil Division.

(3) On Occasion.

(4) Individuals or households, State or local governments, Businesses or other for profit, Non-profit institutions, and Small businesses or organizations. The SF 95 is utilized by those persons making a claim against the United States Government under the Federal Tort Claims Act.

(5) 400,000 respondents @ .25 hours per response.

(6) 100,000 annual burden hours.

(7) Not applicable under Section 3504(h).

Public comment on this item is encouraged.

Dated: August 31, 1994.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 94–21963 Filed 9–6–94; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: This addition to the annual list of labor surplus area is effective September 1, 1994.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, USES, Employment and Training Administration, 200 Constitution Avenue, N.W., Room N–4470, Attention: TEESS, Washington, D.C. 20210. Telephone: 202–219–5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation Part 20 (48 CFR Part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all

of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation Part 25 (48 CFR Part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation Part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1993, (58 FR 53943).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary as a labor surplus area pursuant to 20 CFR 654.5(b)(48 FR 15615 April 12, 1983) and is effective September 1, 1994.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on August 29, 1994.

Doug Ross,

Assistant Secretary.

Addition to the Annual List of Labor Surplus Areas.

(September 1, 1994)

Labor Surplus Areas

Tennessee:

Hardeman County

Civil Jurisdictions Included

Hardeman County

[FR Doc. 94–22003 Filed 9–6–94; 8:45 am]

BILLING CODE 4510–30–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. C & C Coal Company

[Docket No. M–94–124–C]

C & C Coal Company, 100 E. Main Street, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1100–2(a)(2) (quantity and location of firefighting equipment) to its Primrose Slope (I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner proposes to use only portable fire extinguishers to replace existing requirements where rock dust, water cars, and other water storage are not practical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. C & C Coal Company

[Docket No. M–94–125–C]

C & C Coal Company, 100 E. Main Street, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1200(i) (mine map) to its Primrose Slope (I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner proposes to limit the mapping of mines above and below mine workings to those present within 100 foot of the vein being mined except when veins are interconnected to other veins beyond the 100 feet limit through rock tunnels. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

3. C & C Coal Company

[Docket No. M–94–126–C]

C & C Coal Company, 100 E. Main Street, Ashland, Pennsylvania 17921 has filed a petition to modify the application of 30 CFR 75.1202–1(a) (temporary notations, revisions, and supplements) to its Primrose Slope (I.D. No. 36–08341) located in Schuylkill County, Pennsylvania. The petitioner proposes to revise and supplement mine maps on an annual basis instead of the required 6 month interval and to update maps daily by hand notations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Betty B. Coal Company

[Docket No. M–94–127–C]

Betty B. Coal Company, P.O. Box 1139, Coeburn, Virginia 24230 has filed a petition to modify the application of 30 CFR 75.1710 (canopies or cabs; electric face equipment) to its Betty B. Mine No. 12 (I.D. No. 44–06423) located in Wise County, Virginia. The petitioner requests relief from the use of canopies on electric face equipment. The petitioner states that the use of canopies would result in hazardous conditions to the equipment operator.

5. L. L. & S. Coal Company

[Docket No. M–94–128–C]

L. L. & S. Coal Company, P.O. Box 148, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its L. L. & S. Mine (I.D. No. 36–08166) located in Schuylkill County, Pennsylvania. Because of steep, frequently changing pitch and numerous curves and knuckles in the main haulage slope, the petitioner proposes to use the gunboat without safety catches in transporting persons. As an alternate, when using the gunboat to transport persons, the petitioner proposes to use an increased rope strength safety factor and secondary safety connections which are securely fastened around the gunboat and to the hoisting rope above the main connecting device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Company

[Docket No. M–94–129–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. Due to deteriorating roof and rib conditions from the No. 5 Seal in the Main East set of seals to the point of intersection with Main North of the intake air course, traveling the affected area in its entirety would be unsafe. The petitioner proposes to establish evaluation check points; to have a certified person test for methane and the quantity of air at each check point on a weekly basis; to have the certified person initial, date, and record the results in a record book kept on the surface; and to make the record book available for inspection by interested persons. The petitioner asserts that the proposed alternative

method would provide at least the same measure of protection as would the mandatory standard.

7. Martinka Coal Company

[Docket No. M–94–130–C]

Martinka Coal Company, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Tygart River Mine (I.D. No. 46–03805) located in Marion County, West Virginia. Due to deteriorating conditions in certain areas of the return air course, traveling the affected area in its entirety would be unsafe. The petitioner proposes to establish five evaluation check points; to have a certified person monitor for hazardous conditions, the volume and direction of airflow, and the methane and oxygen concentrations in the affected area at each check point on a weekly basis; to record the results in a manner similar to that required by the mandatory standard; and to locate a date board at each evaluation point which the examiner would initial and record the date and time of the examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Monterey Coal Company

[Docket No. M–94–131–C]

Monterey Coal Company, Rural Route 4, Box 235, Carlinville, Illinois 62626 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its No. 1 Mine (I.D. No. 11–00726) located in Macoupin County, Illinois. The petitioner proposes to use two Fletcher Model CDR–15 slim line roofbolters near the end of the longwall panel to provide additional support of the face in preparation for equipment transfer to the next panel. These bolters would be equipped with No. 2 AWG G–GC portable cables with 1200 feet of the cable reaching across the face from the power center outby. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Consolidation Coal Company

[Docket No. M–94–132–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1002 (trolley wires and trolley feeder wires, high-voltage cables and transformers) to its Shoemaker Mine (I.D. No. 46–01436) located in Marshall County, West Virginia. The petitioner proposes to use high-voltage (4,160 volts) cables inby the last open crosscut to supply power to longwall equipment. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Eastern Associated Coal Corporation

[Docket No. M–94–133–C and M–94–134–C]

Eastern Associated Coal Corporation, 800 Laidley Tower, P.O. Box 1233, Charleston, West Virginia 25324 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Lightfoot No. 1 Mine (I.D. No. 46–04332) and its Lightfoot No. 2 Mine (I.D. No. 46–04955) both located in Boone County, West Virginia. The petitioner proposes to use a threaded ring and a spring loaded device on battery plug connectors for mobile battery-powered machines to prevent the plug connector from accidently disengaging while under load instead of using a padlock. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. K & S Coal Company

[Docket No. M–94–135–C]

K & S Coal Company, RD #2, Box 145, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.332(b)(1) and (b)(2) (working sections and working places) to its First Chance Slope (I.D. No. 36–07629) located in Schuylkill County, Pennsylvania. The petitioner proposes to use air passing through inaccessible abandoned workings and additional areas by mixing with the air in the intake haulage slope to ventilate the only active working section, to ensure air quality by sampling intake air during preshift and on-shift examinations, and to suspend mine production when air quality fails to meet specified criteria. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before October 7, 1994. Copies of these petitions are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–21986 Filed 9–6–94; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Arts National Council; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that the Aids Working Group to the National Council on the Arts will hold a Working Session on Health Insurance on September 20, 1994 from 9:00 a.m. to 5:00 p.m. This meeting will be held in Room MO–9, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The group will discuss issues in health care coverage at the state and national levels, successful models of health coverage, and future strategies and recommendations regarding access to coverage.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

Due to the limited seating capacity of the room, those who wish to attend this open meeting should contact Brenda Pitts at 202/682–5706, at least five days prior to the meeting.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Brenda Pitts, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5706.

Dated: September 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–22002 Filed 9–6–94; 8:45 am]

BILLING CODE 7537–01–M

Challenge/Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Presenting and Commissioning Section) to the National Council on the Arts will be held on September 28, 1994. The panel will meet from 9:00 a.m. to 5:00 p.m. in Room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C. 20506.

A portion of this meeting will be open to the public from 4:30 p.m. to 5:00 p.m. for a policy discussion.

The remaining portion of this meeting from 9:00 a.m. to 4:30 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994, this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the Panel chairman and with the approval of the full-time Federal employee in accordance.

If you need special accomodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Washington, D.C., 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, D.C., 20506, or call 202/682–5439.

Dated: September 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–22001 Filed 9–6–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel In Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Advanced Scientific Computing.

Date and Time: September 27, 1994; 8:30 a.m. to 5:00 p.m.

Place: Room 1150, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Richard S. Hirsh, Deputy Division Director, Advanced Scientific Computing, Room 1122, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1970.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22022 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Civil & Mechanical Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Civil and Mechanical Systems.

Date and Time: September 28, 1994—9:00 a.m. to 4:00 p.m.

Place: National Science Foundation, Room 530, Arlington, VA 22230.

Notice of Meeting: Closed.

Contact Person: Dr. Jorn Larsen-Basse, Program Director, 4201 Wilson Blvd., Arlington, VA 22230: Telephone: (703) 306–1360.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Civil and Mechanical Systems NSF SBIR proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22026 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Electrical and Communications Systems #1196.

Date and Time: September 23, 1994/8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 532, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Paul Werbos, Program Director, Neuroengineering, ECS, Room 675, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1430.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review seven outstanding Phase I SBIR proposals in neuroengineering.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22024 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: September 28, 29, and 30, 1994; 8:30 a.m. to 5:00 p.m.

Place: Room 370, NSF, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Persons: Dr. William H. Carter, Program Director, Quantum Electronics, Waves and Beams, Division of Electrical and Communications Systems, NSF, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230: Telephone: (703) 306–1339.

Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research Proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b. (c) (4) and (6) the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22019 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary, and Informal Education; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name of Committee: Special Emphasis Panel in Elementary, Secondary and Informal Education.

Date and Time:

September 29, 1994, 8 a.m. to 5:00 p.m.
September 30, 1994, 8 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., 3rd Floor, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Roger Mitchell, Program Officer, Division of Elementary, Secondary and Informal Education, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22028 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences.

Date and Time: September 26–27, 1994; 9:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Room 370.

Type of Meeting: Closed.

Contact Person: Dr. Leonard E. Johnson, Program Director, Division of Earth Sciences, Room 785, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA, Telephone: (703) 306–1559.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22020 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Human Resources Development (#1199)

Date and Time: September 26–27, 1994; 8:00 a.m.–5:00 p.m.

Place: Room 360, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Drs. Costello Brown and William McHenry, Program Directors, Minority Programs, Division of Human Resource Development, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1640.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research (SBIR) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 USC 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22025 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Human Resource Development; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Human Resource Development.

Date and Time: September 26 and 27, 1994—8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Closed.

Contact Person: Lawrence Scadden and Mary Kohlerman, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1636.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Programs for Persons with Disabilities proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22027 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel In Mathematical Sciences.

Date and Time: Monday, September 26, 1994 and Tuesday, September 27, 1994 from 8:30 a.m. to 5:00 p.m.

Place: Room 1020, National Science Foundation, 4201 Wilson Blvd, Arlington, VA.

Type of Meeting: Closed.

Contact Persons: Dr. Alvin Thaler, Program Director & Dr. Deborah Lockhart, Program Director, Division of Mathematical Sciences, Room 1025, Arlington, VA 22230. Telephone: (703) 306–1870.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Small Business Innovation Research proposals as part of the selection of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22023 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Special Emphasis Panel in Polar Programs.

Date and Time: September 29, 1994; 8:30 a.m.–5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA; Room 730.

Type of Meeting: Closed.

Contact Person: Dr. Bernhard Lettau, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Oceans and Climate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c)(4) and (6) of the Government in the Sunshine Act.

Dated: September 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–22021 Filed 9–6–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–3070]

Louisiana Energy Services, L.P.; Availability of the Final Environmental Impact Statement for the Claiborne Enrichment Center, Homer, LA

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a Final Environmental Impact Statement (FEIS) (NUREG–1484) regarding the proposed construction and operation of the Claiborne Enrichment Center to be located near Homer, Louisiana. The FEIS describes and evaluates the potential environmental consequences of granting Louisiana Energy Services, L.P. (LES) a license to construct and operate a uranium enrichment facility. The facility would use the gaseous centrifuge enrichment process. Natural uranium hexafluoride would be used as the feed material, the product would be uranium hexafluoride enriched up to 5 percent in the isotope uranium-235. The FEIS concludes that adverse impacts associated with construction and operation of the facility are small and acceptable and are outweighed by the substantial socioeconomic benefits associated with plant construction and operation. The FEIS also documents the NRC Staff response to comments received on the Draft Environmental Impact Statement.

The FEIS is available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, Louisiana.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 415–8126.

Dated at Rockville, MD, this 29th day of August 1994.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–21967 Filed 9–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. STN 50–528, STN 50–529, and STN 50–530]

Arizona Public Service Company, et al., Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3; Exemption

I

Arizona Public Service Company (the licensee) is the holder of Facility Operating License Nos. NPF–41, NPF–51, and NPF–74, which authorizes operation of the Palo Verde Nuclear Generating Station, Units 1, 2, and 3 (Palo Verde), respectively. The license provides, among other things, that it is subject to all rules, regulations, and Orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect. The Palo Verde facilities consist of three pressurized reactors located in Maricopa County, 50 miles west of Phoenix, Arizona.

II

Paragraph (a) of § 73.55, "Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage," of Title 10 of the Code of Federal Regulations (CFR) states, in part, that "the licensee shall establish and maintain an onsite physical protection system and security organization which will have as its objective to provide high assurance that activities involving special nuclear material are not inimical to the common defense and security and do not constitute an unreasonable risk to the public health and safety."

Paragraph (1) of § 73.55(d), "Access Requirement," specifies that "The licensee shall control all points of personnel and vehicle access into a protected area." Section 73.55(d)(5) requires that "A numbered picture badge identification system shall be used for all individuals who are authorized access to protected areas without escort." Section 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area . . . ."

The licensee proposed to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badge with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to allow

contractors who have unescorted access to take their badges offsite instead of returning them when exiting the site. By letter dated April 29, 1994, the licensee requested an exemption from certain requirements of 10 CFR 73.55(d)(5) for this purpose.

III

Pursuant to 10 CFR 73.5, "Specific exemptions," the Commission may, upon application of any interested person or upon its own initiative, grant such exemptions in this part as it determines are (1) authorized by law and will not endanger life or property or the common defense and security, and (2) are otherwise in the public interest.

Pursuant to 10 CFR 73.55, the Commission may authorize a licensee to provide alternative measures for protection against radiological sabotage provided the licensee demonstrates that the alternative measures have "the same high assurance objective" and meet "the general performance requirements" of the regulation, and "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Currently, unescorted access into protected areas of the Palo Verde units is controlled through the use of a photograph on a badge/keycard (hereafter, referred to as badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The individual is then given the badge to allow access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at each entrance/exist location and are returned upon exit. The badges are stored and are retrievable at each entrance/exist location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of his/her hand (hand geometry) registered with his/her badge number in the access control computer. Access is then controlled by the individual requesting access placing his/her badge into the card reader and his/her hand on a measuring surface, the computer then compares the hand geometry to the registered badge number. If the characteristics of the hand geometry stored in the computer match the badge number, access is granted. If the characteristics do not match, access is denied. This provides a nontransferable means of identifying that the individual possessing the badge is the individual who was granted unescorted access. It also provides a positive means of assuring that a stolen or lost badge could not be used to gain access, thus eliminating the need to issue and retrieve the badges while maintaining the same high level of assurance that access is granted to only authorized individuals. All other access processes, including search function capability, would remain the same. The system will not be used for persons requiring escorted access (i.e., visitors). The access process will continue to be under the observation of security personnel located within a hardened cubicle who have final control over the release of the entrance station turnstiles. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to the protected area with escorts. Badges will continue to be displayed by all individuals while inside the protected area.

The licensee will use the hand geometry equipment which will meet the detection probability of 90 percent with a 95 percent confidence level. Testing evaluated by Sandia National Laboratory (Sandia report entitled "A Performance Evaluation of Biometric Identification Devices," SAND91–0276 UC–906 Unlimited Release, Printed June 1991), demonstrated that the proposed hand geometry system is capable of meeting the proposed detection probability and confidence level. Based upon the results of the Sandia report and on its experience with the current photo-identification system, the proposed system will have a false acceptance rate less than the current system. The Physical Security Plans for the site will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

IV

For the foregoing reasons, pursuant to 10 CFR 73.55, the NRC staff has determined that the proposed alternative measures for protection against radiological sabotage meet "the same high assurance objective," and "the general performance requirements" of the regulation and that "the overall level of system performance provides protection against radiological sabotage equivalent" to that which would be provided by the regulation.

Accordingly, the Commission has determined that, pursuant to 10 CFR 73.5, an exemption is authorized by law, will not endanger life or property or common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Arizona Public Service Company an exemption from those requirements of 10 CFR 73.55(d)(5) relating to the returning of picture badges upon exit from the protected area such that individuals not employed by the licensee, i.e., contractors, who are authorized unescorted access into the protected area, can take their badges offsite.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant adverse environmental impact (59 FR 41519).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 31st day of August 1994.

Jack W. Roe,

Director, Division of Reactor Projects III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 94–21969 Filed 9–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8902]

Receipt of Application From Atlantic Richfield Co. To Amend License Condition 38 of Source Material License SUA–1470

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Licensee Request to Amend Source Material License.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated August 2, 1994, an application from Atlantic Richfield Company (ARCO) to amend License Condition (LC) 38 of Source Material License No. SUA–1470.

The license amendment application proposes to modify License Condition 38 to change the completion dates for two site reclamation milestones. The new dates proposed by ARCO would extend completion of (1) placement of final radon barrier on portions of the disposal cells by three years, and (2) placement of erosion protection by two years and two months.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hooks, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission,

Washington, DC 20555. Telephone (301) 415–7777.

SUPPLEMENTARY INFORMATION: The portions of License Condition 38 with the proposed changes would read as follows:

A. (3) Placement of final radon barrier designed and constructed to limit radon emissions to an average flux of no more than 20 pCi/m ²/s above background—December 31, 1997.

B. (1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of 10 CFR part 40—December 31, 1997.

ARCO's application to amend Condition 38 of Source Material License SUA–1470, which describes the proposed changes to the license condition and the reason for the request is being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

The licensee and any person who interest may be affected by the issuance of this license amendment may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); be served on the licensee (Atlantic Richfield Company, P.O. Box 638, Grants, New Mexico 87020); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing must set forth with particularity the interest of the petitioner in the proceedings and how that interest may be affected by the results of the proceedings, including the reasons why the request would be granted, with particular reference to the following factors:

1. The nature of petitioner's right under the Atomic Energy Act, to be made a party to the proceedings;

2. The nature and extent of the petitioner's property, financial or other interest in the proceedings; and

3. The possible effect on the petitioner's interest, of any order which may be entered in the proceedings.

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, MD, this 26th day of August 1994.

Joseph J. Holonich,

Chief, High-Level Waste and Uranium Recovery Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–21968 Filed 9–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–443 (License No. NPF–86)]

North Atlantic Energy Service Corp. (Seabrook Station, Unit No. 1); Order for Modification of Order Approving Transfer of License

I

Great Bay Power Corporation (Great Bay), formerly EUA Power Corporation, is the owner of a 12.1324 percent share of Seabrook Station, Unit No. 1 (Seabrook). Great Bay's interest in Seabrook is governed by License No. NPF–86 issued by the U.S. Nuclear Regulatory Commission (NRC), pursuant to part 50 of title 10 of the Code of Federal Regulations (10 CFR part 50), on March 15, 1990, in Docket No. 50–443. Under this license, only North Atlantic Energy Service Corporation (North Atlantic), acting as agent and representative of the 11 joint owners listed in the license, has the authority to operate Seabrook. Seabrook is located in Rockingham County, New Hampshire.

II

The transfer of any right under License No. NPF–86 is subject to NRC approval pursuant to 10 CFR 50.80(a). By letter of May 14, 1993, from its counsel, Ropes & Gray, North Atlantic filed two requests with the NRC. In one, it requested NRC approval of the indirect transfer of control of EUA Power Corporation's 12.1324 percent ownership in Seabrook. In the other, it requested an amendment to the Operating License to reflect EUA Power Corporation's change of name to Great Bay Power Corporation. The name of EUA Power Corporation was formally changed to Great Bay Power Corporation in February 1993 following the redemption of all outstanding stock in EUA Power Corporation from its corporate parent, Eastern Utility Associates. Following the redemption of its outstanding stock, EUA Power Corporation was no longer a subsidiary of Eastern Utility Associates, and the name was changed to remove any implication of a continuing relationship with its former corporate parent. The name change did not affect the corporate entity of the debtor in bankruptcy. An indirect transfer of ownership occurs with the elimination of the existing stock of the debtor (Great Bay) and the issuance of new stock to others. On August 16, 1993, the NRC issued Amendment 23 to License No. NPF–86 that incorporated the name change of EUA Power Corporation to Great Bay Power Corporation in the footnote to page 1 of the operating license and issued an order approving the indirect transfer of the ownership interest of EUA Power Corporation. The order was contingent on the transfer of control being completed no later than February 15, 1994, and included the provision that upon application and showing of good cause, the order may be extended for a short period beyond February 15, 1994.

On February 3, 1994, North Atlantic, through its counsel Ropes & Gray, filed an application requesting extension of the Order until June 30, 1994, and identified the reasons why the transfer of control could not be completed by February 15, 1994. In that application, North Atlantic asserted that the sole obstacle to final implementation of the Plan of Reorganization was the difficulty with completing the contemplated $45 million credit facility for the source of funds to cover Great Bay's cash requirements. In lieu of this credit facility, the debtor's bondholders (Bondholders) entered into an agreement in principle with Omega Advisors that provided for an investment of $35 million by Omega Advisors in exchange for 60 percent equity in Great Bay. This agreement, reached on February 2, 1994, was a modification to the Plan of Reorganization and additional time was required to formalize the agreement, recirculate a revised Disclosure Statement to the creditors, and obtain reconfirmation of the revised Plan of Reorganization from the Bankruptcy Court.

On February 15, 1994, the NRC issued an Order which modified the August 16, 1993, Order Approving Transfer of License by extending the expiration date to June 30, 1994. On April 7, 1994, a Stock Subscription Agreement was entered into with Omega Advisors and Elliot Associates, L.P.[1] (the Investors), and a revised Disclosure Statement was

[1] On April 14, 1994, Ropes & Gray submitted a status report on behalf of North Atlantic and a copy of the Supplemental Disclosure Statement. That statement disclosed that in addition to Omega Advisors, Elliot Associates, L.P., would participate in the acquisition of an aggregate of 60 percent of Great Bay's equity securities. Previously, Omega Advisors was identified as the sole participant in the equity financing. The stock purchase agreement discloses that the Omega entities will purchase 49 percent of the equity position and Elliot Associates will purchase the remaining 11 percent.

circulated to all creditors. The Revised Plan of Reorganization was confirmed by the Bankruptcy Court on May 23, 1994, and a closing of the transaction was scheduled for June 15, 1994. However, on June 11, 1994 the Investors notified Great Bay that unanticipated events delaying the completion of the Seabrook third refueling outage from early June 1994 until early August 1994 could affect adversely Great Bay's financial projections, and therefore the delay constituted a material adverse change in Great Bay's financial condition. The Investors requested postponement of the scheduled closing while independent financial and engineering consultants retained by the Investors assessed the impact of these events. However, these evaluations could not be available by June 30, 1994, leading North Atlantic to request, through its counsel Ropes & Gray, on June 27, 1994, a second extension of the Order until August 31, 1994. On June 30, 1994, the NRC issued an Order which modified the August 16, 1993, Order Approving Transfer of License by extending the expiration date to August 31, 1994.

North Atlantic (Ropes & Gray letter of August 17, 1994) now has advised the NRC that Great Bay and the Investors have nearly resolved their differences and have agreed tentatively to close the transaction, but on a slightly modified basis. The modification to the proposal originally agreed to would compensate the Investors for loss resulting from the extended outage. To effect this, the Great Bay Bondholders will place 480,000 shares of Great Bay common stock (to which they would otherwise be entitled) into escrow. If, 1 year after closing, the Investors' original investment has a market value less than $38.5 million, some or all of the escrowed shares will be distributed to the Investors to raise their investment to that dollar value. Any remaining escrowed shares will be distributed to the Bondholders. The net effect of such a distribution to the Investors would be to raise their ownership share to a maximum of 66 percent rather than 60 percent. Because this modification changes the distribution to the Bondholders under the Plan of Reorganization, a revised Disclosure Statement must be circulated to the creditors and the Bankruptcy Court must reconfirm the Plan for Reorganization.

North Atlantic asserts that additional time, anticipated to be about 75 days, is required to obtain reconfirmation of the Plan of Reorganization and the requisite regulatory approvals and exhaust any appeal periods, but that the timing of events is largely beyond its control and estimates are unreliable.

North Atlantic has requested (Ropes & Gray letter of August 17, 1994) that the Order's expiration date be extended until the Bankruptcy Court issues a Final Decree. On the basis of the information in North Atlantic's application (Ropes & Gray letter of August 17, 1994), I find that there is good cause to extend the expiration date of the Order Approving Transfer of License dated August 16, 1993.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954 (as amended), 42 U.S.C. 2201 et seq., and 10 CFR 50.80, it is hereby ordered that: the Order Approving Transfer of License dated August 16, 1993, is modified to change the latest date for completion of the transfer, as specified in Section III of the August 16, 1993, Order, to December 31, 1994. Should transfer not be completed by this date, the Director of the Office of Nuclear Reactor Regulation, upon demonstration by North Atlantic of good cause, may in writing relax or rescind any condition of this Order. The Order of August 16, 1993, except as modified herein, remains in effect.

For the Nuclear Regulatory Commission.

Dated at Rockville, MD, this 30th day of August 1994.

William T. Russell,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–21970 Filed 9–6–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Sherry Turpenoff, (202) 606–0940.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on August 9, 1994 (59 FR 40628). Individual authorities established or revoked under Schedules A and B and established under Schedule C between July 1 and July 31, 1994, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30, will also be published.

Schedule A

Department of the Air Force

Revoked five positions, GS–12 through GS–15, in the Specialized Management Office (WR–ALC/QL) at Robins Air Force Base, Georgia. Effective August 3, 1994.

Schedule B

No Schedule B authorities were established or revoked during July 1994.

Schedule C

Commission on Civil Rights

Special Assistant to a Commissioner. Effective July 28, 1994.

Commodity Futures Trading Commission

Special Assistant to the Commissioner. Effective July 1, 1994.

Department of Agriculture

Director, Public Liaison to the Director, Office of Public Liaison. Effective July 5, 1994.

Confidential Assistant to the Administrator, Agricultural Stabilization and Conservation Service. Effective July 28, 1994.

Confidential Assistant to the Administrator, Rural Development Administration. Effective July 29, 1994.

Department of the Army (DOD)

Secretary (Office Automation) to the Assistant Secretary of the Army (Financial Management). Effective July 11, 1994.

Foreign Affairs Specialist to the Secretary of the Army. Effective July 18, 1994.

Secretary (Stenography/Office Automation) to the Assistant Secretary of the Army (Installations, Logistics and Environment). Effective July 25, 1994.

Department of Commerce

Confidential Assistant to the Deputy Director, Office of Public Affairs. Effective July 13, 1994.

Special Assistant to the Director, Office of White House Liaison. Effective July 21, 1994.

Special Assistant to the Assistant Secretary for Economic Development. Effective July 21, 1994.

Special Assistant to the Assistant Secretary for Trade Development. Effective July 25, 1994.

Department of Defense

Senior Advisor for Defense Conversion Policy to the Deputy Under Secretary of Defense (Threat Reduction Policy). Effective July 1, 1994.

Defense Fellow to the Deputy Assistant Secretary of Defense (Economic Reinvestment and Base Realignment and Closure). Effective July 13, 1994.

Confidential Assistant to the Military Assistant to the Secretary of Defense. Effective July 18, 1994.

Personal and Confidential Assistant to the Special Assistant to the Secretary of Defense. Effective July 18, 1994.

Confidential Assistant to the Special Assistant to the Secretary and Deputy Secretary of Defense. Effective July 18, 1994.

Defense Fellow to the Deputy Under Secretary (Readiness). Effective July 18, 1994.

Private Secretary to the Assistant Secretary of Defense (International Security Policy). Effective July 18, 1994.

Personal and Confidential Assistant to the Assistant Secretary of Defense (International and Security Policy). Effective July 18, 1994.

Personal and Confidential Assistant to the Principal Deputy Under Secretary of Defense (Policy). Effective July 18, 1994.

Staff Specialist to the Project Director. Effective July 18, 1994.

Public Affairs Specialist to the Office of the Assistant Secretary of Defense (Public Affairs). Effective July 25, 1994.

Department of Education

Deputy Secretary's Regional Representative Region VI, Dallas, Texas, to the Secretary's Regional Representative. Effective July 6, 1994.

Confidential Assistant to the Director, Community Reform Initiatives Services. Effective July 15, 1994.

Confidential Assistant to the Director, Community Development Field Service Staff. Effective July 15, 1994.

Confidential Assistant to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective July 15, 1994.

Director, White House Initiatives on Hispanic Education to the Assistant Secretary for Intergovernmental and Interagency Affairs. Effective July 15, 1994.

Department of Energy

Staff Assistant to the Under Secretary. Effective July 18, 1994.

Staff Assistant to the Director, Scheduling and Logistics. Effective July 19, 1994.

Staff Assistant to the Director, Scheduling and Logistics. Effective July 19, 1994.

Deputy Director, Scheduling and Logistics to the Director, Scheduling and Logistics. Effective July 19, 1994.

Staff Assistant to the Director, Scheduling and Logistics. Effective July 19, 1994.

Special Assistant to the Deputy Assistant Secretary for Facility Transition and Management. Effective July 25, 1994.

Staff Assistant (Legal) to the Assistant General Counsel for General Law. Effective July 26, 1994.

Executive Assistant to the Secretary of Energy. Effective July 28, 1994.

Staff Assistant to the Press Secretary, Office of Public and Consumer Affairs. Effective July 28, 1994.

Department of Housing and Urban Development

Special Assistant to the Assistant Secretary for Policy Development and Research. Effective July 11, 1994.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective July 15, 1994.

Special Assistant to the Deputy Assistant Secretary for Economic Development. Effective July 15, 1994.

Director of Special Initiatives to the Assistant Secretary for Community Planning and Development. Effective July 19, 1994.

Community Outreach Officer to the Senior Advisor to the Secretary. Effective July 21, 1994.

Deputy Assistant Secretary for Single Family Planning to the Assistant Secretary for Housing, Federal Housing Commissioner. Effective July 21, 1994.

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective July 26, 1994.

Department of Justice

Secretary (OA) to the United States Attorney, District of New Hampshire. Effective July 5, 1994.

Special Assistant to the Director, National Institute of Justice. Effective July 12, 1994.

Secretary (OA) to the United States Attorney, Middle District of Alabama. Effective July 15, 1994.

Department of Labor

Staff Assistant to the Chief of Staff. Effective July 18, 1994.

Department of the Navy (DOD)

Staff Assistant to the Secretary of the Navy. Effective July 28, 1994.

Department of State

Special Advisor to the Deputy Assistant Secretary, Bureau of Oceans and International Environmental and Scientific Affairs. Effective July 5, 1994.

Legislative Management Officer to the Assistant Secretary, Legislative Affairs. Effective July 11, 1994.

Senior Advisor to the Secretary of State. Effective July 12, 1994.

Special Assistant to the Director, (Senior Officer) Office of Population Coordinator. Effective July 12, 1994.

Staff Assistant to the Assistant Secretary, Bureau of Public Affairs. Effective July 12, 1994.

Staff Assistant to the Director, (Senior Officer), Office of Population Coordinator. Effective July 12, 1994.

Special Assistant to the Deputy Assistant Secretary. Effective July 12, 1994.

Special Assistant to the Assistant Secretary, Bureau of Economic and Business Affairs. Effective July 28, 1994.

Department of Transportation

White House Liaison to the Chief of Staff. Effective July 11, 1994.

Associate Director of Media Relations and Special Projects to the Assistant to the Secretary and Director of Public Affairs. Effective July 11, 1994.

Special Assistant to the Administrator, Federal Railroad Administration. Effective July 11, 1994.

Special Assistant to the Special Assistant for Scheduling and Advance. Effective July 11, 1994.

Department of the Treasury

Financial Risk Analyst to the Senior Deputy Comptroller for Capital Markets, Office of the Comptroller of the Currency. Effective July 1, 1994.

Confidential Assistant to the Deputy Secretary of the Treasury. Effective July 20, 1994.

Review Officer to the Executive Secretary and Senior Advisor. Effective July 21, 1994.

Senior Advisor to the Assistant Secretary (Management). Effective July 21, 1994.

Federal Maritime Commission

Special Assistant to the Commissioner. Effective July 28, 1994.

General Services Administration

Executive Assistant to the Associate Administrator for Congressional and Intergovernmental Affairs. Effective July 15, 1994.

Overseas Private Investment Corporation

Special Assistant to the Senior Vice President for Policy and Investment Development. Effective July 20, 1994.

Media Specialist to the Senior Vice President for Policy and Investment Development. Effective July 20, 1994.

Securities and Exchange Commission

Secretary to the Executive Director. Effective July 26, 1994.

Small Business Administration

Budget and Policy Analyst to the Associate Deputy Administrator for Government Contracting and Minority Enterprise Development. Effective July 18, 1994.

Special Assistant to the Associate Administrator for Investment. Effective July 27, 1994.

U.S. Arms Control and Disarmament Agency

Special Assistant to the Director, U.S Army Arms Control and Disarmament Agency. Effective July 29, 1994.

U.S. International Trade Commission

Staff Assistant (Legal) to the Commissioner. Effective July 11, 1994.

Confidential Assistant to a Commissioner. Effective July 11, 1994.

Staff Assistant to the Chairman. Effective July 26, 1994.

United States Tax Court

Trial Clerk to a Judge. Effective July 28, 1994.

Trial Clerk to a Judge. Effective July 28, 1994.

Trial Clerk to a Judge. Effective July 28, 1994.

Trial Clerk to a Judge. Effective July 28, 1994.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

[FR Doc. 94–21935 Filed 9–6–94; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 5th Street, N.W., Washington, D.C. 20549.

New

Mall Intercept Survey File No. 270–393

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct a mall intercept survey to obtain information on what format and presentation of information about mutual funds will make it easier for investors to make inferences and make correct comparisons of fees, expenses and risks for different funds. The results will enable the Commission to better understand the level of investor comprehension of mutual fund prospectuses. The mall intercept survey is estimated to require a total of 33.33 burden hours. The burden hour per participant will be .33 hours or 20 minutes.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 29, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21930 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extensions

Rule 12g3–2, Proposed Forms 12F & 12FA—File No. 270–104

Regulations 13D & 13G, Schedule 13D—File No. 270–137

Rule 13e–1—File No. 270–255

Rule 13e–3 and Schedule 13E–3—File No. 270–1

Regulations 14D & 14E, Schedule 14D–1—File No. 270–114

Rules 29 and 72—File No. 270–169

Proposed Revisions

Form 3—File No. 270–125

Form 4—File No. 270–126

Form 5—File No. 270–323

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget approval for extensions and proposed revisions on the following previously approved rules and forms:

Rule 12g3–2 and proposed Forms 12F and 12FA are used and proposed to be used by foreign issuers to disclose that they meet certain conditions exempting them from the registration requirements of Section 12g. Approximately 1,800 respondents would file annually at an estimated 1 burden hour per response with a total annual burden of 1,800 hours.

Regulations 13D, 13G and Schedule 13D provide the financial community with relevant information and a fair opportunity to evaluate publicly-held securities in light of acquisitions or holdings of securities. Approximately 6,536 respondents file annually at an estimated 13.75 burden hours per response with a total annual burden of 89,870 hours.

Rule 13e–1 is designed to provide shareholders and the marketplace with relevant information concerning an issuer who is repurchasing its securities during a tender offer for such securities by a third party. Approximately 20 respondents file annually at an estimated 13 burden hours per response with a total annual burden of 260 hours.

Rule 13e–3 and Schedule 13E–3 prescribes the filing, disclosure and dissemination requirements in connection with a going private transaction by an issuer or an affiliate. Approximately 221 respondents file annually at an estimated 139.25 burden hours per response with a total annual burden of 30,775 hours.

Regulations 14D, 14E and Schedule 14D–1 require information important to security holders in deciding how to respond to tender offers. Approximately 366 respondents file annually at an estimated 353.25 burden hours per response with a total annual burden of 129,290 hours.

Rule 29 requires the filing of copies of reports submitted by a registered holding company or its subsidiary companies to state commissions covering operations not reported to the Federal Energy Regulatory Commission. Rule 72 makes the rules under Sections 16 (a) and (b) of the Securities Exchange Act of 1934 applicable to any duty or liability imposed under Section 17 (a) or (b) of the Public Utility Holding Company Act of 1935. The rule imposes an annual burden of ¼ hour on each of the 62 companies.

Form 3 is an initial statement of beneficial ownership of equity securities required to be filed by officers, directors, and ten percent holders of

companies registered under Section 12 of the Exchange Act. Form 3, as revised, would be filed by approximately 8,208 respondents at an estimated .5 hours per response for a total annual burden of 4,104 hours.

Form 4 is required to report transactions of officers, directors and ten percent shareholders in their companies' equity securities. Form 4, as revised, would be filed by approximately 65,704 respondents at an estimated .5 hours per response for a total annual burden of 32,852 hours.

Form 5 is filed by officers, directors and ten percent shareholders on an annual basis to report transactions and holdings in their companies' equity securities. Form 5, as revised, would be filed by approximately 38,475 respondents at an estimated 1 hour per response for a total annual burden of 38,475 hours.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Desk Officer for the Securities and Exchange Commission, (Project Numbers 3235–0119, 3235–0145, 3235–0305, 3235–0007, 3235–0102, 3235–0149, 3235–0104, 3235–0287, and 3235–0362), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 29, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21931 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

Requests Under Review by Office of Management and Budget

Acting Agency Clearance Officer: Dave T. Copenhafer (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings and Information Services, Washington, D.C. 20549.

Extensions

Rule 17Ad–15—File No. 270–360
Rule 17f–1(b)—File No. 270–28
Rule 17f–1(c) and Form X–17F–1A—File No. 270–29
Rules 17h–1T and 17h–2T—File No. 270–359

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget approval for extensions on the following previously approved rules and forms:

Rule 17Ad–15 requires transfer agents to establish written standards for the acceptance or rejection of guarantees of securities transfers from eligible guarantor institutions. There are approximately 800 registered transfer agents subject to the rule's recordkeeping requirements. The average burden for each transfer agent is approximately 40 hours annually, for a total annual burden of 32,000 hours.

Rule 17f–1(b) requires reporting institutions to register with the Commission or its designee to participate in the Lost and Stolen Securities Program. Approximately 600 respondents incur an average of one-half burden hour annually to comply with this rule, for a total annual burden of 300 hours.

Rule 17f–1(c) and Form X–17F–1A require reporting institutions to report lost, stolen, missing, and counterfeit securities to a centralized database. Approximately 23,000 reporting institutions file approximately 667,000 Forms X–17F–1A. The Commission estimates that the average burden for each form is 5 minutes, resulting in a total annual burden of 55,583 hours.

Rules 17h–1T and 17h–2T impose reporting and recordkeeping requirements on broker-dealers that are associated with other entities, other than natural persons. Approximately 250 broker-dealers are subject to the rules. It is estimated that the average burden for each firm is approximately 14 hours annually, or a cumulative burden of 3,500 hours.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549 and Desk Officer for Securities and Exchange Commission, Project Numbers 3235–0409, 3235–0032, 3235–0037, and 3235–0410, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 29, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21932 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

Forms Under Review by the Office of Management and Budget

Acting Agency Clearance Officer: David T. Copenhafer, (202) 942–8800.

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Proposed Amendments

Regulation S–X—File No. 270–3
Form N–1A—File No. 270–21
Form N–2—File No. 270–21
Form N–3—File No. 270–281
Form N–4—File No. 270–282

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for OMB approval amendments to Regulation S–X under the Securities Act of 1933 (the "1933 Act") and Form N–1A, Form N–2, Form N–3, and Form N–4 under the 1933 Act and the Investment Company Act of 1940 (the "1940 Act"). The amendments pertain to the disclosure of investment company ("funds") expenses when such expenses are paid by broker-dealers in exchange for the direction of the fund's brokerage transactions to the broker-dealer.

The proposed amendment to Regulation S–X would require funds to include in their statements of operations the amount of any expense that would have been paid had a broker-dealer not paid the expense, in whole or in part, in exchange for fund brokerage. The proposed amendments to Form N–1A, Form N–2, Form N–3 and Form N–4 would require that this "total expense" figure also be set forth in the fee table and financial highlights table in fund prospectuses and be used in the calculation of fund yield. The change in burden associated with these amendments will be reflected in the burdens associated with the various forms proposed to be amended.

It is estimated that 270 funds that file on Form N–1A will each incur 3.0 burden hours in addition to the time currently required to complete the Form, while 2,430 funds that file on Form N–1A will each incur 1.0 additional burden hour. It is estimated that twelve funds that file on Form N–2 will each incur 2.5 burden hours in addition to the time currently required

to complete the Form, while 113 funds that file on Form N–2 will each incur 1.0 additional burden hour. It is estimated that five funds that file on Form N–3 will each incur 1.5 burden hours in addition to the time currently required to complete Form N–3. Finally, it is estimated that twenty-eight funds that file on Form N–4 will each incur 1.5 burden hours in addition to the time currently required to complete Form N–4.

Direct general comments to the Desk Officer for the Securities and Exchange Commission at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to David T. Copenhafer, Acting Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549 and Desk Officer for the Securities and Exchange Commission. (Project Numbers 3235–0009, 3235–0307, 3235–0026, 3235–0316, and 3235–0318), Office of Management and Budget, Room 3208, New Executive Office Building, Washington, D.C. 20503.

Dated: August 29, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21933 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34613; File No. SR–NASD–94–47]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to an Interim Extension of the OTC Bulletin Board® Service Through October 3, 1994

August 30, 1994.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 14 U.S.C. 78s(b)(1), notice is hereby given that on August 22, 1994, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is simultaneously approving the proposal.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

On June 1, 1990, the NASD, through a subsidiary corporation, initiated operation of the OTC Bulletin Board Service ("OTCBB Service" or "Service") in accord with the Commission's approval of File No. SR–NASD–88–19, as amended.[1] The OTCBB Service provides a real-time quotation medium that NASD member firms can elect to use to enter, update, and retrieve quotation information (including unpriced indications of interest) for securities traded over-the-counter that are neither listed on The Nasdaq Stock Market℠ nor on a primary national securities exchange (collectively referred to as "OTC Equities").[2] Essentially, the Service supports NASD members' market making in OTC Equities through authorized Nasdaq Workstation units. Real-time access to quotation information captured in the Service is available to subscribers of Level 2/3 Nasdaq service as well as subscribers of vendor-sponsored services that now carry OTCBB Service data. The Service is currently operating under interim approval that expires on September 1, 1994.[3]

The NASD hereby files this proposed rule change, pursuant to Section 19(b)(1) of the Act and Rule 19b–4 thereunder, to obtain authorization for an interim extension of the Service through October 3, 1994. During this interval, there will be no material change in the OTCBB Service's operational features, absent Commission approval of a corresponding Rule 19b–4 filing.

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 NASD 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 NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to ensure continuity in the operation of the OTCBB Service while the Commission considers an earlier NASD rule filing (File No. SR–NASD–92–7) that requested permanent approval of the Service. For the month ending July 31, 1994, the Service reflected the market making positions of 398 NASD member firms displaying quotations/indications of interest in approximately 5,082 OTC Equities.

During the proposed extension, foreign securities and American Depositary Receipts (collectively, "foreign/ADR issues") will remain subject to the twice-daily, update limitation that traces back to the Commission's original approval of the OTCBB Service's operation. As a result, all priced bids/offers displayed in the Service for foreign/ADR issues will remain indicative.

In conjunction with the start-up of the Service in 1990, the NASD implemented a filing requirement (under Section 4 of Schedule H to the NASD By-Laws) and review procedures to verify member firms' compliance with Rule 15c2–11 under the Act. During the proposed extension, this review process will continue to be an important component of the NASD's oversight of broker-dealers' market making in OTC Equities. The NASD also expects to work closely with the Commission staff in developing further enhancements to the Service to fulfill the market structure requirements mandated by the Securities Enforcement Remedies and Penny Stock Reform Act of 1990, particularly Section 17B of the Act.[4] The NASD notes that implementation of the Reform Act entails Commission rulemaking in

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[1] Securities Exchange Act Release No. 27975 (May 1, 1990), 55 FR 19124 (May 8, 1990).

[2] With the Commission's January 1994 approval of File No. SR–NASD–93–24, the universe of securities eligible for quotation in the OTCBB now includes certain equities listed on regional stock exchanges that do not qualify for dissemination of transaction reports via the facilities of the Consolidated Tape Association. Securities Exchange Act Release No. 33507 (January 24, 1994), 59 FR 4300 (order approving File No. SR–NASD–93–24).

[3] Securities Exchange Act Release No. 34144 (June 1, 1994), 59 FR 29646.

[4] On November 24, 1992, the NASD filed an application with the Commission for interim designation of the Service as an automated quotation system pursuant to Section 17B(b) of the Act. On December 30, 1992, the Commission granted Qualifying Electronic Quotation System ("QEQS") status for the Service for purposes of certain penny stock rules that became effective on January 1, 1993. On August 26, 1993, the Commission granted the NASD's request for an extension of QEQS status until such time as the OTCBB meets the statutory requirements of Section 17B(b)(2). Finally, on May 13, 1994, the NASD filed an application with the Commission for permanent designation of the Service as an automated quotations system for penny stocks pursuant to Section 17B(b).

several areas, including the development of mechanisms for gathering and disseminating reliable quotation/transaction information for "penny stocks."

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with Sections 11A(a)(1), 15A(b) (6) and (11), and Section 17B of the Act. Section 11A(a)(1) sets forth the Congressional findings and policy goals respecting operational enhancements to the securities markets. Basically, the Congress found that new data processing and communications techniques should be applied to improve the efficiency of market operations, broaden the distribution of market information, and foster competition among market participants. Section 15A(b)(6) requires, among other things, that the NASD's rules promote just and equitable principles of trade, facilitate securities transactions, and protect public investors. Subsection (11) thereunder authorizes the NASD to adopt rules governing the form and content of quotations for securities traded over-the-counter for the purposes of producing fair and informative quotations, preventing misleading quotations, and promoting orderly procedures for collecting and disseminating quotations. Finally, Section 17B contains Congressional findings and directives respecting the collection and distribution of quotation information on low-priced equity securities that are neither Nasdaq nor exchange-listed.

The NASD believes that extension of the Service through October 3, 1994, is fully consistent with the foregoing provisions of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing For Commission Action

The NASD requests that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after its publication in the **Federal Register** to avoid any interruption of the Service. The current authorization for the Service extends through September 1, 1994. Hence it is imperative that the Commission approve the instant filing on or before that date. Otherwise, the NASD will be required to suspend operation of the Service pending Commission action on the proposed extension.

The NASD believes that accelerated approval is appropriate to ensure continuity in the Service's operation pending a determination on permanent status for the Service, as requested in File No. SR–NASD–92–7. Continued operation of the Service will ensure the availability of an electronic quotation medium to support member firms' market making in approximately 5,082 OTC Equities and the widespread dissemination of quotation information on these securities. The Service's operation also expedites price discovery and facilitates the execution of customer orders at the best available price. From a regulatory standpoint, the NASD's capture of quotation data from participating market makers supplements the price and volume data reported by member firms pursuant to Section 2 of Schedule H to the NASD By-Laws.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 28, 1994.

V. Commission's Findings and Order Granting Accelerated Approval

The Commission finds that approval of the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A(b)(11) of the Act, which provides that the rules of the NASD relating to quotations must be designed to produce fair and informative quotations, prevent fictitious or misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publishing notice of the filing thereof. Accelerated approval of the NASD's proposal is appropriate to ensure continuity in the Service's operation as an electronic quotation medium that supports NASD members' market making in these securities and that facilitates price discovery and the execution of customers' orders at the best available price. Additionally, continued operation of the Service will materially assist the NASD's surveillance of its members trading in OTC Equities that are eligible and quoted in the Service, and in non-Tape B securities that are listed on regional exchanges and quoted in the OTCBB by NASD members.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved for an interim period through October 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21926 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34614; File No. SR–Phlx–93–41]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment No. 1 to Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 2 and No. 3 to Proposed Rule Change to Adopt Equity Floor Procedure Advice A–2, Stopping Orders.

August 30, 1994.

I. Introduction

On November 2, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to 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 adopt Equity Floor Procedure Advice ("Advice") A–2, Stopping Orders. On June 1, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to narrow the scope of its original filing, to revise certain language used therein and to request approval to amend its Minor Rule Violation and Enforcement Plan ("MRVE Plan").[3] On July 25, 1994, the Exchange submitted Amendment No. 2 to the proposed rule change in order to correct a typographical error.[4] On August 24, 1994, the Exchange submitted to the Commission Amendment No. 3 to the proposed rule change to clarify certain procedural requirements.[5]

The proposed rule change, together with Amendment No. 1, was published for comment in Securities Exchange Act Release No. 34216 (June 15, 1994), 59 FR 32034 (June 21, 1994). No comments were received on the proposal. This order approves the proposed rule change, including Amendments No. 2 and No. 3 on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to adopt Advice A–2 in order to codify its policy regarding the handling of stopped orders on its equity floor.[6] Under the proposed rule change, a Phlx specialist who stops an order[7] will be required to display a representative size of that order in his or her quote,[8] unless the specialist executes the order immediately after granting the stop. In addition, proposed Advice A–2 will prohibit a specialist from trading as principal with a stopped order if he or she is holding an agency order at the same price (or better) as the interest for the specialist's own account. Pursuant to the Exchange's rules,[9] the specialist must exercise due diligence to match the stopped order with such agency order.

The Exchange also proposes to amend its MRVE Plan to include minor violations of Advice A–2 and to establish a fine schedule for such violations. According to that schedule, inadvertent failure to adhere to the advice's requirements[10] may subject a specialist to a $250 fine; a second occurrence during a three-year running calender period could result in the issuance of a $500 fine. Thereafter, the sanction will be determined at the discretion of the Exchange's Business Conduct Committee.

The Phlx believes that the proposed rule change is consistent with Section 6 of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and prevent fraudulent and manipulative acts and practices, by furthering the purposes of Rule 203 which, in turn, should foster a fair and orderly market in Exchange traded securities.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Sections 6(b), 6(d), 11(b) and 19(d).[11] In particular, the Commission believes the proposed advice is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. The Commission also believes that the proposed advice is consistent with the requirement of Section 11(b), and Rule 11b–1 thereunder,[12] that specialist transactions must contribute to the maintenance of fair and orderly markets.

The Commission historically has been concerned that the practice of stopping stock may compromise the specialist's fiduciary duty to unexecuted customer orders on the limit order book.[13] The Commission, however, has approved the practice in limited circumstances where the potential harm is offset by gains to the specialist's market making function and by the possibility of price improvement.[14] Accordingly, those exchanges with stopping stock rules[15] require their specialists to reduce the spread between the consolidated best bid and offer or, in a minimum variation market, to add size at the inside quote. The Commission believes that such a requirement strikes an appropriate balance between the interests of various market participants. Moreover, by encouraging accurate representation of

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[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] *See* letter from Gerald D. O'Connell, First Vice President, Phlx, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated May 31, 1994 ("Amendment No. 1").

[4] *See* letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, Phlx, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated July 19, 1994 ("Amendment No. 2").

[5] *See* letter from Gerald D. O'Connell, First Vice President, Regulation and Trading Operations, Phlx, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated August 24, 1994 ("Amendment No. 3").

[6] Proposed Advice A–2 will be followed by the designator "(E)" to clarify that it applies only to the Phlx's equity floor.

[7] An agreement to "stop" an order at a specified price constitutes a guarantee by the member who grants the stop (*i.e.*, the equity specialist) that the order will be executed at the stop price or better. *See, e.g.*, Phlx Rule 1018 ("Stopping an Option").

[8] The Phlx has indicated that, where the spread between the consolidated best bid and offer is greater than the minimum variation, a specialist who stops a buy (sell) order will be required to reduce that spread by bidding (offering) at a price higher than the prevailing bid (lower than the prevailing offer). Under the Phlx proposal, the specialist may display a stopped buy (sell) order at the stop price so long as such bid (offer) does not create a locked or crossed market. Finally, where the spread between the consolidated best bid and offer is the minimum variation, the Phlx specialist must reflect the stopped buy (sell) order in his or her quotation at the prevailing bid (offer). Telephone conversations between Gerald D. O'Connell, First Vice President, Regulation and Trading Practices, Phlx, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on July 26 and August 23, 1994. As noted above, the specialist must display a representative size of the stopped order. *See* Amendment No. 3, *supra*, note 5. After being placed on the specialist's book, stopped stock must be executed in accordance with traditional auction market principles.

[9] *See* Phlx Rule 218 ("Customer's Order Receives Priority"). *See also* Phlx Rules 119 ("Precedence of Highest Bid") and 120 ("Precedence of Offers at Same Price").

[10] The Phlx has stated that it would not consider intentional failure to adhere to the advice's requirements to be a minor rule violation. Telephone conversation between Gerald D. O'Connell, First Vice President, Regulation and Trading Practices, Phlx, and Beth A. Stekler, Attorney, Division of Market Regulation, SEC, on August 23, 1994.

[11] 15 U.S.C. §§ 78f(b), 78f(d), 78k(b) and 78s(d) (1988).

[12] 17 CFR 240.11b–1 (1991).

[13] *See, e.g.*, SEC, Report of the Special Study of the Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess. Pt 2 (1963).

When stock is stopped, book orders on the opposite side of the market that are entitled to immediate execution lose their priority. If the stopped order then receives an improved price, limit orders at the stop price are bypassed and, if the market turns away from that limit, may never be executed.

Book orders on the same side of the market are bypassed when a stopped order receives an execution at an improved price before existing limit orders at that price.

[14] *See, e.g.*, Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991) (File No. SR–NYSE–90–48) (approving proposed rule change to permit New York Stock Exchange ("NYSE") specialists to stop stock in minimum variation markets when (1) an imbalance exists on the opposite side of the market and (2) such imbalance is of sufficient size to suggest the likelihood of price improvement). In approving the NYSE proposal, the Commission found, among other things, that a stopped order is the equivalent of a limit order for purposes of Section 11(b) of the Act.

[15] *See* NYSE Rule 116.30; American Stock Exchange ("Amex") Rule 109; and Article XX, Rule 12 of the Chicago Stock Exchange ("CHX") Rules. A Boston Stock Exchange ("BSE") proposal to adopt a stopping stock rule currently is pending with the Commission. *See* Securities Exchange Act Release No. 34569 (August 22, 1994) (File No. SR–BSE–94–09).

the trading interest held by the specialist, it also facilitates greater transparency in the securities markets. In the Commission's opinion, such safeguards are a critical aspect of an exchange's stopping stock rule.

After careful review of Advice A–2, the Commission has concluded that the proposed rule change should help ensure that specialists handle stopped orders in a manner which is consistent with their obligation to maintain fair and orderly markets.[16] Under the proposed advice, a specialist who stops an order will, except as discussed below, be required to display a representative size of that order in his or her market. As a practical matter, the Phlx has indicated that the specialist must reduce the spread between the consolidated best bid and offer or, in a minimum variation market, add size at the inside quote.[17] The Commission therefore is satisfied that proposed Advice A–2 should increase the likelihood that a customer whose order is stopped will receive price improvement and result in narrower and/or deeper markets. This, in turn, should enhance the liquidity and transparency of the market for securities traded on the Phlx.

The Commission finds that it is reasonable for the Phlx to allow its specialists to execute an order *immediately* after granting a stop, so long as the specialist does not use this discretion to circumvent his or her market marking responsibilities. Because such circumvention would raise serious regulatory concerns, the Commission expects the Phlx to monitor compliance with Advice A–2 and to take appropriate action if it finds that stopped stock not executed immediately is not then displayed in the manner indicated in the Phlx proposal.[18]

Finally, the Commission notes that Advice A–2's yielding and due diligence requirements merely codify how the fundamental principles of an agency auction market apply in the context of stopped stock. In this regard, the Commission agrees with the Phlx that the advice will provide specialists with a "ready reminder" of their responsibilities, thereby deterring potential violations of Commission and Exchange rules.

Although the Commission has concluded that Advice A–2's requirements are consistent with the Act, the Commission believes further action could be taken to ensure proper handling of stopped stock. Specifically, the Commission expects the Phlx to submit a proposed rule change to complement its floor procedure advice. In developing such a rule, the Phlx should consider including the following elements: a definition of an agreement to "stop" stock and the obligations of the member who agrees to grant the stop; the market conditions under which a stop should be granted; a policy for the execution of stopped stock and, in particular, for determining the price at which the order should be executed; and pilot procedures for minimum variation markets that are consistent with the rules of priority, parity and precedence.[19]

In addition, the Commission finds that the proposed amendments to the MRVE Plan are consistent with the Section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members for a rule violation that is technical and objective in nature. Moreover, because the MRVE Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternative means by which to deter violations of the Phlx's policy regarding specialists' handling of stopped orders, thus furthering the purposes of Section 6(b)(1) of the Act. An exchange's ability effectively to enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. A rule included in an exchange's minor rule violation plan should not be deemed an unimportant rule. The Commission notes that inclusion of rules under a minor rule violation plan may reduce reporting burdens on a self-regulatory organization ("SRO") and also may make its disciplinary system more efficient in prosecuting violations of such rules. This would be the case in situations where the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation.

In addition, because the Phlx retains the discretion to bring a full disciplinary proceeding for any violation included in its MRVE Plan, the Commission believes that adding proposed Advice A–2 to the MRVE Plan will enhance, rather than reduce, the Phlx's enforcement capabilities regarding this Exchange policy. Indeed, the Commission expects the Phlx to bring full disciplinary proceedings for violations of the advice's requirements where the violation is egregious or where there is a history or pattern of repeat violations.

Finally, the Commission finds good cause for approving Amendments No. 2 and No. 3 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendment No. 2 corrects a typographical error in the text of the proposed advice, while Amendment No. 3 merely clarifies procedures for implementing the advice's display requirement. The Commission did not receive any comments on the original proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 2 and No. 3 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to Amendments No. 2 and No. 3 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–41 and should be submitted by September 28, 1994.

IV. Conclusion

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,[20] and Rule 19d–1(c)(2) under the Act,[21] that the

[16] *See* Phlx Rule 203.

[17] For further discussion of procedures by which the specialist must implement the advice's requirements, including the maintenance of auction market procedures, *see supra,* note 8 and accompanying text.

[18] *See supra,* note 8 and accompanying text.

[19] The Commission has approved NYSE, Amex and CHX procedures for stopping stock in a minimum variation market on a pilot basis until March 21, 1995.

[20] 15 U.S.C. § 78s(b)(2) (1988).

[21] 17 CFR 240.19d–1(c)(2) (1991).

proposed rule change (SR–Phlx–93–41), including Amendments No. 2 and No. 3 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21927 Filed 8–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 20507; 811–5263]

IDEX Total Income Trust; Notice of Application

August 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANT: IDEX Total Income Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed April 28, 1994, and amended on August 4, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 1994, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 201 Highland Avenue, Largo, Florida 34640.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Attorney, at (202) 942–0583, or Barry D. Miller, Senior Special Counsel, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, an open-end diversified management investment company, is organized as a business trust under the laws of the Commonwealth of Massachusetts. On January 7, 1987, applicant filed a notification of registration on Form N–8A under section 8(a) of the Act and a registration statement on Form N–1A under section 8(b) of the Act and the Securities Act of 1933. The registration statement became effective on June 24, 1987, and the public offering of applicant's shares commenced on June 29, 1987.

2. On March 22, 1993, applicant's board of trustees adopted an agreement and plan of reorganization and liquidation (the "Plan"). The Plan provided for the transfer of all of applicant's assets to IDEX II Flexible Income Portfolio (the "Portfolio"), a separate series of IDEX II Series Fund, a Massachusetts business trust, in exchange for the assumption by the Portfolio of all of the debts, liabilities, obligations, and duties of applicant, and shares of the Portfolio equal in number to the shares of applicant outstanding as of the close of business on September 30, 1993.

3. Applicant and the Portfolio are affiliated persons because they have common officers; they therefore relied on the exemption provided by rule 17a–8 under the Act to effect the transaction.[1] Consequently, the trustees determined, in accordance with rule 17a–8, that the purchase of applicant's assets by the Portfolio was in applicant's best interests, and that such purchase would not result in any dilution to the interests of the existing shareholders.

4. Applicant filed preliminary proxy materials with the SEC on or about May 28, 1993, and filed definitive proxy materials with the SEC on or about June 24, 1993. On or about June 25, 1993, a notice of the special meeting, proxy statement, and form of proxy relating to the Plan were distributed to applicant's shareholders. The Plan was approved by vote of applicant's shareholders at a special meeting of shareholders held on July 28, 1993.

5. As indicated in the proxy materials, the purpose of the reorganization of applicant into the Portfolio was to reduce the number of separately organized investment companies in the IDEX group, to enable the combination of prospectuses, statements of additional information, and shareholder reports, and to provide other operational efficiencies for certain IDEX funds, including applicant and its successor. The reorganization also implemented various changes to applicant's investment policies and restrictions in order to standardize these matters for the funds in the IDEX group.

6. As of October 1, 1993, there were 3,048,111.95 shares of beneficial interest of applicant outstanding, with an aggregate net asset value of $29,232,430 and a per share net asset value of $9.59. On that date, applicant transferred to the Portfolio all right, title, and interest in and to its assets, including all securities, cash, cash equivalents, receivables, and other assets. In exchange, the Portfolio assumed all debts, liabilities, obligations and duties of applicant, and issued and delivered to applicant full and fractional shares of Portfolio equal in number to the shares of applicant outstanding as of the close of business on September 30, 1993. Applicant then liquidated and distributed *pro rata* (resulting in a one-for-one distribution) to its shareholders of record the shares of the Portfolio received in exchange for shareholders' shares of applicant.

7. The expenses incurred in connection with the reorganization consisted primarily of legal expenses, expenses of printing and mailing communications to shareholders, registration fees, and miscellaneous accounting and administrative expenses totalling $35,492.71. In accordance with the Plan, the Portfolio was responsible for the expenses of both parties in connection with the reorganization.

8. At the time of the application, applicant had no shareholders, assets, or liabilities, nor was it a party to any litigation or administrative proceeding. Applicant is not engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

9. Applicant intends to file a notification of dissolution with the Secretary of State of the Commonwealth of Massachusetts.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21928 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

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[22] 17 CFR 200.30–3(a)(12) (1991).

[1] Rule 17a–8 provides an exemption from the affiliated transaction prohibition of section 17(a) of the Act for a merger of investment companies that may be affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Release No. 20510; 811–1725]

State Bond Securities Funds, Inc.; Notice of Application for Deregistration

August 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: State Bond Securities Funds, Inc.

RELEVANT ACT SECTION: Order requested under section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATES: The application was filed on July 28, 1994 and amended on August 22, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 1994, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 8400 Normandale Lake Boulevard, Suite 1150, Minneapolis, MN 55437–3807.

FOR FURTHER INFORMATION CONTACT: Marianne H. Khawly, Law Clerk, at (202) 942–0562, or C. David Messman, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end investment management company organized as a Maryland corporation. On August 22, 1968, applicant filed a Notification of Registration on Form N–8A pursuant to section 8(a) of the Act. On September 16, 1968 applicant filed a registration statement on Form N–1A under section 8(b) of the Act and under the Securities Act of 1933. The registration statement became effective on July 30, 1969, and applicant's initial public offering commenced shortly thereafter.

2. On March 18, 1994, applicant's Board of Directors approved a plan of reorganization whereby applicant agreed to transfer all of its assets and stated liabilities to State Bond Common Stock Fund (the "Acquiring Fund"), in exchange for shares of the Acquiring Fund. In accordance with rule 17a–8 of the Act, applicant's directors determined that the sale of applicant's assets to the Acquiring Fund was in the best interest of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

3. The directors of applicant concluded that the reorganization would benefit applicant's shareholders because the overall fees charged to the combined fund should result in lower expense ratios than are currently being incurred by the applicant.

4. A registration statement on Form N–14 was filed with the SEC on April 6, 1994. The proxy statement/prospectus contained therein was furnished to applicant's shareholders on or about May 9, 1994. At a special meeting held on June 21, 1994, holders of a majority of the outstanding voting shares of applicant approved the reorganization.

5. The reorganization was consummated on June 25, 1994 (the "Closing Date"). On June 24, 1994, applicant had aggregate net assets of $8,605,437 and a net asset value per share of $11.32. On the Closing Date, all of the assets and stated liabilities of applicant were transferred to the Acquiring Fund in exchange for shares of the Acquiring Fund having a net asset value equal to the net assets of applicant. Shares of the Acquiring Fund were then distributed to applicant's shareholders. Each shareholder received the proportion of Acquiring Fund shares received by applicant that the number of applicant shares owned by each such shareholder bore to the number of outstanding applicant shares.

6. Applicant bore approximately $23,787 in expenses in connection with the reorganization. Such expenses were for legal, accounting, proxy solicitation, and liquidation fees.

7. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is neither engaged in nor proposes to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant terminated its existence as a Maryland corporation on July 25, 1994.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21925 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons are generally prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of one another solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–20506; 811–4125]

SunAmerica Fund Group; Notice of Application

August 30, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: SunAmerica Fund Group.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant requests an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on June 14, 1994, and amended on July 29, 1994 and August 24, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on September 26, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549. Applicant, 733 Third Avenue, New York, New York 10017.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company organized as a Massachusetts business trust. On or about October 12, 1984, applicant, initially named Equitec Siebel Total Return Fund ("ESTRF"), filed a registration statement to register an indefinite number of its shares of common stock. The registration statement became effective on or about January 2, 1985, and ESTRF commenced operations and the initial public offering of its shares on January 29, 1985.

2. On September 30, 1985, ESTRF reorganized into a Massachusetts business trust and was renamed Equitec Siebel Fund Group ("ESFG"). Over time, ESFG commenced operations of several series: Equitec Siebel Total Return Fund; Equitec Siebel Government Fund; Equitec Siebel High Yield Bond Fund; Equitec Siebel Aggressive Growth Fund: Equitec Siebel Cash Equivalent Fund; Equitec Siebel Global Fund; and Equitec Siebel Precious Metals Fund (collectively, the "Funds").

3. On January 7, 1991, ESFG's adviser entered into an agreement to sell the Funds' advisory contracts to SunAmerica Asset Management Corp. ("SunAmerica"). On June 14, 1991, shareholders of the respective Funds approved new investment advisory and management agreements between ESFG and SunAmerica whereby SunAmerica became the adviser of the Funds. In connection with the approval, the Funds were renamed: the Total Return Fund was renamed SunAmerica Balanced Assets Fund; the Government Fund was renamed SunAmerica U.S. Government Securities Fund; the High Yield Bond Fund was renamed SunAmerica High Income Fund; the Aggressive Growth Fund was renamed SunAmerica Emerging Growth Fund; the Cash Equivalent Fund was renamed SunAmerica Liquid Assets Fund; the Global Fund was renamed SunAmerica Global Equity Fund; and the Precious Metals Fund was renamed SunAmerica Precious Metals Fund.

4. The Global Equity and Precious Metals Funds were liquidated by vote of their shareholders on March 30, 1992. The Liquid Assets Fund was liquidated by vote of its shareholders on June 25, 1992.

5. On March 31, 1993, applicant's board of trustees approved on agreement and plan of reorganization for each of the applicant's remaining Funds. Under the agreements, the remaining Funds would merge into other investment companies that were advised by SunAmerica. In accordance with rule 17a–8 under the Act, the board of trustees of each of applicant and the acquiring companies determined that participation in the reorganization was in the best interest of the shareholders and that the interests of the existing shareholders would not be diluted as a result of the reorganization.[1] On July 29, 1993, applicant filed proxy materials with the SEC and mailed these materials to shareholders on or about July 29, 1993. Applicant's shareholders approved the agreement and plan of reorganization at special meetings held on September 23, 1993.

6. Pursuant to each agreement, on September 24, 1993, applicant transferred substantially all of the assets and liabilities of (a) its Emerging Growth Fund to the SunAmerica Emerging Growth Fund series of SunAmerica Equity Funds in exchange for shares of the SunAmerica Emerging Growth Fund and (b) its Balanced Asset Fund to the SunAmerica Balanced Assets Fund series of SunAmerica Equity Funds in exchange for shares of the SunAmerica Balanced Assets Fund. Applicant then distributed *pro rata* the appropriate shares of SunAmerica Emerging Growth Fund and SunAmerica Balanced Assets Fund to it shareholders. On October 1, 1993, applicant transferred substantially all of the assets and liabilities of (i) its U.S. Government Fund to the SunAmerica U.S. Government Securities Fund series of SunAmerica Income Funds in exchange for shares of the SunAmerica U.S. Government Securities Fund, and (ii) its High Income Fund to the SunAmerica High Income Fund series of SunAmerica Income Funds in exchange for shares of the SunAmerica High Income Fund. Applicant then distributed *pro rata* the appropriate shares of SunAmerica U.S. Government Securities Fund and SunAmerica High Income Fund to its shareholders. In each case, the aggregate net asset value of an acquiring fund's shares represented the net asset value of the respective applicant Fund.

7. The expenses of the reorganization were borne by the investment companies participating in the reorganization of the SunAmerica Family of Mutal Funds, including applicant and each of the acquiring companies. Such expenses included preparation of proxy materials, printing expenses, and legal and accounting fees. No brokerage commissions were paid in connection with the reorganization.

8. As of the date of this application, applicant had no assets, liabilities or shareholders. All liabilities and obligations not discharged by applicant were assumed by and became the obligations of the acquiring funds. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant is neither engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21929 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Emergency Evacuation Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss emergency evacuation issues.

DATES: The meeting will be held on September 22, 1994 at 9 a.m. Arrange for oral presentations by September 12, 1994.

ADDRESSES: The meeting will be held at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal

Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on September 22, 1994, at McDonnell Douglas, 1735 Jefferson-Davis Highway, suite 1200, Spirit Room, Crystal City, Virginia. The agenda for the meeting will include:

- Opening Remarks.
- A review of the activities of the Performance Standards Working Group.
- A discussion of future activities and plans.
- A vote may be taken on a draft advisory circular on Evacuation Demonstration Procedures.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by September 12, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Emergency Evacuation Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Washington, DC, on August 26, 1994.

Daniel Salvano,

Assistant Executive Director for Emergency Evacuation Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–21975 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–13–M

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In July 1994, there were five applications and one amendment approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IV of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Duluth Airport Authority, Duluth, Minnesota.

Application Number: 94–01–C–00–DLH.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $562,248.

Charge Effective Date: October 1, 1994.

Estimated Charge Expiration Date: April 1, 1996.

Class Of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators.

Determination: Approved. Based on the information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Duluth International Airport.

Brief Description Of Project Approved For Collection And Use: Installation of runway 09/27 precision approach path indicators and distance markers on runway 3/21, Terminal and general aviation ramp rehabilitation, Install jet bridge, Runway visibility zone grading, associated pavement removal, well abandonment, cable trenching, and electrical ducts, Design taxiway K, construct westerly 2,900 feet (phase I), and relocate utility ducts, Airfield signage and land acquisition, Part 150 noise compatibility study, Snow equipment maintenance/aircraft rescue and firefighting facility preliminary study (phases I and II), Prepare and coordinate PFC application.

Decision Date: July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Franklin D. Benson, Minneapolis Airports District Office, (612) 725–4221.

Public Agency: City of Quincy, Illinois.

Application Number: 94–01–C–00–UIN.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $115,517.

Earliest Charge Effective Date: October 1, 1994.

Estimated Charge Expiration Date: July 1, 1997.

Class Of Air Carriers Not Required To Collect PFC's: Charter operators.

Determination: Approved. Based on the information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at the Quincy Municipal Airport-Baldwin Field.

Brief Description Of Projects Approved For Collection And Use: Acquire snow [plow] truck, Overlay and mark taxiway and main entrance road, Grading and drainage for east quadrant fixed based operator area, Taxiway guidance signs, replace high intensity runway lights and medium intensity runway lights, and improvements to terminal building, Hydraulic lift, Relocate and modernize the lighting control vault, Prepare airport layout plan.

Brief Description Of Project Partially Approved For Collection and Use: Replace medium intensity taxiway lights.

Decision: Partially approved. This was an AIP project and the construction bids were lower than expected; therefore, the estimated local share was reduced.

Decision Date: July 8, 1994.

FOR FURTHER INFORMATION CONTACT: Louis H. Yates, Chicago Airports District Office, (708) 294–7335.

Public Agency: Port of Portland, Portland, Oregon.

Application Number: 94–02–C–00–PDX.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $53,653,440.

Charge Effective Date: November 1, 1994.

Estimated Charge Expiration Date: September 1, 1999.

Class Of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operator as further defined in the Port of Portland's Ordinance No. 359 as adopted.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Portland International Airport.

Brief Description Of Projects Approved For Collection And Use: Runway 10R/28L (south) rehabilitation, Runway 10L/28R (north) rehabilitation, Terminal apron between concourses C and D rehabilitation, Taxiways H, D, and Weather Service apron rehabilitation, Rehabilitate north ramp from concourse E to the general aviation area, Rehabilitate fire station west road, Construct taxiway C high speed exists, Airfield emergency generator upgrade, Construct snow and ice control materials storage facility, Construct new taxiway from concourse C to taxiway E, Fillet paving A5, A6, and A7, Purchase emergency mobile command unit, Install runway distance remaining

markers, Install centerline lights on taxiway A from A2 to taxiway E to taxiway M, phase 2, Install centerline lights on taxiway T from concourses E to A, phase 2, Apron widening at concourse D, Install centerline lights on taxiway C from exit C1 to taxiway E, phase 2, Light 10L lead on/off at A1 and A7, Northeast corner fillet widening at B5 from taxiway T to concourse B, Install centerline lights on taxiway C from C6 to C8 with lead on/off, Relocate fire station, Replace E–89, Replace F–81, Add third lane to Airport Way westbound, Add second lane to 82nd Avenue and third lane to Airport Way eastbound, Extend east frontage road, Central utility plant boiler and upgrade, Federal Inspection Station (FIS) expansion, Renovate concourses B and C security checkpoints.

Brief Description Of Projects Approved For Collection Only: Taxiway A and connectors rehabilitation, Runway 2/20 rehabilitation, Taxiway F rehabilitation, Taxiway GA rehabilitation, Signalize Airport Way and west frontage road.

Brief Description of Projects Approved, In Part, For Collection And Use: Roadway signing improvements.

Determination: Approved in part. The signage along Airport Way is eligible under AIP criteria; however, the replacement of signage in the parking lots, is ineligible. Replace terminal roofs.

Determination: Approved in part. A portion of this project, equal to the percentage of eligible area in the terminal, is eligible under AIP criteria. The FAA concurs with the Port of Portland's determination that 46 percent of the terminal space is eligible; therefore, 46 percent of this project is eligible.

Brief Description Of Projects Disapproved: Storm water treatment ponds.

Determination: Disapproved. Although Public Law 102–581 amended section 503(a)(2) of the Airport and Airway Improvement Act of 1982 to make projects to comply with the Federal Water Pollution Control Act of 1972 or a State water quality agency eligible under AIP, specific language in that legislation does not permit water quality stand-alone projects to be determined eligible for PFC funding. The limited exception to this prohibition is the use of PFC revenue for local match of AIP-funded water quality projects. The financial plan for this project shows the total cost of the project to be funded with PFC revenue. Therefore, this project does not meet the requirements of § 158.15(b). FIS screening point.

Determination: Disapproved. This project involves the purchase and installation of equipment and related structures for a security checkpoint at the FIS. This type of project is a requirement of Part 108. AIP and PFC eligibility is limited to equipment and facilities required by Part 107. Therefore, this project does not meet the requirements of § 158.15(b).

Brief Description Of Projects Withdrawn: Construct equipment storage shed.

Determination: The Port of Portland withdrew this project by letter dated April 5, 1994. Enplaning roadway expansion, phase 1.

Determination: This project involved phase 2 of a project approved in the Port of Portland's first PFC application. On April 12, 1994, the FAA approved the Port of Portland's request to amend the first PFC decision and withdraw this project from the second application.

Decision Date: July 12, 1994.

FOR FURTHER INFORMATION CONTACT: Renee Hall, Seattle Airports District Office, (206) 227–2662.

Public Agency: Sonoma County, Santa Rosa, California.

Application Number: 94–02–C–00–STS.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $272,365.

Estimated Charge Effective Date for This Application: October 1, 1994.

Estimated Charge Expiration Date: July 1, 1997.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description Of Project Approved For Collection And Use: Taxiway guidance signs and security devices.

Brief Description of Project Approved, In Part, For Collection And Use: Land acquisition for runway approach protection.

Determination: Approved in part. A portion of the project is ineligible because costs were incurred prior to the November 5, 1990, eligibility date for the PFC program.

Decision Date: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriquez, San Francisco Airports Division, (415) 876–2805.

Public Agency: City of Dayton, Ohio.

Application Number: 94–02–C–00–DAY.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $23,467,251.

Earliest Charge Effective Date: October 1, 1994.

Estimated Charge Expiration Date: October 1, 2001.

Class Of Air Carriers Not Required To Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Dayton International Airport (DAY).

Brief Description Of Projects Approved For Collection And Use: FAR Part 139 signage, Airfield pavement evaluation (non destructive testing), Airfield improvements, Airfield pavement rehabilitation (phase II), Aircraft parking apron improvements, Taxiway W extension, New emergency power generator, Scan surface monitoring system upgrade, Cargo apron expansion, Sand storage building, Airfield equipment, Aircraft rescue and firefighting equipment, Security gate improvements, Security vehicle replacement, Land acquisition and relocation, Airport master plan update and FAR Part 150 study, FAA tower order environmental assessment, Land acquisition for airport development, Multi-user flight information display system, Concourse renovation, Ticketing area renovation.

Brief Description Of Project Approved, In Part, For Collection And Use: Water system improvements.

Determination: Approved in part. This project is AIP eligible; however, the eligibility is contingent on the relative percentage of the public usage of the system. In this case, it has been determined to be 50 percent.

Brief Description Of Projects Approved For Collection At DAY For Use At Dayton General Airport South (MGY): Master plan update for MGY, Aircraft parking apron rehabilitation, Airfield improvements.

Brief Description Of Projects Approved For Collection Only: Planning for extension of runway 6R/24L, Central aircraft deicing area, Runway deicing fluid storage tank.

Brief Description Of Project Disapproved: Emery cargo apron purchase.

Determination: Disapproved. The FAA has determined that the Emery air cargo apron purchase to extinguish the exclusive use rights is not eligible under AIP eligibility criteria, based on the following:

1. The construction, alteration, or reconstruction of aprons that are predominantly for the exclusive use of a tenant or operator not furnishing an

aeronautical service to the public are ineligible for Federal participation under AIP. The existing apron would be utilized by tenants not furnishing an aeronautical service to the public (aircraft maintenance hangars).

2. The extinguishment of a lease is AIP eligible if it is an incidental cost to the purchase, relocation, or demolition of a non-eligible structure located on the airport, and when such a structure constitutes an airport hazard or impedes eligible airport development. This does not apply in this situation. Therefore, the cost of extinguishing the exclusive use rights is not eligible for Federal participation.

3. Paying Emery Worldwide to relinquish their exclusive rights to the existing apron is tantamount to reimbursing Emery for the construction costs of the apron. Airport development costs incurred before the date of execution of a grant agreement covering the development are not eligible for Federal participation.

4. The payment to extinguish the exclusive use rights of the Emery apron is not AIP eligible; therefore, not PFC eligible.

Decision Date: July 25, 1994.

FOR FURTHER INFORMATION CONTACT: Larry King, Detroit Airports District Office, (313) 487–7300.

Amendments To PFC Approvals

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
93–01–C–01–CLM, Port Angeles, WA	07/07/94	$52,000	$116,504	07/31/94	04/01/95

Issued in Washington, D.C. on August 25, 1994.

Donna Taylor,

Manager, Passenger Facility Charge Branch.

Cumulative List of PFC Applications Previously Approved

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama:					
92–01–I–00–HSV., Huntsville Intl-Carl T. Jones Field, Huntsville	03/06/1992	$3	$36,472,657	06/01/1992	11/01/2008
93–02–U–00–HSV., Huntsville Intl-Carl T. Jones Field, Huntsville	06/03/1993	3	0	09/01/1993	11/01/2008
94–03–C–00–HSV., Huntsville Intl-Carl T. Jones Field, Huntsville	06/29/1994	3	20,831,051	09/01/1994	11/01/2008
92–01–C–00–MSL., Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	100,000	06/01/1992	02/01/1995
94–02–C–00–MSL., Muscle Shoals Regional, Muscle Shoals	05/17/1994	3	60,000	08/01/1994	10/01/1996
Arizona:					
92–01–C–00–FLG., Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM., Yuma MCAS/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
Arkansas:					
94–01–I–00–FSM., Fort Smith Municipal, Fort Smith	05/18/1994	3	4,040,076	08/01/1994	04/01/2007
California:					
92–01–C–00–ACV., Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
94–01–C–00–BUR., Burbank-Glendale-Pasadena, Burbank	06/17/1994	3	34,989,000	09/01/1994	10/01/2001
93–01–C–00–CIC., Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1997
92–01–C–00–IYK., Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LGB., Long Beach-Daugherty Field, Long Beach	12/30/1993	3	3,533,766	03/01/1994	03/01/1998
93–01–C–00–LAX., Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
94–01–C–00–MOD., Modesto City-County Arpt-Harry Sham, Modesto	05/23/1994	3	300,370	08/01/1994	08/01/2001
93–01–C–00–MRY., Monterey Peninsula, Monterey	10/08/1993	3	3,960,855	01/01/1994	06/01/2000
92–01–C–00–OAK., Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
94–02–C–00–OAK., Metropolitan Oakland International, Oakland	02/23/1994	3	8,999,000	05/01/1994	04/01/1995
93–01–I–000–ONT., Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP., Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–000–SMF., Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC., San Jose International, San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93–02–U–00–SJC., San Jose International, San Jose	02/22/1993	3	0	05/01/1993	08/01/1995
93–03–C–00–SJC., San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP., San Luis Obispo County-McChesney Fie, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS., Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
94–02–C–00–STS., Sonoma County, Santa Rosa	07/13/1994	3	272,365	10/01/1994	07/01/1997
91–01–I–00–TVL., Lake Tahoe, South Lake Tahoe	05/01/1992	3	928,747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS., Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–C–00–DVX., Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE., Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL., Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT., Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC., Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN., Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ., Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB., Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS., Steamboat Springs/Bob Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX., Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93–01–C–00–HVN., Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999
93–02–I–00–BDL., Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
94–03–U–00–BDL., Bradley International, Windsor Locks	02/22/1994	3	0	05/01/1994	09/01/1995
Florida:					
93–01–C–00–DAB., Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92–01–C–00–RSW., Southwest Florida International, Fort Myers	08/31/1992	3	253,858,512	11/01/1992	06/01/2014
93–02–U–00–RSW., Southwest Florida International, Fort Myers	05/10/1993	3	0	11/01/1992	06/01/2014
93–01–C–00–JAX., Jacksonville International, Jacksonville	01/28/1994	3	12,258,255	05/01/1994	07/01/1997
92–01–C–00–EYW., Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92–01–C–00–MTH., Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92–01–C–00–MCO., Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93–02–C–00–MCO., Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
93–01–I–00–PFN., Panama City-Bay County International, Panama City	12/01/1993	3	8,238,499	02/01/1994	10/01/2007
92–01–C–00–PNS., Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92–01–I–00–SRQ., Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92–01–I–00–TLH., Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93–02–U–00–TLH., Tallahassee Regional, Tallahassee	12/30/1993	3	0	02/01/1993	06/01/1998
93–01–C–00–TPA., Tampa International, Tampa	07/15/1993	0	0	10/01/1993	09/01/1999
93–01–C–00–PBI., Palm Beach International, West Palm Beach	01/26/1994	3	38,801,096	04/01/1994	04/01/1999
Georgia:					
93–01–C–00–CSG., Columbus Metropolitan, Columbus	10/01/1993	3	534,633	12/01/1993	06/01/1995
91–01–C–00–SAV., Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92–01–I–00–VLD., Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
94–01–C–00–BOI., Boise Air Terminal-Gowen Field, Boise	05/13/1994	3	6,857,774	08/01/1994	10/01/1998
93–01–C–00–SUN., Friedman Memorial, Hailey	06/29/1993	3	188,000	09/01/1993	09/01/1997
92–01–C–00–IDA., Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
94–01–I–00–LWS., Lewiston-Nez Perce County, Lewiston	02/03/1994	3	229,610	05/01/1994	03/01/1997
94–01–C–00–PIH., Pocatello Regional, Pocatello	06/30/1994	3	400,000	10/01/1994	03/01/2002
92–01–C–00–TWF., Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93-01-C-00-MDW., Chicago Midway, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
93-01-C-00-ORD., Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
94-01-C-00-UIN., Quincy Municipal Baldwin Field, Quincy	07/08/1994	3	115,517	10/01/1994	07/01/1997
92-01-I-00-RFD., Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-U-00-RFD., Greater Rockford, Rockford	09/02/1993	3	0	12/01/1993	10/01/1996
92-01-I-00-SPI., Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI., Capital, Springfield	04/28/1993	3	0	06/01/1992	02/01/1994
93-03-I-00-SPI., Capital, Springfield	11/24/1993	3	4,585,443	06/01/1992	02/01/2006
Indiana:					
92-01-C-00-FWA., Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND., Indianapolis International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
93-01-C-00-DSM., Des Moines Municipal, Des Moines	11/29/1993	3	6,446,507	03/01/1994	04/01/1997
92-01-I-00-DBQ., Dubuque Regional, Dubuque	10/06/1992	3	148,500	01/01/1993	05/01/1994
94-02-C-00-DBQ., Dubuque Regional, Dubuque	02/09/1994	3	203,420	05/01/1994	02/01/1996
93-01-C-00-SUX., Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
94-01-C-00-ALO., Waterloo Municipal, Waterloo	03/29/1994	3	637,000	06/01/1994	06/01/1998
Kentucky:					
94-01-C-00-CVG., Cincinnati/Northern Kentucky International, Covington	03/30/1994	3	20,737,000	06/01/1994	09/01/1995
93-01-C-00-LEX., Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
93-01-C-00-PAH., Barkley Regional, Paducah	12/02/1993	3	386,550	03/01/1994	12/01/1998
Louisiana:					
92-01-I-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR., Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	0	12/01/1992	12/01/1998
93-01-C-00-MSY., New Orleans International/ Moisant Fi, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
93-02-U-00-MSY., New Orleans International/ Moisant Fi, New Orleans	11/16/1993	3	0	06/01/1993	04/01/2000
93-01-I-00-SHV., Shreveport Regional, Shreveport	11/19/1993	3	33,050,278	02/01/1994	02/01/2019
Maine:					
93-01-C-00-PWM., Portland International Jetport, Portland	10/29/1993	3	12,233,751	02/01/1994	05/01/2001
Maryland:					
92-01-I-00-BWI., Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
94-01-I-00-CBE., Greater Cumberland Regional, Cumberland	03/30/1994	3	150,000	07/01/1992	07/01/1999
Massachusetts:					
93-01-C-00-BOS., General Edward L Logan International, Boston	08/24/1993	3	604,794,000	11/01/1993	10/01/2011
92-01-C-00-ORH., Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW., Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-I-00-ESC., Delta County, Escanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT., Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-I-00-GRR., Kent County International, Grand Rapids	09/09/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX., Houghton County Memorial, Hancock	04/29/1993	3	162,986	07/01/1993	01/01/1996
93-01-C-00-IWD., Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998
93-01-C-00-LAN., Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92-01-I-00-MQT., Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
94-02-U-00-MQT., Marquette County, Marquette	04/06/1994	3	0	04/01/1994	04/01/1996
94-01-C-00-MKG., Muskegon County, Muskegon	02/24/1994	3	5,013,088	05/01/1994	05/01/2019
92-01-C-00-PLN., Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,875	03/01/1993	06/01/1998
Minnesota:					
93-01-C-00-BRD., Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
94-01-C-00-DLH., Duluth International, Duluth	07/01/1994	3	562,248	10/01/1994	04/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
92–01–C–00–MSP., Minneapolis-St. Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
94–02–C–00–MSP., Minneapolis-St. Paul International, Minneapolis	05/13/1994	3	113,064,000	08/01/1994	06/01/1998
Mississippi:					
91–01–C–00–GTR., Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92–01–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	390,595	07/01/1992	12/01/1993
93–02–C–00–GPT., Gulfport-Biloxi Regional, Gulfport-Biloxi	11/02/1993	3	607,817	07/01/1992	12/01/1995
92–01–C–00–PIB., Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93–01–C–00–JAN., Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92–01–C–00–MEI., Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
93–02–C–00–MEI., Key Field, Meridian	10/19/1993	3	155,223	11/01/1992	08/01/1996
Missouri:					
93–01–C–00–SGF., Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92–01–C–00–STL., Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93–01–C–00–BIL., Billings-Logan International, Billings	01/26/1994	3	5,672,136	04/01/1994	05/31/2002
93–01–C–00–BZN., Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
94–01–C–00–BTM., Bert Mooney, Butte	04/17/1994	3	410,202	07/01/1994	05/01/2000
92–01–C–00–GTF., Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93–02–U–00–GTF., Great Falls International, Great Falls	05/25/1993	3	0	11/01/1992	07/01/2002
92–01–C–00–HLN., Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93–01–C–00–FCA., Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92–01–C–00–MSO., Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91–01–C–00–LAS., McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93–02–C–00–LAS., McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
94–03–U–00–LAS., McCarran International, Las Vegas	04/20/1994	0	0	07/01/1994	09/01/2014
93–01–C–00–RNO., Reno Cannon International, Reno	10/29/1993	3	34,263,607	01/01/1994	05/01/1999
New Hampshire:					
92–01–C–00–MHT., Manchester, Manchester	10/13/1992	3	5,461,000	01/01/1993	03/01/1997
New Jersey:					
92–01–C–00–EWR., Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93–01–I–00–ALB., Albany County, Albany	12/03/1993	3	40,726,364	03/01/1994	04/01/2005
93–01–C–00–BGM., Binghamton Regional/Edwin A Link Fie, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92–01–I–00–BUF., Greater Buffalo International, Buffalo	05/29/1992	3	189,873,000	08/01/1992	03/01/2026
92–01–I–00–ITH., Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92–01–C–00–JHW., Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92–01–C–00–JFK., John F Kennedy International, New York	07/23/1992	3	109,980,000	10/01/1992	08/01/1995
92–01–C–00–LGA., Laguardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93–01–C–00–PLB., Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
94–01–C–00–SLK., Adironack, Saranac Lake	05/18/1994	3	121,952	08/01/1994	01/01/2003
92–01–C–00–HPN., Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Carolina:					
93–01–C–00–ILM., New Hanover International, Wilmington	11/02/1993	3	1,505,000	02/01/1994	08/01/1997
North Dakota:					
92–01–C–00–GFK., Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
93–01–C–00–MOT., Minot International, Minot	12/15/1993	3	1,569,483	03/01/1994	03/01/1999
Ohio:					
92–01–C–00–CAK., Akron-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date[1]
92-01-CC-00-CLE., Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
94-02-U-00-CLE., Cleveland-Hopkins International, Cleveland	02/02/1994	3	0	05/01/1994	11/01/1995
92-01-I-00-CMH., Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93-02-I-00-CMH., Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93-03-U-00-CMH., Port Columbus International, Columbus	10/27/1993	3	0	10/01/1992	09/01/1996
94-02-C-00-DAY., James M Cox Dayton International, Dayton	07/25/1994	3	23,467,251	10/01/1994	10/01/2001
93-01-C-00-TOL., Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
94-01-C-00-YNG., Youngstown-Warren Regional, Youngstown	02/22/1994	3	351,180	05/01/1994	07/01/1996
Oklahoma:					
92-01-C-00-LAW., Lawton Municipal, Lawton	05/08/1992	3	482,135	08/01/1992	04/01/1996
92-01-I-00-TUL., Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995
93-02-U-00-TUL., Tulsa International, Tulsa	10/18/1993	3	0	02/01/1994	08/01/1995
Oregon:					
93-01-C-00-EUG., Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93-01-C-00-MFR., Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
93-01-C-00-OTH., North Bend Municipal, North Bend	11/24/1993	3	182,044	02/01/1994	01/01/1998
92-01-C-00-PDX., Portland International, Portland	04/08/1992	3	17,961,850	07/01/1992	07/01/1994
94-02-C-00-PDX., Portland International, Portland	07/12/1994	3	53,653,440	11/01/1994	09/01/1999
93-01-C-00-RDM., Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
Pennsylvania:					
92-01-I-00-ABE., Allentown-Bethlehem-Easton, Allentown	08/28/1992	3	3,778,111	11/01/1992	04/01/1995
92-01-C-00-AOO., Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92-01-C-00-ERI., Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93-01-C-00-JST., Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92-01-I-00-PHL., Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93-02-U-00-PHL., Philadelphia International, Philadelphia	05/14/1993	3	0	08/01/1993	07/01/1995
92-01-C-00-UNV., University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1997
93-01-C-00-AVP., Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
Rhode Island:					
93-01-C-00-PVD., Theodore F Green State, Providence	11/30/1994	3	103,885,286	02/01/1994	08/01/2013
South Carolina:					
93-01-C-00-CAE., Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2008
93-01-C-00-49J., Hilton Head, Hilton Head Island	11/19/1993	3	1,542,300	02/01/1994	03/01/1999
Tennessee:					
93-01-C-00-CHA., Lovell Field, Chattanooga	04/26/1994	3	7,177,253	07/01/1994	10/01/2002
93-01-C-00-TYS., Mc Ghee Tyson, Knoxville	10/06/1993	3	5,681,615	01/01/1994	01/01/1997
92-01-I-00-MEM., Memphis International, Memphis	05/28/1992	3	26,000,000	08/01/1992	12/01/1994
93-02-C-00-MEM., Memphis International, Memphis	01/14/1994	3	24,026,000	04/01/1994	10/01/1999
92-01-C-00-BNA., Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93-02-C-00-AUS., Robert Mueller Municipal, Austin	06/04/1993	3	6,181,800	11/01/1993	01/01/1995
94-01-C-00-BPT., Jefferson County, Beaumont/Port Arthur	06/03/1994	3	563,126	09/01/1994	11/01/1996
93-01-C-00-CRP., Corpus Christi International, Corpus Christi	12/29/1993	3	5,540,745	03/01/1994	01/01/1998
94-01-C-00-DFW., Dallas/Fort Worth International, Dallas/Fort Worth	02/17/1994	3	115,000,000	07/01/1994	02/01/1996
92-01-C-00-ILE., Killeen Municipal, Killeen	10/20/1992	3	243,339	01/01/1993	11/01/1994
93-01-I-00-LRD., Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93-01-C-00-LBB., Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
94-02-U-00-LBB., Lubbock International, Lubbock	02/15/1994	3	0	05/01/1994	02/01/2000
92-01-I-00-MAF., Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
94-02-U-00-MAF., Midland International, Midland	04/14/1994	3	0	07/01/1994	01/01/2013
93-01-C-00-SJT., Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
93-01-C-00-TYR., Tyler Pounds Field, Tyler	12/20/1993	3	819,733	03/01/1994	07/01/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State, application No., airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Virginia:					
92–01–I–00–CHO., Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92–02–U–00–CHO., Charlottesville-Albemarle, Charlottesville	12/21/1992	2	0	09/01/1992	11/01/1993
93–03–U–00–CHO., Charlottesville-Albemarle, Charlottesville	10/20/1993	2	0	01/01/1994	11/01/1993
94–01–C–00–RIC., Richmond International (Byrd Field), Richmond	02/04/1994	3	30,976,072	05/01/1994	08/01/2005
93–01–C–00–IAD., Washington Dulles International, Washington, DC	10/18/1993	3	199,752,390	01/01/1994	11/01/2003
93–01–C–00–DCA., Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
94–02–U–00–DCA., Washington National, Washington, DC	04/06/1994	3	0	07/01/1994	11/01/2000
Washington:					
93–01–C–00–BLI., Bellingham International, Bellingham	04/29/1993	3	366,000	07/01/1993	01/01/1995
93–01–C–00–PSC., Tri-Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93–01–C–00–CLM., William R Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
94–01–C–00–PUW., Pullman-Moscow Regional, Pullman	03/22/1994	1	169,288	06/01/1994	01/01/1998
92–01–C–00–SEA., Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93–02–C–00–SEA., Seattle-Tacoma International, Seattle	10/25/1993	3	47,500,500	01/01/1994	01/01/1996
93–01–C–00–GEG., Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93–01–I–00–ALW., Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93–01–C–00–EAT., Pangborn Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92–01–C–00–YKM., Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93–01–C–00–CRW., Yeager, Charleston	05/28/1993	3	3,254,126	08/01/1993	04/01/1998
93–01–C–00–CKB., Benedum, Clarksburg	12/29/1993	3	105,256	04/01/1994	04/01/1996
92–01–C–00–MGW., Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
94–01–C–00–ATW., Outagamie County, Appleton	04/25/1994	3	3,233,645	07/01/1994	09/01/2000
92–01–C–00–GRB., Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
94–01–C–00–LSE., La Crosse Municipal, La Crosse	04/06/1994	3	795,299	08/01/1994	08/01/1997
93–01–C–00–MSN., Dane County Regional-Truax Field, Madison	06/22/1993	3	6,746,000	09/01/1993	03/01/1998
93–01–I–00–CWA., Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93–01–C–00–RHI., Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93–01–C–00–CPR., Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93–01–C–00–CYS., Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93–01–I–00–GCC., Gillette-Campbell County, Gillette	06/28/1993	3	331,540	09/01/1993	09/01/1999
93–01–C–00–JAC., Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996
Guam:					
92–01–C–00–NGM., Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
93–02–C–00–NGM., Agana Nas, Agana	02/25/1994	3	258,408,107	05/01/1994	06/01/2021
Puerto Rico:					
92–01–C–00–BQN., Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–PSE., Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–01–C–00–SJU., Luis Munoz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
93–02–U–00–SJU., Luis Munoz Marin International, San Juan	12/14/1993	3	0	03/01/1994	02/01/1997
Virgin Islands:					
92–01–I–00–STT., Cyril E. King, Charlotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–STX., Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

[1] The estimated charge application date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 94–22016 Filed 9–6–94; 8:45 am]
BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Key West International Airport, Key West, FL, and Use the Revenue From a PFC at Key West International Airport, Key West, FL, and Marathon Airport, Marathon, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Key West International Airport and use the revenue from a PFC at Key West International Airport and Marathon Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before October 7, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 9677 Tradeport Drive, Suite 130, Orlando, Florida 32827–5397.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Peter Horton, Division Director of Community Services of Monroe County at the following address: Monroe County Public Service Building, 5100 College Road West, Key West, Florida 33040.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Monroe County under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Pegy Jones, Airport Plans and Programs Manager, 9677 Tradeport Drive, Orlando, Florida 32827–5397, (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Key West International Airport and use a PFC at the Key West International Airport and Marathon Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On August 29, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by Monroe County, Florida, was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than November 29, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: February 1, 1995.

Proposed charge expiration date: April 30, 1997.

Total estimated PFC revenue: $1,235,333.

Brief description of proposed project(s):

Project 1. Part 77 Clearance—Key West;

Project 2. Visual/Noise Buffer Project—Key West;

Project 3. Airport Fencing—Key West;

Project 4. Drainage Improvements—Key West;

Project 5. Boca Chica Joint Use Study;

Project 6. ARFF Facility Improvements—Marathon;

Project 7. Airport Fencing—Marathon;

Project 8. Salt Pond Mangrove Enhancement—Key West;

Project 9. Major Conditional Use Study—Key West;

Project 10. Airport Master Plans—Key West and Marathon Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Public agency has not requested to exclude a class of air carriers.

Any person may inspect the application in person at the FAA office listed above under "FOR FURTHER INFORMATION CONTACT."

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at Monroe County, Key West, Florida.

Issued in Orlando, Florida, on August 29, 1994.

Charles E. Blair,

Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 94–21983 Filed 9–6–94; 8:45 am]
BILLING CODE 4910–13–M

Federal Transit Administration

[Docket No. 94–B]

Third Party Contracting Guidelines Circular Revision

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Transit Administration (FTA) is revising Circular 4220.1B: Third Party Contracting Guidelines. Before the Circular is finalized, FTA seeks comments from interested parties on the draft changes. This notice announces the availability of the Circular for review.

DATES: Comments must be submitted on or before November 7, 1994.

ADDRESSES: All requests for the draft Circular should be addressed to Carolyn Thompson, Third Party Contract Review Division, Federal Transit Administration, 400 Seventh Street, SW., Room 7405, Washington, DC 20590. Comments on the Circular should be submitted to the FTA Docket Clerk, same address but room 9316.

FOR FURTHER INFORMATION CONTACT: Carolyn Thompson, Procurement Analyst, Third Party Contract Review Division, Federal Transit Administration, (202) 366–5470.

SUPPLEMENTARY INFORMATION: Current contracting guidance for FTA grantees is contained in FTA Circular 4220.1B, "Third Party Contracting Guidelines," dated May 5, 1988, revised February 5, 1990. FTA is revising the Circular to incorporate new provisions included in the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102–240, October 28, 1991) and to reflect a more current contracting policy. Most of the changes are relatively insignificant, and are shown in bold type on the draft Circular. The agency also particularly seeks comment on the following two matters.

Since issuing FTA C 4220.1B in 1988, the FTA has required submission of certain contracts for preaward review in areas where the agency perceived problems. FTA proposes to retain the requirements of Chapter III, FTA Preaward Review of Third Party Contracts, pertaining to single bids, other than low bid, and brand name. However, FTA requests public comment on whether these are still problem areas perceived as needing special oversight.

Similarily, FTA C 4220.1B, as extended into FTA C 4220.1C, does not apply to capital projects where no Federal funds are involved. However, because Federal operating assistance is provided based upon a percentage of the net deficit of all operating expenses incurred, FTA has applied the Circular to all operating contracts and proposes in the draft Circular to continue doing so. This has caused considerable concern and FTA is soliciting specific comments on this issue.

All comments received will be reviewed by FTA procurement staff and taken into consideration in refining the guidance included in the final revised Circular.

Parties interested in reviewing the draft may request a copy by writing to the Third Party Contract Review Division, at the address listed in ADDRESSES section of this document.

Comments should be sent to the FTA docket, at the address listed in the ADDRESSES section of this document.

Issued on: September 1, 1994.

Gordon J. Linton,

Administrator.

[FR Doc. 94–22015 Filed 9–6–94; 8:45 am]

BILLING CODE 4910–51–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Report on the Andean Trade Preference Act: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Trade Policy Staff Committee (TPSC) is seeking the views of interested parties on the operation of the Andean Trade Preference Act of 1990 (19 U.S.C. 3201(f)) ("the Act"). Section 203(f) of the Act requires the Administration to submit a report to the Congress on or before the third anniversary of the date of the enactment of the Act, December 4, 1994, regarding the operation of the Act. The TPSC invites written comments which provide views relevant to the issues to be examined in preparing such a report, including the considerations included in subsections 203 (c) and (d) of the Act (19 U.S.C. 3201 (b) and (c)).

DATES: Public comments are due at USTR on November 1, 1994.

ADDRESSES: Director for Andean Affairs, Latin America and Caribbean Section, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Karen Lezny, Director for Andean Affairs, Latin America and Caribbean Section, Office of the United States Trade Representative, (202) 395–5190.

SUPPLEMENTARY INFORMATION: Section 203(f) (19 U.S.C. 3201(f)) of the Andean Trade Preference Act states:

> On or before the 3rd, 6th, and 9th anniversaries of the date of enactment of this title, the President shall submit to the Congress a complete report regarding the operation of this title, including the results of a general review of beneficiary countries based on the consideration described in subsections (c) and (d). In reporting on the considerations described in subsection (d)(11), the President shall report any evidence that the crop eradication and crop substitution efforts of the beneficiary are directly related to the effects of this title.

All interested parties are invited to submit comments relevant to the program's operation, including the status of beneficiary countries—Bolivia, Colombia, Ecuador, and Peru—under the criteria set out in sections (c) and (d) of the Act (19 U.S.C. 3201 (c) and (d)). Interested parties may comment on any aspect of the program's operation. Issues to be examined include: the program's effect on the volume and composition of trade and investment between the United States and the region; its effect on the economic growth and development of the beneficiary countries; the extent to which narcotics eradication and related sustainable economic alternative development efforts in coca-growing areas have benefited from the program; and the degree to which the program has encouraged the trade and investment policies cited in the Act.

Written Notice

All written comments should be addressed to: Karen Lezny, Director for Andean Affairs, Latin America and Caribbean Section, Office of the U.S. Trade Representative, 600 17th Street, NW., Room 523, Washington, DC 20506.

All submissions must be in English and should conform to the information requirements of 15 CFR 2007.

A party must provide twelve copies of its statement which must be received at USTR no later than 5 p.m., November 1, 1994. If the comments contain business confidential information, ten copies of a non-confidential version must also be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "confidential" at the top and bottom of the cover page (or letter) and of each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential".

Written comments submitted in connection with these decisions, except for information granted "business confidential" status pursuant to 15 CFR 2007.7, will be available for public inspection shortly after the filing deadline. Inspection is by appointment only with the staff of the USTR Public Reading Room and can be arranged by calling (202) 395–6186. Other requests and questions should be directed to the Latin America and Caribbean section at USTR by calling (202) 395–5190.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 94–21922 Filed 9–6–94; 8:45 am]

BILLING CODE 3190–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 172
Wednesday, September 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EXPORT-IMPORT BANK OF THE UNITED STATES

Notice of an Open Special Meeting of the Board of Directors of the Export-Import Bank of the United States

TIME AND PLACE: Thursday, September 8, 1994, at 10:45 a.m. The meeting will be held at the Export-Import Bank in Room 1141, 811 Vermont Ave., N.W., Washington, D.C. 20571.

Agenda

1. Insurance Brokers.

PUBLIC PARTICIPATION: The meeting will be open to public observation. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Barbara Lane, Room 1112, 811 Vermont Ave., N.W., Washington, D.C. 20571, (202) 566–8982, not later than Wednesday, September 7, 1994. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to September 7, 1994, Barbara Lane, Room 1112, 811 Vermont Ave., N.W., Washington, D.C. 20571, Voice: (202) 566–8982 or TDD: (202) 535–3913.

FURTHER INFORMATION:

For further information, contact Barbara Lane, Room 1112, 811 Vermont Ave., N.W., Washington, D.C. 20571, (202) 566–8982.

Carol F. Lee,

General Counsel.

[FR Doc. 94–22127 Filed 9–2–94; 3:21 pm]

BILLING CODE 6690–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND PLACE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on September 16–17, 1994. The meeting will commence at 9:00 a.m. on both days.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, N.W., Sagamore Hill Room, Washington, D.C. 20001, (202) 628–2100.

STATUS OF MEETINGS: *Open*, except that portion of the meeting may be closed pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party, to include a status report on the matter of *Wilkinson v. LSC*. In addition, the Committee will consider for approval the minutes of the executive session(s) held on July 15, 1994. Finally the Committee will be briefed by the Executive Vice President regarding the status of current and future recruitment efforts.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Section 552b(c)(10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(h)].[2] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Approval of Minutes of July 15, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
   a. Consider and Act on Status Report on the Matter of *Wilkinson v. LSC*.
4. Briefing by the Executive Vice President Limited Solely to:
   a. A Status Report on Recruitment of a Communications Director and a Director of Government Relations; and
   b. Management's Plans for Other Recruitment Efforts.

OPEN SESSION: (Resumed)

5. Approval of Minutes of July 15, 1994 Meeting.
6. Consideration of Update on the Reauthorization Legislative Process.
7. Consider and Act on Proposed Changes to Part 1611 of the Corporation's Regulations.
8. Consider and Act on Staff Report on the Public Comments Received In Response to Proposed Changes to Part 1607 of the Corporation's Regulations.
9. Public Comment on Proposed Changes to Part 1607 of the Corporation's Regulations.
10. Consider and Act on Proposed Changes to Part 1607 of the Corporation's Regulations.
11. Discussion of Proposed Changes to Part 1604 of the Corporation's Regulations.
12. Discussion of Proposed Changes to Part 1609 of the Corporation's Regulations.
13. Discussion of Proposed Changes to Part 1610 of the Corporation's Regulations.
14. Consider and Act on Recommendation to the Board of Directors Regarding Proposed Changes to Part 1602 of the Corporation's Regulations Which Appeared at 58 FR 52918.
15. Public Comment.
16. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION:

Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: September 2, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–22077 Filed 9–2–94; 10:16 am]

BILLING CODE 7050–01–M

[1] A briefing is informational and does not constitute a "meeting" as defined in the Government in the Sunshine Act. Notice of this briefing, though not required, is given as a courtesy to the public.

[2] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of September 5, 12, 19, and 26, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of September 5—Tentative

Wednesday, September 7

2:00 p.m.
Briefing on Information Technology Strategic Plan (Public Meeting)
(Contact: Richard Hartfield, 301–415–5818)

Thursday, September 8

1:30 p.m.

Periodic Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting)
(Contact: John Larkins, 301–415–7360)
3:00 p.m.
Briefing on NRC High Level Radioactive Waste Performance Assessment Program (Public Meeting)
(Contact: Norman Eisenberg, 301–415–7285)
4:30 p.m.*
Affirmation/Discussion and Vote (Public Meeting)
*(Please Note: These items will be affirmed immediately following the conclusion of the preceding meeting.)
a. Final Rulemaking—New 10 CFR Part 76, "Certification of Gaseous Diffusion Plants" (Tentative)
(Contact: Chuck Nilsen, 301–415–6209)
b. Final Rule Amending Part 110 Concerning Exports of Alpha-Emitting Radionuclides, Tritium, and Transuranic Isotopes (Tentative)
(Contact: Elaine Hemby, 301–504–2341)

Friday, September 9

9:00 a.m.
Briefing on HLW Issues by NWTRB, State of Nevada, Local Governments and Native Americans (Public Meeting)
(Contact: Chip Cameron, 301–504–1642)
1:30 p.m.
Protocol for Study of Thyroid Disease in Belarus as a Result of the Chernobyl Accident (Public Meeting)
(Contact: Shlomo Yaniv, 301–415–6239)

Week of September 12—Tentative

There are no meetings scheduled for the Week of September 12.

Week of September 19—Tentative

There are no meetings scheduled for the Week of September 19.

Week of September 26—Tentative

There are no meetings scheduled for the Week of September 26.

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: September 2, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–22162 Filed 9–2–94; 3:22 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of September 5, 1994.

A closed meeting will be held on Wednesday, September 7, 1994, at 10 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, September 7, 1994, at 10 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary (202) 942–7070.

Dated: September 1, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–22104 Filed 9–2–94; 11:54 am]

BILLING CODE 8010–01–M

federal register

Wednesday
September 7, 1994

Part II

Department of Education

National Institute on Disability and Rehabilitation Research Grants; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1995–1996 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes funding priorities for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1995–1996. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before October 7, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 3424, Washington, D.C. 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains two proposed priorities under the D&U program. The priorities are in the areas of disability research dissemination and accessible data.

Authority for the D&U program of NIDRR is contained in sections 202 and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private agencies and organizations, including institutions of higher education and Indian tribes or tribal organizations.

These proposed priorities support the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish research priorities by reserving funds to support particular research activities.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this program only applications that meet these absolute priorities:

Proposed Priority 1: Center for the Dissemination of Disability Research

Section 200(4)(A) of Rehabilitation Act of 1973, as amended requires that NIDRR "ensure the widespread distribution, in usable formats, of practical scientific and technological information generated by research, demonstration projects, training, and related activities." This priority calls for a center that can assist NIDRR grantees to better disseminate the results of their research, including increasing the accessibility of research information to those who need alternate formats.

Researchers usually report research findings through professional meetings and publications. In order to expand dissemination of research findings to other audiences, including rehabilitation professionals, individuals with disabilities, and other interested parties, researchers may need technical assistance and training. Research is needed to understand the reasons why persons are not utilizing information from NIDRR-sponsored research (e.g., unfamiliarity with terminology, inability to utilize the medium, or the lack of availability of the traditional research publications).

A body of literature currently exists concerning best practices for information dissemination (see Backer, "Knowledge: Creation, Diffusion, Utilization," Vol. 12, Number 3, March 1991, Sage Publications). Through a model project, this Center will evaluate the effectiveness of these recommended practices and assist researchers to develop strategies they can use to determine the best formats and methods to disseminate their research findings to all appropriate audiences.

The proposed center shall support all of the costs associated with the pilot project described below.

Proposed Priority

A D&U center for the dissemination of disability research shall—

- Identify the format, availability, accessibility (including electronic accessibility), and obstacles to utilization of disability research faced by a wide range of potential target audiences, including, but not limited to, persons with disabilities and their families, advocacy organizations, researchers, policymakers at the local, State and Federal level, journalists, and disability-related service providers;
- Identify unique issues of disability research information dissemination that apply to persons from minority backgrounds and develop strategies to address those issues;
- Identify and develop dissemination strategies that disability researchers can use to identify all appropriate target audiences, understand the audiences' interests and needs, and disseminate the appropriate information to all target audiences using each audience's preferred information medium;
- Identify, develop, and distribute to all NIDRR grantees, technical assistance materials that address format, availability, accessibility, and dissemination strategies in order to assist the grantees to disseminate their research findings as effectively as possible to all appropriate audiences;
- Respond to technical questions and requests for technical assistance on dissemination from all NIDRR grantees and provide training to the project directors at their annual meeting;
- Develop (within six months after the award), implement (beginning within 12 months after the award), and evaluate (beginning 24 months after the award) a pilot dissemination project that solicits nominations of research results from NIDRR's Rehabilitation Research and Training Center Program grantees, Rehabilitation Engineering Research Center Program grantees, Field-initiated Research Program grantees, and Research and Demonstration Program grantees, selects a wide range of those research products (at least one set of products from each of the programs listed above), and disseminates those findings to all appropriate target audiences using a wide range of formats and media in order to ensure maximum availability, accessibility, and utility; and
- Provide all of NIDRR's grantees with a quarterly newsletter providing

them with technical assistance on research information dissemination.

Proposed Priority 2: Improving Access to Disability Data Background

Demographic data and statistical information on disability are extremely valuable in assisting the nation in understanding the scope of disability issues in America, developing disability policy, and planning, conducting, and evaluating services for individuals with disabilities. Legislators, policymakers, service providers, and advocates—as well as manufacturers and retailers—require information on the incidence and prevalence of disability conditions, the distribution of disability conditions among the population, and the characteristics of individuals with disabilities. This information is needed in order to develop policy, and plan, administer, and evaluate programs, including health care programs; assess market demand for goods and services; estimate demand for and the costs of public services; and evaluate the effectiveness of society's efforts to promote disability prevention, rehabilitation, community integration and inclusion, and protect the civil rights of individuals with disabilities.

Data on disability are collected and produced by many groups. The variety of statutory authorities for the collection of public data sets, the absence of any mandate or resources for comprehensive demographic studies of disability, and a consistently applied definition of disability have resulted in fragmented, incomplete, and inconsistent data sets about individuals with disability. One byproduct of this situation has been the focus on explorations and reconciliations to make these data more useful for further research.

Yet legislators and program administrators, advocates and journalists continue to use "data"—numbers, estimates, projections, and "best guesses"—as the basis for policy decisions and assessments. It is important that the estimates used be accurate and that their users understand the implications of the data. Underestimates of certain conditions or populations may result in failure to plan and provide resources for adequate services; overestimation makes it impossible to assess the real effectiveness of laws or programs and may discourage efforts to address certain problems for fear of overwhelming costs.

There is a need for presentation of data in meaningful, understandable, and accessible formats usable by persons with a range of educational levels and technical skills, sensory disabilities, languages, and cognitive abilities. There is also a need to make disability data available to the broad range of target audiences referred to above.

NIDRR has attempted to address many of the problems of unsatisfactory databases and the need to increase understanding of the demography of disability by supporting research projects and centers that primarily compile and analyze data and train researchers and statisticians. This scholarly effort has not addressed sufficiently the widescale dissemination of data that is presented in useful, meaningful, and accessible formats for a variety of audiences not experienced in the nuances of data interpretation. Further, NIDRR's data research program has, almost of necessity, been focused on data that relate to health conditions and health care needs.

NIDRR also has identified a need to improve the ability of individuals with disabilities and the parents, persons from minority backgrounds with disabilities, family members, guardians, advocates, or authorized representatives of the individuals to access information. In addition, many persons with disabilities need comprehension aids that will allow them to understand and utilize the information they access.

The proposed project on access to disability data will focus on the synthesis, interpretation, presentation, and dissemination of statistical information on disability to a wide target audience. It will provide training in the interpretation and use of disability data to individuals with disabilities and their organizations, and will involve individuals with disabilities in the identification of information needs and channels of access, evaluation of the materials prepared in the project, and dissemination of products.

Proposed Priority

A D&U project on improving access to disability data shall—

- Assess the needs of a range of target audiences for specific types of disability data and the availability of such data;
- Identify the most effective channels and formats for conveying information to various target populations, including individuals with various types of disabilities, those associated with special communication needs, and individuals who are members of minority or traditionally underserved groups;
- Identify and define the nature of the access problems to disability data faced by various segments of the target population;
- Identify, collect, summarize, repackage, and disseminate selected disability statistics (proposed by the applicant) in a number of formats and through a number of media that will most effectively reach various segments of the target population, and evaluate the effectiveness of the selected mechanisms;
- Develop innovative and attractive informational products in a variety of accessible formats; develop guidelines for the dissemination of these materials, and provide training to relevant target populations in the use and dissemination of the materials;
- Develop, test, and market innovative uses of information technologies, including on-line data services, 800 numbers, and a system for reimbursable data services, as appropriate;
- Assess the need for and, if necessary, develop informational materials to facilitate the use of disability data derived from State and local entities by legislators, policy makers, service providers, advocates, manufacturers and retailers;
- Coordinate with other OSERS-supported and other Federal agency data dissemination activities to avoid duplication of effort; and
- Maintain all print materials created in full 3 1/2" disk format in Word Perfect 5.2 for IBM, Microsoft Word 5 for Macintosh, and ASCII format for easier translation into Braille and for read back using a screen reader, and maintain a library and on-line database of all products.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in Room 3423, Switzer Building, 330 C Street, S.W., Washington, D.C. between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR Parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133D, Knowledge Dissemination and Utilization Program)

Dated: August 31, 1994.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–21915 Filed 9–6–94; 8:45 am]

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federal register

Wednesday
September 7, 1994

Part III

Securities and Exchange Commission

17 CFR Parts 228, 229, 230 and 249
Disclosure of Security Ratings; Proposed Rule and Nationally Recognized Statistical Rating Organizations; Notice

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, 230 and 249

[Release Nos. 33–7086; 34–34617; IC–20509; File No. S7–24–94]

RIN 3235–AG20

Disclosure of Security Ratings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission ("Commission") today is publishing for comment proposals to require disclosure with respect to security ratings in prospectuses under the Securities Act of 1933 and material changes in security ratings on Form 8–K under the Securities Exchange Act of 1934. The proposals specify the disclosure necessary with respect to ratings, whether disclosed voluntarily or pursuant to the new requirements. Today's proposals are intended to improve the quality and timeliness of security ratings disclosures provided to investors and the financial markets in prospectuses and periodic reports, and to reduce the potential for market misunderstanding and confusion over the scope and meaning of security ratings.

DATES: Comments should be received on or before December 6, 1994.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comment letters should refer to File No. S7–24–94. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Brian P. Miller, or Michael H. Mitchell, at (202) 942–2900, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. For issues relating to investment companies, contact Kenneth J. Berman, at (202) 942–0721, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is publishing for comment proposed Item 202(g) of Regulation S–K [1] and proposed Item 202(d) of Regulation S–B [2] under the Securities Act of 1933 ("Securities Act") [3] and the Securities Exchange Act of 1934 ("Exchange Act") [4] to require disclosure of solicited security ratings assigned by nationally recognized statistical rating organizations ("NRSROs") to registered securities or any rating, whether or not assigned by an NRSRO, that is used by a participant in the offering, and to mandate the disclosure necessary in connection with any discussion of ratings, voluntary or required, in prospectuses. The Commission also is publishing for comment new Item 9 of Form 8–K [5] under the Exchange Act to require disclosure of material rating changes. The Commission is proposing to rescind its policy on voluntary security ratings disclosure set forth in Section 10 of Regulations S–K and S–B, [6] and is proposing technical amendments to Rules 134(a)(14), [7] 430A, [8] and 436(g) [9] under the Securities Act.

I. Background

A. Disclosure of Security Ratings—Current Policy

In 1981, the Commission, recognizing the importance of security ratings to investors and to the marketplace, reversed its historic policy of precluding disclosure of security ratings in registration statements, prospectuses, and other offering documents.[10] The Commission adopted a policy that permits, but that does not require, issuers to disclose in Commission filings security ratings assigned by rating organizations to classes of debt securities, convertible debt securities, and preferred stock.

The policy distinguishes between security ratings assigned by NRSROs and those assigned by other rating organizations.[11] The most significant distinction is the provision allowing the inclusion of a security rating by an NRSRO in a registration statement without having to provide a written consent from the NRSRO to be named as an expert for purposes of Section 11 of the Securities Act.[12] Any non-NRSRO rating organization must furnish a consent and take on expert liability under the Securities Act if its rating is included in the registration statement and prospectus.[13] In addition, under the policy, issuers may disclose a rating in tombstone advertisements on a limited basis, provided that the rating is assigned by an NRSRO.[14] As part of the same initiative, the Commission incorporated eligibility criteria based on ratings by NRSROs into its short form registration forms under the Securities Act.[15] In doing so, the Commission noted that investment grade securities typically were purchased on the basis of interest rates and ratings.[16]

Underlying the Commission's change in policy and the disclosure guidance it provided in its policy statement was an understanding of rating practices and disclosures as they had developed through the 1970s. In announcing the policy, the Commission noted the significance and usefulness of security ratings, as shown by the use of ratings "by investors, by market professionals in establishing the appropriate price and yield for a particular security and by regulatory bodies, including the Commission." [17]

The security ratings encompassed by the Commission's policy were understood generally to be credit

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[1] 17 CFR 229.202(g).

[2] 17 CFR 228.202(d).

[3] 15 USC 77a–77aa.

[4] 15 USC 78a–78jj.

[5] 17 CFR 249.308.

[6] 17 CFR 229.10(c) and 228.10(c).

[7] 17 CFR 230.134(a)(14).

[8] 17 CFR 230.430A.

[9] 17 CFR 230.436(g).

[10] Securities Act Release No. 6336 (Aug. 6, 1981). While adopting the policy in 1981, the Commission set forth its views on ratings disclosure in Regulation S–K, Item 10(c), 17 CFR 229.10(c), in connection with adoption of its integrated disclosure system in 1982. Securities Act Release No. 6383 (Mar. 16, 1982).

[11] For purposes of the policy, the term "NRSRO" has the same meaning as used in the Commission's net capital rule, Rule 15c3–1. 17 CFR 240.15c3–1. In so doing, the Commission noted that the purposes underlying the voluntary ratings disclosure policy differ from those underlying the net capital rule, but did not believe that a different meaning of NRSRO was necessary. The process by which rating organizations are recognized as NRSROs is discussed in the companion ratings concept release issued by the Commission today which solicits comment on the Commission's role in using the ratings of NRSROs (Exchange Act Rel. 34616 (Aug. 31, 1994)).

[12] 15 USC 77k. *See also* 17 CFR 230.436(g).

[13] *See Robert A. Stanger & Co.*, SEC No-Action Letter (Nov. 7, 1986); *See also* Securities Act Release No. 6383, in which the Commission adopted the integrated disclosure system; 17 CFR 436(g).

[14] *See* Rule 134(a)(14)(ii) under the Securities Act. 17 CFR 230.134(a)(14)(ii).

[15] *See* Securities Act Release No. 6383; Forms S–3 (17 CFR 239.13) and F–3 (17 CFR 239.33).

[16] *See* Securities Act Release No. 6383.

[17] Securities Act Release No. 6336. Even before the Commission adopted its 1981 ratings disclosure policy, the Commission relied on or permitted disclosure of ratings in other contexts. The first regulatory use of ratings was in the Commission's net capital rule, which allows broker/dealers reduced deductions from net capital for certain holdings rated in certain investment grade categories. 17 CFR 240.15c3–1. In addition, the Commission used ratings in certain of its rules under the Investment Company Act of 1940 ("Investment Company Act") and permitted disclosure of certain ratings in investment companies' registration statements. *See, e.g.*, Rule 10f–3 under the Investment Company Act. 17 CFR 270.10f–3. The policy release also noted the extent to which state legal investment laws for banks, savings and loans, and insurance companies incorporated security ratings.

ratings. In the release announcing the policy, the Commission noted that the typical security rating at the time was "an alphabetical designation which attempts to quantify the likelihood that an issuer will be able to comply with the terms of a particular obligation," [18] and cited one rating organization's designation as a "current assessment of the creditworthiness of an obligor with respect to a specific debt obligation." [19] The release went on to state that a debt rating was "an evaluation of the likelihood that an issuer will be able to make timely interest payments and will be able to repay principal," and a preferred stock rating was an "assess[ment] of the relative security of dividend payments." [20]

In adopting a policy of voluntary ratings disclosure, the Commission noted that the state of affairs at the time did not show a "pressing need" for mandatory disclosure. [21] Underlying the Commission's action was an understanding that the market viewed debt securities and preferred stock with the same rating designation and comparable payment terms as fungible.

The importance of security ratings continues today. Ratings influence a company's cost of capital. Investment bankers and issuers often solicit the rating organizations' views when developing new financial instruments or structuring financing transactions. Investors typically use ratings for various reasons such as establishing internal investment guidelines and considering alternative investments. Because of changes in the securities market the Commission has determined to reconsider its policy of voluntary ratings disclosure.

B. Growth of Customized, Structured, and Derivative Securities

Since adoption of the Commission's policy on security ratings, there has been a dramatic proliferation in the types of securities offered in the marketplace, with the development of a vast market for mortgage and asset backed securities and other highly structured or derivative financial instruments. The rights and obligations evidenced by these financial instruments typically differ significantly from the traditional fixed obligations, evidenced by corporate debt and preferred stock, to pay sums certain in the form of interest and principal or dividends at set intervals. Moreover, in addition to the change in the types of securities being rated, the scope and meaning of ratings themselves have become more variable. Disclosure concerning ratings, however, has remained largely static.

1. Evolution of Financial Instruments

Unlike the traditional debt and preferred stock instruments upon which the 1981 policy was based, today many securities with the same rating are not viewed by the market as generic and fungible. An investor's investment return and the issuer's payment obligations evidenced by these instruments often are contingent on, and highly sensitive to, changes in the values of underlying assets, indices, interest rates and cash flows. Risks relating to fluctuations in interest rates and other economic and market factors may be as important to an instrument's investment return as the issuer's creditworthiness. Because of these non-credit payment risks, there is substantially greater uncertainty relating to yield and total return than for traditional debt obligations of comparable credit rating. Moreover, the terms of these financial instruments are highly complex and frequently are individually tailored to specific investor demands. In short, today's instruments run along a spectrum from a fixed obligation to pay sums certain to a highly contingent residual interest in variable future cash flows.

For example, structured notes offer an infinite variety of payment obligations and present substantial cash flow, market, and liquidity risks in addition to credit risk.[22] To illustrate, a structured note may promise a specified interest payment monthly for two years, but principal payable at maturity may be determined by reference to the number of days an interest index exceeds a benchmark rate, subject to a cap. If the index never exceeds the benchmark rate during the measurement period, by the instrument's terms, the investor receives the minimum principal amount (which often is less than face or stated value). Such note could be assigned a "triple-a" rating under a credit analysis if issued by a highly-capitalized, financially sound company. The credit rating would address the likelihood that the issuer will be able to pay any principal due, not the likelihood that the investor will receive any principal payment.

Likewise, from the relatively simple mortgage-backed obligations (single-class securities representing equal, undivided interests in a pool of mortgages) that were developed in the 1970s, mortgage-backed and asset-backed pooled securities have evolved through financial engineering into highly customized instruments with unlimited potential variations. While credit risk remains important to investors in mortgage-backed securities, additional investment considerations are introduced by uncertain principal prepayment speeds associated with the underlying interest rate sensitive assets.

Simple mortgage-backed securities may include multiple senior-subordinated class structures, with the subordinated classes bearing a disproportionate share of the credit risk, but all classes sharing prepayment risk equally. With more complex, customized collateralized mortgage obligations ("CMOs"), the cash flows (i.e., the stream of payments on the underlying mortgage loans) are "carved up" into a multi-class bond structure so that the prepayment risk is disproportionately allocated to certain classes. Each class receives interest and/or principal payments based on the priorities in the payment structure. For example, a "planned amortization class" ("PAC") is designed to produce more stable cash flows by redirecting prepayments on the underlying pooled assets to other classes called "companion classes," which act as "shock absorbers" for the PAC with respect to prepayments. Both the PAC and the companion classes could be senior securities, and rank "pari passu" with respect to credit defaults on the underlying loans and both could be rated "triple a," notwithstanding the disproportionate share of prepayment risk borne by the companion classes, a risk not addressed by a traditional credit rating.

"Residual" securities, typically representing a beneficial interest in whatever cash flows remain in the pool of financial assets after obligations to pay all other outstanding classes have been satisfied, have been rated. In a number of cases, because of the highly speculative nature of these cash flows, the residual has incorporated a fixed promise to pay a nominal amount, e.g., $10,000 principal in the early months of the security's existence, to the residual holder. The amount of the fixed nominal obligation may have no relationship to the amount paid for the

[18] Securities Act Release No. 6336.
[19] *Id.*
[20] *Id.*
[21] *Id.*

[22] "Structured notes are debt securities whose cash flow characteristics (coupon, redemption amount, or stated maturity) depend upon one or more indices or that have imbedded forwards or options. Such imbedded forwards and options in the structure of the notes allow underwriters to create an unlimited number of risk/reward profiles and to customize risk characteristics to fit an investor's desired risk exposure." Comptroller of the Currency, Administrator of National Banks, OCC Advisory Letter 94–2, *Purchases of Structured Notes* 1 (July 21, 1994).

residual, nor to the anticipated residual cash flow. The credit rating for the residual represents only an evaluation of the likelihood that the holder will receive the promised nominal amount. Thus, a residual could be rated "triple-a" even if there are other securities in the offering that are not.

2. Non-Credit Payment Evaluations

In response to developments of derivative and structured securities that have significant non-credit risks, rating organizations are developing analytical models to evaluate the non-credit risks of these instruments. For example, one rating organization has developed a "volatility" rating ("V-Rating"), scaled V1–V5, intended to provide an indication of the volatility (or, conversely, predictability) of a security in total return, price, and cash flow over a range or various interest rate scenarios.[23] The volatility of "current coupon agency certificates"[24] is used as a benchmark. Classes assigned ratings of V1, V2, and V3 demonstrate volatility less than or equal to current coupon agency certificates over the range of interest rate scenarios. Classes assigned ratings of V4 and V5 demonstrate greater volatility over the range of interest rate scenarios than do current coupon agency certificates.[25]

Another rating organization has adopted the practice of attaching a symbol—the letter "r"—to its traditional credit rating for certain derivative securities to alert investors that the instruments may experience high volatility or dramatic fluctuations in their expected returns because of market risk.[26] The principal function of the "r" symbol is to serve as an investor alert. It does not provide a measure or quantification of the non-credit payment risk (although the rating organization continues in its efforts to develop market-risk measures which might quantify non-credit payment risk).[27] The rating organization notes, however, that "[t]he absence of an "r" symbol should not be taken as an indication that an obligation will exhibit no volatility or variability in total return."[28]

A new rating permutation has evolved in response to the creation of cash flow securities, also known as "kitchen-sink" bonds.[29] A cash flow security represents an interest in a pool of several classes of previously issued unrelated mortgage backed securities, which typically are highly sensitive to principal prepayment speed and have volatile yields. Because each underlying security may have been issued at different times, be backed by different pools of mortgage loans, have different allocations of principal and interest among the various classes, and perform differently in various interest rate and prepayment rate environments, the performance of the cash flow security will reflect a combination of the performance characteristics of the various underlying securities. In registered cash flow bond offerings seen to date, where the aggregate stated principal amounts of the underlying pooled securities was less than the stated principal balance of the cash flow securities, the cash flow securities would not qualify for a "triple a" credit rating with respect to principal repayment.

Two rating organizations separately have developed and applied a methodology to analyze the likelihood of receipt of a specified amount of cash flow (combined interest and principal payments on the underlying assets) from the pooled securities, without regard to whether such payment amount constitutes interest or principal repayment.[30] Assessing the likelihood of receipt of this cash flow combines both a credit rating and non-credit payment evaluation of prepayments on the underlying pooled securities. Applying prepayment analysis to determine the likelihood of receipt of aggregate cash flows represents a significant development in rating techniques.

The cash flow ratings do not address the likelihood of receipt of the original principal amount of the cash flow security or the receipt of any specified amount of interest; the rating assesses the likelihood of receiving a specified dollar amount of cash over the life of the security. Because the cash flow rating does not address the marketed or expected promises, a cash flow rating may be viewed as a limited scope rating in that it does not rate the likelihood of payment in accordance with the instrument's actual or expected terms.

Initially, cash flow ratings were assigned the same rating designations as assigned for traditional credit ratings. One rating organization has appended, and the other has expressed a willingness to append, a suffix to rating designations for cash flow securities.

3. Security Ratings Disclosure Practices

Notwithstanding these developments, little has changed with respect to most ratings disclosures and regulatory policies using such ratings. Today, a traditional corporate debt instrument with fixed principal and interest obligations, a structured note whose principal or interest is tied, for example to an index of securities, an "interest-only" strip ("IO"), a collateralized mortgage obligation ("CMO") security, a residual interest in a CMO offering, and a cash flow (or "kitchen-sink") bond all can be designated "triple-a," notwithstanding that investment returns on most of these instruments are largely dependent on factors in addition to the issuer's creditworthiness and that the scope of the rating differs among the securities. Moreover, despite the differences among these securities, issuers, financial intermediaries, and investors have availed themselves of the regulatory accommodations provided for securities rated investment grade by NRSROs.[31]

II. Proposals

A. General

The growth of customized asset-backed, derivative, and structured securities that have significant non-credit payment risks, as well as the development of "limited scope" ratings,[32] have caused the Commission to reconsider its voluntary ratings disclosure policy. When these complex, customized securities first developed, they were purchased by a relatively small number of large, highly sophisticated institutional investors. Recent evidence suggests that these

[23] V-Ratings analyze the potential impact of interest rate movements on individual tranches but do not rate the probability of specific interest rate scenarios. Fitch Investors Service, *CMO Volatility Ratings* (Special Report) (Feb. 6, 1992).

[24] This term refers to current rates on new Federal National Mortgage Association ("FNMA"), Federal Home Loan Mortgage Corporation ("FHLMC"), and Government National Mortgage Association ("GNMA") mortgage participation certificates. *Id.*

[25] *Id.*

[26] *"r" Added To Volatile Derivative/Hybrid Ratings*, Creditweek (Standard & Poor's Corp.), July 11, 1994.

[27] *Id.*

[28] *Id.*

[29] Laura Jereski, *Kitchen-Sink Bonds May Offer Everything But Stability*, Wall St. J., Nov. 18, 1993, at C1, C17.

[30] *See, e.g.*, Duff & Phelps Credit Rating Co., *Rating Prepayment-Sensitive Cash Flow Securities* (Special Report) (Aug. 1993).

[31] In a companion concept release issued today, the Commission is soliciting comment on the Commission's regulatory use of the ratings assigned by NRSROs. The release solicits a wide range of comments both as to the specific regulatory uses of NRSRO ratings, as well as the Commission's process for designating and monitoring NRSROs. See Exchange Act Release No. 34616.

The proposals contained in this release are aimed at improving the quality and timeliness of disclosure of ratings in Commission filings under the current regulatory approach to ratings and rating organizations.

[32] For purposes of this release, a "limited scope" rating means a rating that assesses less than the promised (or expected, if different from the promised) return on the security.

securities are increasingly being offered and sold to a larger investor base, either directly or through mutual funds and pension plans.[33]

Current rating designations and the variation in meaning and scope of the ratings represented, together with the widely disparate payment obligations of the securities rated, have a substantial potential to confuse, and in some cases mislead, investors. This problem is exacerbated in secondary market transactions where no disclosure document may be delivered and ratings are described simply by shorthand reference to the rating letter designation. Even where there is a delivered disclosure document, it is often difficult to understand clearly the scope of the rating. Likewise, many market participants have assumed that the same regulatory treatment should apply to similarly rated securities, notwithstanding significant differences in the nature of the payment obligations, the significant non-credit payment risk exposure for many of today's securities, and the limited scope of some security ratings. Given the extensive use of, and reliance on, ratings, and the wide disparity in the meaning and significance of the rating, the Commission today is proposing a mandatory ratings disclosure scheme.

B. Mandated Disclosures

Today's proposals would replace the current voluntary ratings disclosure policy with a system requiring disclosure in a final prospectus of a rating given by an NRSRO whenever a rating with respect to the securities being offered is obtained by or on behalf of an issuer. Material changes in ratings would be required to be reported on Form 8–K under the Exchange Act. The new disclosure requirements are intended to enhance security rating disclosures so that investors clearly understand what terms of a security are being rated and the limitations, if any, on the rating, and are advised on a current basis of material rating changes. In particular, the proposed disclosure would highlight whether the assigned rating covers timely payment of all obligations or whether it is limited in its scope, and whether there are significant non-credit payment risks not addressed by the rating.

1. Mandated Prospectus Disclosure

Under the proposal, when a security rating is obtained by or on behalf of an issuer from an NRSRO (a "solicited rating"), the issuer would be required to disclose in the final prospectus[34] the rating assigned and a discussion of the scope of the rating.[35] The issuer would be required to keep the prospectus disclosure of ratings current so long as the offering continued.[36] The mandated disclosure also would apply when any rating (whether or not assigned by an NRSRO) is used in connection with the offer or sale of a security by any participant in the offering.[37] Commenters are requested to address the proposed treatment of ratings used by any participant in the offering, particularly in view of the need to provide a consent of the rating organization if it is not an NRSRO.

As proposed, the rule would require disclosure of "obtained" NRSRO ratings, whether or not the issuer (or a participant in the offering) chooses to use the rating in the selling effort. Commenters should address whether this requirement could lead to attempts to thwart the mandated disclosure merely by non-substantive or procedural modification to the practice of assigning ratings so that, for example, an issuer would not view a security rating as "obtained by or on behalf of the issuer" unless agreed to by the issuer. Of course, such attempts would raise substantial antifraud issues. If this outcome is possible, should the disclosure obligation be keyed off another event such as when an NRSRO provides the issuer with a "preliminary" indication of what the rating would be? Should the rule mandate disclosure only when the NRSRO rating is used in the offering? Would this result in use and therefore disclosure of favorable ratings, and non-use and non-disclosure of unfavorable ratings? Where no NRSRO rating is provided in the prospectus, should the rule require disclosure that the securities have not been rated by an NRSRO, a discussion of whether there were any contacts with an NRSRO about rating the securities, and a summary description of the contacts which would include any actions taken by the NRSRO, and any views expressed by the NRSRO? Commenters also should address the extent to which practices to avoid disclosure of unfavorable ratings are likely to occur.

For purposes of the proposed rules, a "security rating" is defined as a credit assessment of an issuer's ability to make payments of principal, interest, dividends (as applicable), or other payments on the instrument being rated.[38] The proposed rules also would require disclosure of any designation assigned in connection with a rating organization's evaluation of the security's non-credit payment risks. For example, the evaluations covered by such designation would include an organization's analysis of prepayment speeds, effects of interest rates or other market based factors, event risk provisions, or volatility assessments done in connection with or in addition to a solicited rating.[39] Comment is requested whether all these evaluations should be required to be disclosed and whether any or all these evaluations should be required to be disclosed even if issued in the absence of a solicited security rating.[40]

The proposed rules do not mandate, but would continue to permit, disclosure of ratings by rating organizations that are not designated NRSROs. However, the mandated disclosure proposals would extend to ratings assigned by non-NRSROs that are used voluntarily in the prospectus. Comment is requested, however, as to whether disclosure should be required when a non-NRSRO rating is used to market the securities. Historically, the consent requirement has, for the most part, foreclosed disclosure of such ratings. Disclosure of such ratings in the prospectus would continue to require the rating organization to consent to be named in the registration statement as

[33] *See supra* note 26.

[34] As used in this release, final prospectus refers to a prospectus complying with Section 10(a) under the Securities Act. 15 USC 77j.

[35] When a final rating is not assigned until after effectiveness of a registration statement, a preliminary prospectus should disclose the preliminary rating (if any) assigned by the rating organization in accordance with the disclosure requirements described below. If a disclosed rating is materially changed or if a materially different rating becomes available before effectiveness, the issuer should file a pre-effective amendment and should consider recirculating the preliminary prospectus. The issuer would update the final prospectus to reflect the final rating assigned and all related disclosure. Under the proposals, the final rating is considered "pricing information" that may be included in a final prospectus under Rule 430A of Regulation C. 17 CFR 230.430A.

In connection with delayed shelf offerings, the final rating would be disclosed in a prospectus supplement. If a consent is required, it would be filed as part of a post-effective amendment or, for companies eligible to use a short-form registration statement, a Form 8–K.

[36] Changes in the rating information during the offering period would be disclosed in a prospectus supplement filed with the Commission pursuant to Rule 424(b). 17 CFR 230.424.

[37] Participant refers to the issuer, any selling securityholder, any underwriter and any member of the selling group.

[38] It should be noted that the definition of security rating only applies in the context of determining whether a disclosure obligation exists. This release should not be taken to imply that all security ratings would qualify as "ratings" for all regulatory purposes under the Commission's other rules.

[39] *See supra* section I.B.2., "Noncredit Payment Evaluations."

[40] Neither "security rating" nor "evaluation" is intended to include rankings of interests in direct participation programs.

an expert, and thereby assume potential Section 11 liability under the Securities Act.[41]

The Commission solicits comment on the continued appropriateness of its policy of exempting NRSROs from providing consents, while other rating organizations are required to provide consents for their ratings to be disclosed in prospectuses and registration statements. Would the proposed disclosure requirements cause issuers to forgo ratings or seek ratings from non-NRSROs? Should the Commission expand the consent exemption to all ratings organizations? Would this result in ratings being issued by unqualified parties and the potential for investors to be misled? If the exemption were extended to all rating organizations, should the proposed rule mandate disclosure with respect to all ratings obtained by or on behalf of a registrant, whether or not issued by an NRSRO?

On the other hand, should the exemption be rescinded for NRSROs? If the exemption were rescinded, and rating disclosure were mandated, what would be the effect on the practice of rating securities? Would issuers forgo obtaining ratings? Should the exemption be rescinded even if the Commission were to determine to continue its voluntary disclosure policy? Would this cause issuers to eliminate ratings disclosure in prospectuses and registration statements? If so, would ratings disclosure be eliminated entirely for registered public offerings or disseminated outside the prospectus and registration statement?

As proposed, the rules would not require disclosure of unsolicited ratings—ratings issued by a rating organization on securities on its own initiative, not at the request of the company and not used by any participant in the offering. Where the company does not have any involvement with the rating, and does not use or permit the use of a rating in an offering, it would appear unwarranted for it to have to assume disclosure responsibility and liability for such ratings. On the other hand, the ability to disclose a favorable solicited rating and not disclose a lower unsolicited rating arguably could encourage rating shopping and could allow companies to avoid disclosure that there are disagreements about the creditworthiness of a particular security. Should issuers be required to disclose unsolicited ratings by NRSROs if materially different from that disclosed? If so, to what extent should issuers be responsible for ascertaining whether an unsolicited rating has been issued? If such unsolicited ratings are required to be disclosed, should the mandated disclosure be limited to the rating assigned and name of the issuing rating organization? Would mandated disclosure of unsolicited ratings in effect compel issuers to obtain ratings from all NRSROs to protect against having to disclose unsolicited ratings that may be based on incomplete information?

The Commission also solicits comment on the need to require disclosure in the prospectus on the method of compensating the rating organization. Likewise, comment is requested as to whether the extent of the rating organization involvement in the structuring of the security should be disclosed.

Closed-end investment companies ("closed-end funds") often issue senior securities that are rated by one or more NRSROs. As with non-investment companies, closed-end funds are not required to disclose these ratings in their prospectuses. Form N–2,[42] the form used by closed-end investment companies to register under the Investment Company Act of 1940[43] and to register their securities under the Securities Act, sets forth the disclosure requirements for ratings when the rating is included in a closed-end fund prospectus.[44] Comment is requested whether the mandatory disclosure approach being proposed today also should be applied to closed-end funds and other investment companies.

2. Disclosure Required with Respect to Security Ratings

Regulations S–K and S–B are proposed to be amended to specify the disclosure required whenever a security rating is disclosed, either voluntarily or pursuant to Commission rule. The ratings disclosure should tie directly to the description of securities so that potential investors may compare the actual payment obligations, expected payments, and risks with the promises and risks assessed by the assigning rating organization. The proposed rules require description of: (1) What elements of the securities the rating addresses; (2) all material limitations or qualifications on the rating; (3) any related designation (or other published evaluation) of non-credit payment risks assigned by the rating organization with respect to the security; and (4) any material differences between the terms of the security as assumed in rating the security, and the minimum obligations of the security as specified in the governing instruments or, if significantly different, the terms as marketed to investors. For example, the rating description should explain if the security was rated using a yield assumption which differs from the expected yield being marketed to investors. Also, by way of example, a statement that the rating "covers payment obligations in accordance with the terms of the security" usually would not be informative where the security permits the issuer to defer interest payments for a specified time period. In this instance, the ratings discussion should explain whether the rating assumes that the interest deferral provision is or is not exercised.

The issuer would disclose the required information for each solicited rating. If the rating designation includes a reference to a designation or published evaluation of non-credit payment risk (e.g., sensitivity to movements in interest rates), the additional analysis should be described. Where related evaluations are done, any use of the rating designation should include the designation for the related non-credit payment evaluation so investors relying on the designation are not left unaware of the related evaluation. For example, where a cash flow security is evaluated both for likelihood of cash receipt and susceptibility to interest rate volatility, the designation always should be presented in combination.

Not infrequently, the problem in clearly understanding the scope and meaning of the rating of structured instruments is exacerbated by the complexity and lack of clarity in the description of the securities being offered.[45] In some cases, even the title of the securities could lead to investor misunderstanding of the nature of the securities. The description of the securities should make clear the extent to which payment obligations are fixed or contingent, clearly explaining the nature of the contingencies.

In many cases, securities are offered on the basis of expected returns that can vary from the issuer's contractual commitments. For example, the terms of some asset-backed securities obligate the issuer only to pay available funds passed through from the underlying assets, but investors may expect a minimum stated return and, in fact, the security may be marketed as providing a stated return. In such cases, care needs

[41] 15 USC 77k.

[42] 17 CFR 274.11a–1.

[43] 15 USC 90a *et seq.*

[44] In addition, Guide 6 to Form N–2 sets forth certain risk-related disclosures that should be made when a closed-end fund's senior securities are issued with an NRSRO rating. 17 CFR 274.11a–1.

[45] *See* Item 202 of Regulation S–K. 17 CFR 229.202.

to be used in both primary and secondary transaction disclosures to ensure that investors understand the limited obligation of the issuer.

Comment is requested on the adequacy of the proposed disclosure requirements and whether the proposed requirements would assure that investors will be able to understand the limitations associated with a rating and will be able to compare ratings. Commenters suggesting alternative items should be specific in their suggestions. Commenters also should suggest approaches to ensure that the description of securities is clear and complete, and to ensure that security titles convey the risks involved in an investment.

Comment also is requested as to whether issuers should be required to disclose activities that could be viewed as "rating shopping"—that is approaching a number of rating organizations to determine which organization will provide the highest rating on security terms most favorable to the issuer. To what extent does this practice occur and warrant such disclosure? Should the rules require issuers to disclose contacts with any NRSRO with respect to rating the securities being registered? If such disclosure is favored, should it only be required if the issuer discloses a rating in its prospectus? Alternatively, should such contacts be reported even if no rating is disclosed or required to be disclosed in the prospectus? If disclosure of preliminary contacts with NRSROs is required, what effect will such disclosures have on rating practices?

Mutual funds often represent that they invest only in securities that have a specified rating, such as investment grade, or disclose the percentage of their portfolios comprised of securities with specified ratings. As discussed above, a rating may not convey a security's level of market risk, and, in the absence of appropriate disclosure, investors may not perceive the limitations of a rating or the investment characteristics it addresses. Comment is requested whether current mutual fund disclosure practices and requirements adequately address the limitations and scope of ratings and how mutual fund disclosure documents could be improved to improve investor understanding of the limitations of ratings.

3. Rating Designations

As discussed above, rating organizations frequently have used the same rating designations to represent their evaluation of a wide range of instruments with disparate types of payment obligations and, in many cases, subject to substantial market, cash flow, and liquidity risks. In some cases, the same designation has been used to represent limited scope ratings such as those involving cash flow securities and residuals. Recently, some NRSROs, when rating various interest rate sensitive instruments, have begun to use modifying designations to indicate the existence of non-credit payment risk but not a judgment of the extent of this risk.

Given the market's widespread use of ratings, and the common use of simple letter designations as shorthand communications of the rating, there is a substantial potential for investor misunderstanding. This problem can be particularly acute in the secondary markets.

Comment is requested as to the potential for investors to be confused or misled about the nature of the security or the meaning of a rating as the result of current rating designation practices. Should the disclosure of ratings require the use of designations that clearly distinguish traditional credit ratings from cash flow, residual or other limited scope ratings? Should ratings of securities subject to substantial non-credit related payment risks continue to be designated the same as securities that do not carry such risks? To the extent that commentators believe that there is a significant likelihood that investors may be misled through rating designations, should the Commission rely on rating organizations' self regulation to address the problem, or should the Commission take regulatory action to assure that a rating organization's designation system avoids issuing the same rating designation to securities having substantially different credit or other non-credit payment risks?

4. Security Rating Changes

The Commission is proposing to require issuers to report material changes in security ratings of their securities on Form 8–K. Not only is such information of importance to a company's security holders, but, as noted in the Commission's recent release on municipal disclosures, timely disclosure of such rating action is important to the efficiency and transparency of the debt markets.[46]

Under the proposal, issuers would be required to file a Form 8–K report within 15 calendar days of having been advised by the rating organization of a material change in any NRSRO rating obtained for its securities, including commercial paper, or any other rating of its securities that has been previously disclosed in a prospectus or registration statement for such securities registered under the Securities Act. As proposed, the disclosure of the changed rating would be accompanied by the same disclosure specified in Item 202(g) of Regulation S–K.[47]

Comment is requested as to whether the Commission's proposal to mandate disclosure of material ratings upgrades is appropriate. Under the proposal, it is contemplated that reporting of all adverse rating changes would be required. The Commission requests comment as to whether there are rating downgrades that commenters believe should be viewed as immaterial. In particular, are there classes of securities as to which information on downgrades would not be material to a company's shareholders or debtholders?

Comment also is requested as to the appropriateness of the 15 day calendar period for reporting the rating change. Should the period be shorter, e.g. 5 business days, or longer, e.g. 20 days? Should the period run from the date of the rating change, rather than the date of notice of the change to the issuer? Should rating changes be reportable on a quarterly basis on Form 10–Q and Form 10–K (for the fourth quarter) rather than Form 8–K?

Commenters also should address the extent of the proposed disclosure matters. Should the proposed disclosure be streamlined to require only reporting: the NRSRO or other rating organization taking the action; the title of the securities affected; and both the prior and the new ratings? Comment also is requested as to whether the proposed disclosure requirement should be triggered when there is a change in a rating disclosed in any filing with the Commission (e.g., annual report on Form 10–K).

III. Request for Comment

Any interested persons wishing to submit written comments on the proposals, as well as any other matters that might have an impact on the proposals set forth in the release are requested to do so. The Commission requests comments on the impact of the proposals on issuers, potential investors, security holders, broker-dealers, rating organizations, and others. Comments also are requested on whether the proposed rule would have an adverse effect on competition that is neither necessary nor appropriate in furthering the purposes of the Securities Act and the Exchange Act. The

[46] *See* Securities Act Release No. 7049.

[47] Only information with respect to the ratings subject to change would be required.

Commission will consider comments in complying with its responsibilities under Section 19(a) of the Securities Act[48] and Section 23(a) of the Exchange Act.[49]

IV. Cost-Benefit Analysis

Assist the Commission in its evaluation of the costs and benefits that may result from the proposals, commenters are requested to provide views and data relating to any costs and benefits associated with these proposals. The proposals are expected to increase to some extent the net costs to issuers associated with registering securities for sale and complying with reporting requirements; these costs could be significant if the exemption for NRSROs from the consent requirements under the Securities Act were rescinded and the disclosure of ratings were mandatory. The costs to investors associated with these proposals are minimal. The proposals are expected to provide additional benefits to investors by enlarging the mix of information available to investors regarding security ratings and by alleviating the potential for market misunderstanding. Currently, many issuers seek security ratings for their securities in order to make them marketable. Because the proposals would require disclosure of security ratings and do not address whether issuers should obtain security ratings, the proposals are not expected to affect the issuance of rated securities, assuming the exemption for NRSROs from the consent requirements under the Securities Act is retained.

V. Summary of Initial Regulatory Flexibility Analysis

An Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603 for the proposed amendments. The analysis notes that the proposals are expected to increase regulatory costs for small entities which offer securities registered under the Securities Act.

As discussed more fully in the analysis, the proposed changes may affect persons that are small entities, as defined by the Commission's rules. While it may be unlikely that small entities will publicly sell rated securities (because of the costs of obtaining a rating and because of the exemptions from registration available), any such small entity would be required to prepare additional disclosure regarding certain ratings assigned to the small entity's securities. While this would increase the compliance burdens of small entities, the analysis notes that no other significant alternative would achieve the Commission's objective of reducing the potential for market confusion about the scope and meaning of security ratings.

Commenters are urged to comment on any aspect of the analysis. All comments will be available publicly. Any comments will be considered in preparing the Final Regulatory Flexibility Analysis if the proposals are adopted. For a copy of the analysis, contact Brian P. Miller, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VI. Statutory Basis for Rule

All amendments are being proposed pursuant to Securities Act Sections 5,[50] 6,[51] 7,[52] 10,[53] 11,[54] 17,[55] and 19(a),[56] as amended, and Exchange Act Sections 13[57] and 23(a),[58] as amended.

List of Subjects in 17 CFR Parts 228, 229, 230 and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is proposed to be amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

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

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77*ll*, 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78*l*, 78m, 78n, 78o, 78w, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By removing paragraph (e) of § 228.10.

3. By amending § 228.202 to add paragraph (d) and Instructions to *Item 202* to read as follows:

§ 228.202 (Item 202) Description of Securities.

* * * * *

(d) *Security Ratings.*

(1)(i) If a registrant has obtained a security rating from a nationally recognized statistical rating organization ("NRSRO") with respect to a class of securities being registered under the Securities Act or any rating (whether or not assigned by an NRSRO) is used in the offer or sale of the securities by any participant in an offering, the registrant shall include in the forepart of the prospectus the information required by this paragraph (d) for each such rating obtained or used.

(ii) If a registrant voluntarily discloses any security rating assigned by a rating organization other than an NRSRO in a prospectus or registration statement under the Securities Act, the registrant shall include in the prospectus the information required by this paragraph (d).

(iii) If a registrant is required to disclose a change in a security rating pursuant to Item 9 of Form 8–K (17 CFR 249.308), the registrant shall disclose the information required by this paragraph (d) to the extent not disclosed previously, or to the extent different.

(2) Whenever a registrant discloses a security rating pursuant to this paragraph (d), the registrant shall disclose the following for each security rating disclosed:

(i) The identity of the rating organization assigning the rating;

(ii) The rating assigned;

(iii) The relative rank of the rating within the assigning rating organization's overall classification system;

(iv) A description of what the rating addresses;

(v) All material scope limitations of the rating;

(vi) Any material differences between the terms of the security as assumed in rating the security, and the terms of the security as specified in the governing instruments;

(vii) Any material differences in the terms of the security as assumed in rating the security, and the terms of the security as marketed to investors;

(viii) A statement informing investors that a security rating is not a recommendation to buy, sell, or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating; and

(ix) Any published designation reflecting the results of any other evaluation done by the rating organization in connection with the rating, along with an explanation of the designation's meaning and the relative rank of the designation.

Instructions to Item 202

1. For purposes of paragraph (d), the term *nationally recognized statistical*

[48] 15 USC 77s(a)

[49] 15 USC 78w(a).

[50] 15 USC 77e.

[51] 15 USC 77f.

[52] 15 USC 77g.

[53] 15 USC 77j.

[54] 15 USC 77k.

[55] 15 USC 77g.

[56] 15 USC 77s(a).

[57] 15 USC 78m.

[58] 15 USC 78w(a).

rating organization shall have the same meaning as used in § 240.15c3–1(c)(2)(vi)(F) of this chapter.

2. A registrant shall disclose any material limitations to the security rating on the outside front cover page of the prospectus.

3. If a registrant includes information about security ratings in a prospectus pursuant to paragraph (d), the registrant shall update the description of each rating as set forth in this instruction 3:

A. If a change in a rating already included in the prospectus is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant shall include such rating change in the final prospectus. If the rating change is material, or if the registrant is required to disclose a materially different rating from any disclosed rating which becomes available during this period, the registrant shall amend the registration statement to include the rating change or the additional rating and should consider recirculating the preliminary prospectus.

B. If an additional rating that the registrant is required to disclose, or if a material change in a rating already included, becomes available during any period in which offers or sales are being made, the registrant shall disclose such additional rating or rating change by means of a post-effective amendment, or sticker to the prospectus pursuant to § 230.424(b) of this chapter. However, a post-effective amendment or sticker is not required in the case of a registration statement on Form S–3 (§ 239.13 of this chapter) if the registrant timely discloses the additional rating or the rating change in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to termination of the offering.

4. If a registrant discloses a security rating not assigned by an NRSRO, the registrant also should include the written consent of the non-NRSRO rating organization. With respect to the written consent of any NRSRO, see § 230.436(g) of this chapter. When the registrant has filed a registration statement on Form F–9 (§ 239.39 of this chapter), see § 230.436(g) of this chapter with respect to the written consent of any rating organization specified in the Instruction to paragraph (A)(2) of General Instruction I of Form F–9.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

4. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78*l*, 78m, 78n, 78o, 78w, 78*ll*, 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

§ 229.10 [Amended]

5. By removing paragraph (c) of § 229.10.

6. By amending § 229.202 to add paragraph (g) and Instructions 6 through 9 to Item 202 to read as follows:

§ 229.202 (Item 202) Description of registrant's securities.

* * * * *

(g) *Security Ratings.*

(1)(i) If a registrant has obtained a security rating from a nationally recognized statistical rating organization ("NRSRO") with respect to a class of securities being registered under the Securities Act or any rating (whether or not assigned by an NRSRO) is used in the offer or sale of the securities by any participant in an offering, the registrant shall include in the forepart of the prospectus the information required by this paragraph (g) for each such rating obtained or used.

(ii) If a registrant voluntarily discloses any security rating assigned by a rating organization other than an NRSRO in a prospectus or registration statement under the Securities Act, the registrant shall include in the prospectus the information required by this paragraph (g).

(iii) If a registrant is required to disclose a change in a security rating pursuant to Item 9 of Form 8–K (17 CFR 249.308), the registrant shall disclose the information required by this paragraph (g) to the extent not disclosed previously, or to the extent different.

(2) Whenever a registrant discloses a security rating pursuant to this paragraph (g), the registrant shall disclose the following for each security rating disclosed:

(i) The identity of the rating organization assigning the rating;

(ii) The rating assigned;

(iii) The relative rank of the rating within the assigning rating organization's overall classification system;

(iv) A description of what the rating addresses;

(v) All material scope limitations of the rating;

(vi) Any material differences between the terms of the security as assumed in rating the security, and the terms of the security as specified in the governing instruments;

(vii) Any material differences in the terms of the security as assumed in rating the security, and the terms of the security as marketed to investors;

(viii) A statement informing investors that a security rating is not a recommendation to buy, sell, or hold securities, that it may be subject to revision or withdrawal at any time by the assigning rating organization, and that each rating should be evaluated independently of any other rating; and

(ix) Any published designation reflecting the results of any other evaluation done by the rating organization in connection with the rating, along with an explanation of the designation's meaning and the relative rank of the designation.

Instructions to Item 202.

* * * * *

6. For purposes of paragraph (g), the term *nationally recognized statistical rating organization* shall have the same meaning as used in § 240.15c3–1(c)(2)(vi)(F).

7. A registrant shall disclose any material limitations to the security rating on the outside front cover page of the prospectus.

8. If a registrant includes information about security ratings in a prospectus pursuant to paragraph (g), the registrant shall update the description of each rating as set forth in this instruction 8:

A. If a change in a rating already included in the prospectus is available subsequent to the filing of the registration statement, but prior to its effectiveness, the registrant shall include such rating change in the final prospectus. If the rating change is material, or if the registrant is required to disclose a materially different rating from any disclosed rating which becomes available during this period, the registrant shall amend the registration statement to include the rating change or the additional rating and should consider recirculating the preliminary prospectus.

B. If an additional rating that the registrant is required to disclose, or if a material change in a rating already included, becomes available during any period in which offers or sales are being made, the registrant shall disclose such additional rating or rating change by means of a post-effective amendment, or sticker to the prospectus pursuant to § 230.424(b) of this chapter. However, a

post-effective amendment or sticker is not required in the case of a registration statement on Form S–3 (§ 239.13 of this chapter) if the registrant timely discloses the additional rating or the rating change in a document incorporated by reference into the registration statement subsequent to its effectiveness and prior to termination of the offering.

9. If a registrant discloses a security rating assigned by a non-NRSRO, the registrant also should include the written consent of the non-NRSRO rating organization. With respect to the written consent of any NRSRO, see § 230.436(g) of this chapter. When the registrant has filed a registration statement on Form F–9 (§ 239.39 of this chapter), see § 230.436(g) of this chapter with respect to the written consent of any rating organization specified in the Instruction to paragraph (A)(2) of General Instruction I of Form F–9.

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

7. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

8. By amending § 230.134 by revising paragraph (a)(14) to read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(a) * * *

(14)(i) With respect to any class of securities, the security rating(s) assigned to the class of securities by any nationally recognized statistical rating organization(s) and the name(s) of the nationally recognized statistical rating organization(s) which assigned such rating(s), and with respect to any class of securities registered on Form F–9 (§ 239.39 of this chapter), the security rating(s) assigned to the class of securities by any other rating organization(s) specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F–9 and the name(s) of the rating organization(s) which assigned such rating(s).

(ii) For the purpose of paragraph (a)(14)(i) of this section, the term *nationally recognized statistical rating organization* shall have the same meaning as used in § 240.15c3–1(c)(2)(vi)(F) of this chapter.

(iii) For the purpose of paragraph (a)(14)(i) of this section, the term *class of securities* shall not include a class of securities issued by a registered investment company that does not constitute a class of *senior securities* for purposes of Section 18 of the Investment Company Act of 1940 (15 U.S.C. § 80a–18).

* * * * *

9. By amending § 230.430A by revising paragraph (a) to read as follows:

§ 230.430A Prospectus in a registration statement at the time of effectiveness.

(a) The form of prospectus filed as part of a registration statement that is declared effective may omit information with respect to the public offering price, underwriting syndicate (including any material relationships between the registrant and underwriters not named therein), underwriting discounts or commissions, discounts or commissions to dealers, amount of proceeds, conversion rates, call prices, final security ratings, and other items dependent upon the offering price; delivery dates, and terms of the securities dependent upon the offering date; and such form of prospectus need not contain such information in order for the registration statement to meet the requirements of Section 7 of the Securities Act (15 U.S.C. § 77g) for the purposes of Section 5 of the Securities Act (15 U.S.C. § 77e), *Provided that:*

(1) The securities to be registered are offered for cash;

(2) The registrant furnishes the undertakings required by Item 512(i) of Regulation S–K (§ 229.512(i) of this chapter); and

(3) The information omitted in reliance upon this paragraph (a) from the form of prospectus filed as part of a registration statement that is declared effective is contained in a form of prospectus filed with the Commission pursuant to § 230.424(b) or § 230.497(h); except that if such form of prospectus is not so filed by the later of five business days after the effective date of the registration statement or five business days after the effectiveness of a post-effective amendment thereto that contains a form of prospectus, or transmitted by a means reasonably calculated to result in filing with the Commission by that date, the information omitted in reliance upon this paragraph (a) must be contained in an effective post-effective amendment to the registration statement.

* * * * *

10. By amending § 230.436 by revising paragraph (g) to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(g)(1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the security rating assigned to a class of securities by a nationally recognized statistical rating organization, or, with respect to registration statements on Form F–9 (§ 239.39 of this chapter), by any other rating organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F–9, shall not be considered a part of the registration statement prepared or certified by a person within the meaning of Sections 7 and 11 of the Act (15 U.S.C. §§ 776, 77k).

(2) For the purpose of paragraph (g)(1) of this section, the term *nationally recognized statistical rating organization* shall have the same meaning as used in § 240.15c3–1(c)(2)(vi)(F) of this chapter.

(3) For the purpose of paragraph (g)(1) of this section, the term *class of securities* shall not include a class of securities issued by a registered investment company that does not constitute a class of *senior securities* for purposes of Section 18 of the Investment Company Act of 1940 (15 U.S.C. § 80a–18).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 249 continues to read as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

12. By amending Form 8–K (referenced in § 249.308) by revising General Instruction B.1. to read as follows:

Form 8–K

* * * * *

General Instructions

* * * * *

B. Events to be Reported and Time for Filing of Reports

1. A report on this form is required to be filed upon the occurrence of any one or more of the events specified in Items 1–4, 6, 8, and 9 of this form. A report of an event specified in Items 1–3 is to be filed within 15 calendar days after the occurrence of the event. A report of an event specified in Items 4 or 6 is to be filed within 5 business days after the occurrence of the event; if the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the 5 business day period shall begin to run on and include the first business day thereafter. A report on this form pursuant to Item 8 is required to be filed within 15 calendar days after the date on which the registrant makes the determination

to use a fiscal year end different from that used in its most recent filing with the Commission. A report on this form pursuant to Item 9 is required to be filed within 15 calendar days after the date on which a rating organization advises the registrant of a material change in rating(s).

* * * * *

13. By amending Form 8–K (referenced in § 249.308) to add Item 9 to read as follows:

Form 8–K

* * * * *

Item 9. Change in Security Ratings. (a) If there is a material change in a security rating assigned to any outstanding class of a registrant's securities, which rating either has been obtained from a nationally recognized statistical rating organization (as defined in Item 202(g)(1)(i) of Regulation S–K or Item 202(d)(1)(i) of Regulation S–B), or has been disclosed by the registrant in a registration statement or prospectus filed under the Securities Act, the registrant shall describe the rating change and shall disclose all information required by Item 202(g)(2) of Regulation S–K (§ 229.202(g)(2) of this chapter) (or Item 202(d)(2) of Regulation S–B, if applicable (§ 228.202(d)(2) of this chapter)), to the extent not disclosed previously.

(b) For the purpose of paragraph (a) of this item, the term "nationally recognized statistical rating organization" shall have the same meaning as used in § 240.15c3–1(c)(2)(vi)(F) of this chapter.

* * * * *

Dated: August 31, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21924 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[(Release Nos. 33–7085; 34–34616; IC–20508; International Series Release No. 706); File No. S7–23–94]

Nationally Recognized Statistical Rating Organizations

AGENCY: Securities and Exchange Commission.

ACTION: Concept release.

SUMMARY: The Securities and Exchange Commission ("Commission") solicits recommendations on the Commission's role in using the ratings of nationally recognized statistical rating organizations ("NRSROs"). Because of the expanded use of credit ratings in the Commission's rules, the Commission believes that it is appropriate to examine the process employed by the Commission to designate rating agencies as NRSROs and the nature of the Commission's oversight role with respect to NRSROs.

DATES: Comments should be received on or before December 6, 1994.

ADDRESSES: Persons wishing to submit written comments should file three copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. All written comments should refer to File No. S7–23–94. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, 202/942–0132, Roger G. Coffin, 202/942–0136 or Elizabeth K. King, 202/942–0140.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

In recent years, the credit ratings issued by agencies that are recognized as nationally recognized statistical rating agencies ("NRSROs") have attained an increased level of importance within the context of the Commission's rules and regulations. The Commission looks to the credit ratings issued by NRSROs in a variety of contexts, and for different purposes, to distinguish among various grades of debt and other rated securities.

The increasing utilization of credit ratings as a component in Commission rules, in turn, has prompted a number of domestic and foreign rating agencies to seek NRSRO status. Currently, the Commission's rules do not define the term "NRSRO," nor is there a formal mechanism for monitoring the activities of agencies that have been recognized as NRSROs. Accordingly, the Commission believes that it is appropriate to issue a concept release soliciting comment on the appropriate role of ratings in the federal securities laws, and the need to establish formal procedures for designating and monitoring the activities of NRSROs.

A. The Development of the Term "NRSRO"

In 1975, the Commission adopted the uniform net capital Rule, Rule 15c3–1 under the Securities Exchange Act of 1934 ("Exchange Act"), which in part also incorporated the use of ratings issued by NRSROs in connection with certain provisions of the net capital rule.[1] Rule 15c3–1 requires broker-dealers, when computing net capital, to deduct from net worth certain percentages of the market value ("haircuts") of their proprietary securities positions. Haircuts serve as a safeguard against the risks associated with fluctuations in the price of each broker-dealer's proprietary securities. Broker-dealers' proprietary positions in commercial paper, nonconvertible debt securities and nonconvertible preferred stock are accorded preferential treatment under the net capital rule, in the form of reduced haircuts, if the instruments are rated investment grade by at least two NRSROs.[2] The Commission did not attempt to define the term in the context of the net capital rule and, in using the term subsequently in other regulatory contexts, the Commission generally has stated that the term should have the same meaning as it does for purposes of the net capital rule.[3]

B. Expanded Use of the Term "NRSRO" and Utilization of the Ratings Assigned to Securities by NRSROs

Over time, the NRSRO concept has been incorporated into other areas of the federal securities laws and Congress itself employed the term "NRSRO" in the definition of "mortgage related security." Pursuant to Section 3(a)(41) of the Exchange Act, which was added by the Secondary Mortgage Market Enhancement Act of 1984,[4] a mortgage related security must, among other things, be rated in one of the two highest rating categories by at least one NRSRO.[5] Although Congress did not define what it meant by an NRSRO, its reliance on the term used in Commission rules is significant because it reflects a congressional recognition that the "term has acquired currency as a term of art."[6]

In addition, several regulations issued pursuant to the Securities Act of 1933 ("Securities Act"),[7] the Exchange Act,[8] and the Investment Company Act of 1940 ("Investment Company Act")[9] have incorporated the term "NRSRO" as it is used in the net capital rule. For example, the Commission employs NRSRO ratings as a basis for distinguishing between certain types of securities that may be issued using simplified registration procedures under the Securities Act.[10] NRSRO ratings also are employed in connection with investment restrictions applicable to money market funds. Rule 2a–7 under the Investment Company Act requires a money market fund to limit its investments to securities that are "Eligible Securities,"[11] which, among other things, are securities rated in one of the two highest rating categories for

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[1] 17 CFR 240.15c3–1. *See* Adoption of Amendments to Rule 15c3–1 and Adoption of Alternative Net Capital Requirement for Certain Brokers and Dealers, Exchange Act Release No. 11497 (June 26, 1975), 40 FR 29795 (July 16, 1975).

[2] *See* 17 CFR 15c3–1(c)(2)(vi)(E) (haircuts applicable to commercial paper that has been rated in one of the three highest categories by at least two NRSROs); 17 CFR 15c3–1(c)(2)(vi)(F) (haircuts applicable to nonconvertible debt securities that are rated in one of the four highest rating categories by at least two NRSROs); 17 CFR 15c3–1(c)(2)(vi)(H) (haircuts applicable to cumulative, nonconvertible preferred stock rated in one of the four highest rating categories by at least two NRSROs).

[3] *See, e.g.*, Rule 2a–7 under the Investment Company Act of 1940, 17 CFR 270.2a–7 (the term "NRSRO" is defined to mean any NRSRO "as that term is used in Rule 15c3–1. . . .").

[4] Pub. L. No. 98–440, § 101, 98 Stat. 1689, 1689 (1984). *See* 15 U.S.C. 78c(a)(41).

[5] In 1989, Congress added the term NRSRO to Section 1831e of the Federal Deposit Insurance Act, which prescribes the permissible activities of savings associations in defining the term "investment grade." 12 U.S.C. § 1831e(d)(4)(A). Under Section 1831e(d)(4)(A), any corporate debt security is not of "investment grade" unless the security is rated in one of the four highest categories by at least one NRSRO.

[6] H.R. Rep. No. 994, 98th Cong., 2d Sess. 46 (1984) (appending Statement of Charles C. Cox, Commissioner, Securities and Exchange Commission, to the Subcommittee on Telecommunications, Consumer Protection, and Finance of the House Committee on Energy and Commerce, March 14, 1984).

[7] *See, e.g.*, Regulation S–K (17 CFR 229.10); Rule 436 (17 CFR 230.436); Form S–3 (17 CFR 239.13); Forms F–2 and F–3 (17 CFR 239.32, 239.33).

[8] *See, e.g.*, Rule 10b–6 (17 CFR 240.10b–6). *See also* Form 17–H (17 CFR 249.328T).

[9] *See, e.g.*, Rule 2a–7 (17 CFR 270.2a–7); Rule 10f–3 (17 CFR 270.10f–3); Rule 3a–7 (17 CFR 270.3a–7). Cf. Investment Company Act Release No. 19716, 58 FR 49425 (Sept. 23, 1993) (amending Rule 12d3–1 by, among other things, dropping the requirement that investment companies limit their purchases of debt securities issued by securities-related businesses to those that are investment grade).

[10] *See* Adoption of Integrated Disclosure System, Securities Act Release No. 6383 (Mar. 16, 1982). Adoption of Simplification of Registration Procedures for Primary Securities Offerings, Securities Act Release No. 6964 (Oct. 22, 1992).

[11] *See* 17 CFR 270.2a–7.

short-term debt by the requisite number of NRSROs.

Rule 3a–7 under the Investment Company Act, which exempts certain structured financing from registering under and complying with the Investment Company Act, also utilizes the ratings of NRSROs.[12] Under paragraph (2)(a) of Rule 3a–7, an issuer of fixed income securities that are rated in one of the four highest categories by at least one NRSRO is deemed not to be an investment company under the Investment Company Act. In adopting the rule, the Commission recognized that rating agencies had been "successful in analyzing the structural integrity of financing * * * [and] appear to have been a major factor in investor acceptance of structured financing."[13]

In proposing Rule 3a–7, the Commission requested specific comment on whether a rating requirement was necessary and, if not, on what alternative bases the Commission should exclude structured financing from the Investment Company Act. The Commission also requested comment on whether rating agencies should be subject to additional regulatory requirements. Those commentators who specifically addressed the issue registered strong support for use of NRSRO ratings in the structured financing context. The North American Securities Administrators Association, Inc. and the Investment Company Institute ("ICI") opposed reliance on NRSRO ratings in this context. Of the commentators addressing additional regulatory requirements for rating agencies generally, a large majority opposed Commission regulation of rating agencies, whereas several others argued that questions of regulatory oversight should be addressed separately from the merits of the proposed rule. The ICI was the only commentator supporting additional government oversight.

Finally, Rule 10b–6 under the Exchange Act, which prohibits persons participating in a distribution of securities from artificially conditioning the market for the securities in order to facilitate the distribution, employs an NRSRO concept as well. Generally, Rule 10b–6 exempts certain transactions in nonconvertible debt and nonconvertible preferred securities from its coverage if the securities, among other things, are rated investment grade by at least one NRSRO.[14]

The utilization of NRSRO ratings, therefore, is an important component of the Commission's regulatory program. Initially, the Commission solicits comment as to whether it should continue to employ in its rules the term "NRSRO" and the ratings assigned to various debt and other rated securities by NRSROs. The Commission also invites commentators to consider alternative means by which the Commission could distinguish among various grades of debt and other rated securities.

In addition, with the advent of limited scope ratings of the type applied, for example, to "cash flow securities,"[15] and with the proliferation of structured securities subject to substantial non-credit payment risks, it is appropriate to review the regulatory use of ratings and to specify, if necessary, what types of ratings fall within each of the regulatory provisions that refer to specific ratings. We also request comment regarding whether a limited scope rating by NRSROs should qualify for the exemption from liability under section 11 of the Securities Act.[16]

Rating agencies and other organizations have developed ratings of open-end and other types of investment companies. These ratings serve a number of purposes. Three rating agencies, Fitch Investors Service, Inc. ("Fitch"), Standard & Poor's Corporation ("Standard & Poor's"), and Moody's Investors Service, Inc. ("Moody's"), issue ratings that assess the safety of principal invested in a money market mutual fund. These rating agencies also have begun to rate different characteristics of bond funds.[17] For example, Fitch, Standard & Poor's, and Moody's each issue bond fund ratings designed to identify the degree of credit risk in a bond fund's underlying investments. Fitch and Standard & Poor's also issue bond fund "stability" or "market risk" ratings that purport to quantify the potential volatility of the market value of bond fund shares, based on an analysis of interest rate risk, spread risk, currency risk, and the fund's use of derivatives.[18] Other organizations issue mutual fund risk ratings that are designed to quantify different types of investment risk. These ratings may provide investors with information that may be useful in assessing the risks of investing in a mutual fund; however, they also may create expectations of investment performance that may not be achieved, notwithstanding disclaimers that they are not projections of future results.

Comment is requested regarding whether the Commission should encourage or require these types of ratings to be disclosed in fund prospectuses, sales literature, and advertisements. Commenters are asked to address the type of disclosure that should accompany these types of ratings to assure that their significance and limitations are appreciated by investors, and any other appropriate conditions for their use in fund prospectuses and advertisements (such as conditions to assure that an issuer will only use a rating that is current and that changes in a fund rating are promptly disclosed to investors). Comment is requested as to whether these ratings may lead an investor to select a fund based solely on a fund's ratings rather than other information that bears on the appropriateness of the fund for the investor's investment objectives and goals. Finally, comment is requested on whether Rule 436(g) under the Securities Act should be amended so that a fund could include these types of ratings in its registration statements without having to provide a written consent conveying expert liability to the organization preparing the ratings.[19]

[12] Exclusion from the Definition of Investment Company for Structured Financing, Investment Company Act Release No. 19105 (November 19, 1992), 52 SEC Dkt. 4014.

[13] *Id.* at 4028.

[14] *See* 17 CFR 240.10b–6(a)(4)(xiii). In addition, the Board of Governors of the Federal Reserve System uses the term "NRSRO" in Regulation T. *See* 12 CFR Part 220.

[15] A cash flow security represents an interest in a pool of several classes of previously issued unrelated mortgage backed securities, which typically are highly sensitive to principal prepayment speed and have volatile yields. The Commission has been informed that certain NRSROs have developed rating techniques to measure the likelihood that holders of a particular class of securities will receive a specified dollar amount by the maturity date, without regard to whether such payment amount constitutes interest or principal repayment. Assessing the likelihood of receipt of this cash flow combines both a credit rating and non-credit payment evaluation of prepayments on the underlying pooled securities, and thus represents a significant departure from traditional credit rating techniques. The Commission is issuing a release that proposes amendments with respect to the use of securities ratings in disclosure documents. *See* Securities Act Release No. 33–7086 (Aug. 31, 1994).

[16] 15 U.S.C. § 77k. *See also* 17 CFR § 230.436(g).

[17] The mutual fund ratings, generally, are accompanied by a suffix (*e.g.*, an "m" to indicate a money market fund rating or an "f" to indicate a bond fund rating) to differentiate them from traditional bond and preferred stock ratings.

[18] *See Bond Fund Rating Guidelines*, Fitch Research, June 14, 1993; *Bond Fund Risk Rating Criteria*, Standard & Poor's Credit Week (Jan. 17, 1994).

[19] Mutual fund ratings relate to the fund's equity securities. Currently, because Rule 436(g) under the Securities Act does not cover equity securities, a fund would be required to file an NRSRO's consent if the rating assigned by the NRSRO to the fund's common stock is disclosed in the fund's prospectus. Because NRSROs, generally, will not provide the required consent, funds have been unable to use NRSRO ratings in their prospectuses. In 1986, the

Continued

Further questions regarding NRSROs are set forth below.

II. Designating and Monitoring NRSROs

A. Designation of NRSROs

Six rating organizations currently are "designated" as NRSROs for purposes of the net capital rule:[20] (1) Standard & Poor's; (2) Moody's; (3) Fitch; (4) Duff & Phelps, Inc. ("Duff & Phelps");[21] (5) Thomson BankWatch, Inc. ("BankWatch");[22] and (6) IBCA Limited and its subsidiary, IBCA Inc. (collectively known as "IBCA").[23] Standard & Poor's, Moody's and Fitch were the only rating agencies initially designated as NRSROs by the Division of Market Regulation ("Division"). The Division indirectly designated these three rating agencies as NRSROs by granting no-action relief to broker-dealers who sought assurances concerning their status as NRSROs for purposes of the net capital rule. Subsequently, based on requests directly from rating agencies, the Division provided no-action assurances to three additional rating agencies, Duff & Phelps, BankWatch and IBCA, that they would be considered NRSROs for purposes of the net capital rule.

In reaching a decision regarding whether to provide no-action assurances to rating agencies regarding NRSRO designation, the Division staff undertakes an informal examination of the agency's operations, its position in the marketplace, as well as considering other factors. If the Division staff determines that no-action assurances are appropriate, the staff prepares a letter stating that it will not recommend enforcement action to the Commission if the rating agency is considered to be an NRSRO for purposes of applying the relevant subdivisions of the net capital rule.

In determining whether a rating agency possesses the characteristics of an NRSRO, the staff considers a number of criteria. The Division believes that the single most important criterion is that the rating agency is in fact nationally recognized by the predominant users of ratings in the United States as an issuer of credible and reliable ratings. Consistent with this standard of national recognition is a minimum level of operational capability and reliability of ratings. Therefore, the staff also assesses, among other factors: (a) the agency's organizational structure; (b) the agency's financial resources (to determine, among other things, whether it is able to operate independently of economic pressures); (c) the size and quality of the agency's staff (to determine if the entity is capable of thoroughly and competently evaluating an issuer's credit); (d) the agency's independence from the companies it rates and its reputation for integrity in the marketplace; (e) the agency's rating procedures (to determine whether it has systematic procedures designed to ensure credible and accurate ratings); and (f) the agency's establishment and compliance with internal procedures to prevent misuses of non-public information.[24]

In the letter providing no-action assurances to a rating agency, the Division advises the rating agency that the decision to confer NRSRO status has been based on representations made by or on behalf of the rating agency during the no-action process. The Division then directs the rating agency to bring to its attention any material change in the facts that served as the basis for granting the no-action letter. In this manner, the Division retains the ability to withdraw a no-action letter designating the particular rating agency as an NRSRO if the facts so warrant. Although it has the authority to revoke a no-action letter previously granted to a rating agency, the Commission would like to explore more effective vehicles for soliciting information from NRSROs. Material changes in an NRSRO's organizational structure or modifications of its rating practices, for example, could affect the NRSRO's standing in the credit market. Although the Commission notes that all of the existing rating agencies that have received no-action assurances are registered as investment advisers under the Investment Advisers Act of 1940, the Commission receives only limited informational filings from NRSROs.

The Division staff currently is reviewing no-action requests from other rating agencies regarding NRSRO designation. Although no final determination has been made, the staff has not been able to provide no-action assurances to any of these agencies. Nonetheless, the staff intends to continue to evaluate these agencies pending the comment period for this release.

B. Questions for Comment

1. Comment is invited on whether the Commission should continue to employ an NRSRO concept to distinguish various types of debt and other securities for purposes of its rules.

2. The Commission solicits comment on whether it should propose to adopt, in the net capital rule or another rule, a definition of the term "NRSRO," for purposes of all of its rules. Commentators are invited to provide suggestions as to how the term NRSRO could be defined and as to what, if any, objective criteria should be considered in determining whether a rating agency is an NRSRO for purposes of the Commission's rules.

3. The Commission requests comment as to whether the current no-action letter process with respect to NRSROs is satisfactory, or if not, whether the Commission should establish alternate procedures for designating NRSROs. Commentators are requested to address whether the current practice needs to be formalized, and if so, how this should be accomplished.

4. The Commission also solicits comment on the practice of NRSROs charging issuers for ratings and, more specifically, whether it is appropriate for an NRSRO to charge an issuer based on the size of the transactions being rated.

5. Comment regarding the use of limited scope ratings that may not denote an assessment solely of the credit risk of an instrument also is requested.

Commission proposed to extend Rule 436(g) to ratings of money market fund securities. *See* Investment Company Act Release No. 14984 (Mar. 14, 1986), 51 FR 9838 (Mar. 21, 1986). These proposed amendments were not adopted.

[20] McCarthy, Crisanti & Maffei, Inc. ("McCarthy"), a seventh rating agency designated as an NRSRO on September 13, 1983 by the Division of Market Regulation, has discontinued its ratings business. Duff & Phelps purchased the credit research and ratings business of McCarthy on February 7, 1991. *See* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to Paul J. McCarthy, President of McCarthy (Sept. 13, 1983); Letter from J. Christopher Jackson, Vice President and Associate General Counsel, Van Kampen Merritt, to Michael A. Macchiaroli, Assistant Director, Division of Market Regulation (Mar. 13, 1991).

[21] *See* Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation, to John T. Anderson, Attorney, Lord, Bissell & Brook, on behalf of Duff & Phelps (Feb. 24, 1982).

[22] *See* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to Gregory A. Root, President, BankWatch (Aug. 6, 1991). BankWatch is recognized as an NRSRO only for the purposes of rating debt issued by banks, bank holding companies, non-bank banks, thrifts, broker-dealers and broker-dealers' parent companies. *Id.*

[23] *See* Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to Mr. Robin Monro-Davies, President, IBCA Limited (Nov. 27, 1990); Letter from Michael A. Macchiaroli, Assistant Director, Division of Market Regulation, to David L. Lloyd, Jr., Attorney, Dewey, Ballantine, Bushby, Palmer & Wood, on behalf of IBCA (Oct. 11, 1990). At present, IBCA is designated as an NRSRO only for the purposes of rating debt issued by banks, bank holding companies, United Kingdom building societies, broker-dealers, broker-dealer parent companies and bank-supported debt. *Id.*

[24] *See* No-Action Letter from Nelson S. Kibler, Assistant Director, Division of Market Regulation to John T. Anderson, Esq., Lord, Bissell & Brook (Mar. 24, 1982).

6. Comment is invited on whether the Commission should take further steps regarding NRSROs in order to increase its regulatory oversight role, including seeking additional legislative authority, if necessary. Commentators are requested to consider whether NRSROs should be required to register with the Commission, or whether other types of regulatory oversight are appropriate and necessary to satisfy the purposes of the federal securities laws.

By the Commission.

Dated: August 31, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–21923 Filed 9–6–94; 8:45 am]

BILLING CODE 8010–01–P

federal register

Wednesday
September 7, 1994

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Bird Hunting; Proposed Frameworks for Late-Season Migratory Bird Hunting Regulations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed Rule; Extension of Comment Period.

SUMMARY: This document announces the extension of the comment period for the Fish and Wildlife Service (hereinafter the Service) August 24, 1994, Proposed Rule **Federal Register** (59 FR 43684) from September 2 to September 9, 1994, to establish the 1994–95 late-season hunting regulations for certain migratory game birds. The Service annually prescribes frameworks, or outer limits, for dates and times when hunting may occur and the number of birds that may be taken and possessed in late seasons. These frameworks are necessary to allow State selections of final seasons and limits and to allow recreational harvest at levels compatible with population and habitat conditions. The Service invites additional public comment and suggestions due to public request.

By letter dated August 31, 1994, the Fund for Animals, Inc. (Fund) requested that the Service extend the comment period for this proposed rule until September 16, 1994. As required by the Administrative Procedure Act, the Service provided public notice of the proposed rule and established a period of 9 days in which comments could be submitted in **Federal Register** (59 FR 43684). No specific time period for comment is prescribed by the Administrative Procedure Act. However, it is Department of the Interior policy, as stated in the Departmental Manual, to provide 30 calendar days unless a shorter period is necessary in cases requiring more timely action. In such a case, the proposed rule should state the reasons for the shorter period. This was provided at 59 FR 43692. Although the Service acknowledges the reasons for the request submitted by the Fund and has decided to extend the period an additional 7 days, for the reasons stated in the proposed rule and because the Service needs sufficient time to assess and respond to comments received and prepare the final rule in time for the hunting season, the full 14 day extension cannot be granted.

DATES: The comment period for the proposed frameworks will end on close of business September 9.

ADDRESSES: Written comments should be sent to: Chief, MBMO, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, Washington, DC 20240. Comments received will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Paul R. Schmidt, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, Washington, DC 20240, (703) 358–1714.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1994–95 hunting season are authorized under the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703–711); the Fish and Wildlife Improvement Act (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a—j)

Dated: September 1, 1994.

Richard N. Smith

Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–22037 Filed 9–1–94; 4:04 pm]

BILLING CODE 4310–55–F

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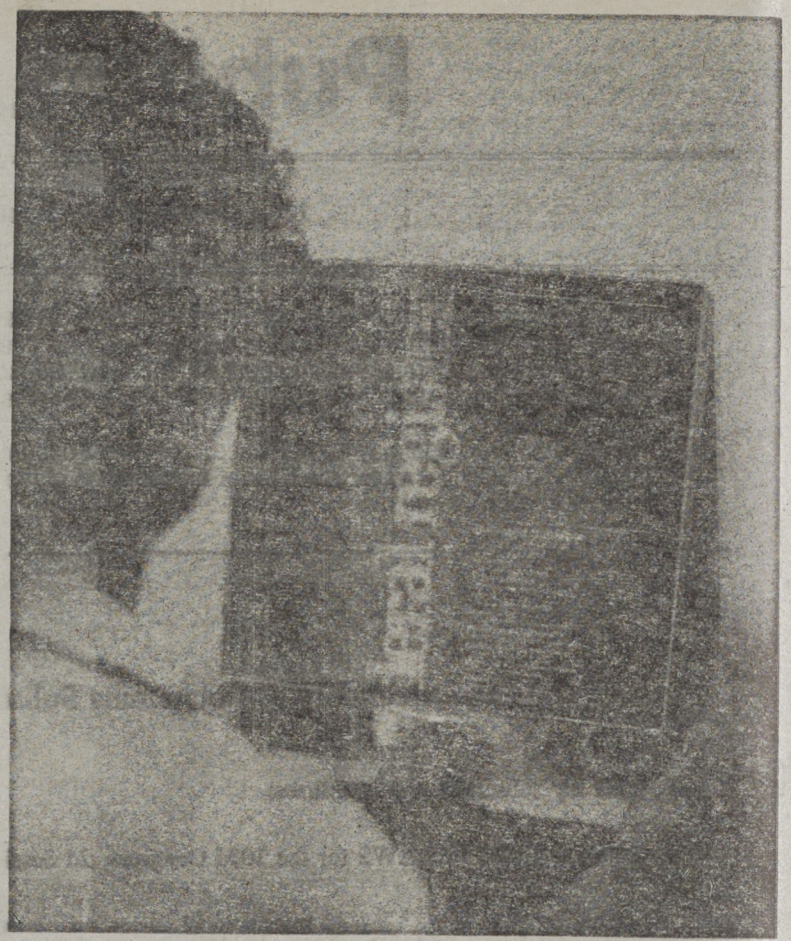
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