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Title 3—

The President

Executive Order 13096 of August 6, 1998

American Indian and Alaska Native Education

By the authority vested in me as President by the Constitution and the laws of the United States of America, in affirmation of the unique political and legal relationship of the Federal Government with tribal governments, and in recognition of the unique educational and culturally related academic needs of American Indian and Alaska Native students, it is hereby ordered as follows:

Section 1. *Goals.* The Federal Government has a special, historic responsibility for the education of American Indian and Alaska Native students. Improving educational achievement and academic progress for American Indian and Alaska Native students is vital to the national goal of preparing every student for responsible citizenship, continued learning, and productive employment. The Federal Government is committed to improving the academic performance and reducing the dropout rate of American Indian and Alaska Native students. To help fulfill this commitment in a manner consistent with tribal traditions and cultures, Federal agencies need to focus special attention on six goals: (1) improving reading and mathematics; (2) increasing high school completion and postsecondary attendance rates; (3) reducing the influence of long-standing factors that impede educational performance, such as poverty and substance abuse; (4) creating strong, safe, and drug-free school environments; (5) improving science education; and (6) expanding the use of educational technology.

Sec. 2. *Strategy.* In order to meet the six goals of this order, a comprehensive Federal response is needed to address the fragmentation of government services available to American Indian and Alaska Native students and the complexity of intergovernmental relationships affecting the education of those students. The purpose of the Federal activities described in this order is to develop a long-term, comprehensive Federal Indian education policy that will accomplish those goals.

(a) *Interagency Task Force.* There is established an Interagency Task Force on American Indian and Alaska Native Education (Task Force) to oversee the planning and implementation of this order. The Task Force shall confer with the National Advisory Council on Indian Education (NACIE) in carrying out activities under this order. The Task Force shall consult with representatives of American Indian and Alaska Native tribes and organizations, including the National Indian Education Association (NIEA) and the National Congress of American Indians (NCAI), to gather advice on implementation of the activities called for in this order.

(b) *Composition of the Task Force.* (1) The membership of the Task Force shall include representatives of the Departments of the Treasury, Defense, Justice, the Interior, Agriculture, Commerce, Labor, Health and Human Services, Housing and Urban Development, Transportation, Energy, and Education, as well as the Environmental Protection Agency, the Corporation for National and Community Service, and the National Science Foundation. With the agreement of the Secretaries of Education and the Interior, other agencies may participate in the activities of the Task Force.

(2) Within 30 days of the date of this order, the head of each participating agency shall designate a senior official who is responsible for management or program administration to serve as a member of the Task Force. The official shall report directly to the agency head on the agency's activities under this order.

(3) The Assistant Secretary for Elementary and Secondary Education of the Department of Education and the Assistant Secretary for Indian Affairs of the Department of the Interior shall co-chair the Task Force.

(c) *Interagency plan.* The Task Force shall, within 90 days of the date of this order, develop a Federal interagency plan with recommendations identifying initiatives, strategies, and ideas for future interagency action supportive of the goals of this order.

(d) *Agency participation.* To the extent consistent with law and agency priorities, each participating agency shall adopt and implement strategies to maximize the availability of the agency's education-related programs, activities, resources, information, and technical assistance to American Indian and Alaska Native students. In keeping with the spirit of the Executive Memorandum of April 29, 1994, on Government-to-Government Relations with Native American Tribal Governments and Executive Order 13084 of May 14, 1998, each participating agency shall consult with tribal governments on their education-related needs and priorities, and on how the agency can better accomplish the goals of this order. Within 6 months, each participating agency shall report to the Task Force regarding the strategies it has developed to ensure such consultation.

(e) *Interagency resource guide.* The Task Force shall identify, within participating Federal agencies, all education-related programs and resources that support the goals of this order. Within 12 months, the Task Force, in conjunction with the Department of Education, shall develop, publish, and widely distribute a guide that describes those programs and resources and how American Indians and Alaska Natives can benefit from them.

(f) *Research.* The Secretary of Education, through the Office of Educational Research and Improvement and the Office of Indian Education, and in consultation with NACIE and participating agencies, shall develop and implement a comprehensive Federal research agenda to:

(1) establish baseline data on academic achievement and retention of American Indian and Alaska Native students in order to monitor improvements;

(2) evaluate promising practices used with those students; and

(3) evaluate the role of native language and culture in the development of educational strategies. Within 1 year, the Secretary of Education shall submit the research agenda, including proposed timelines, to the Task Force.

(g) *Comprehensive Federal Indian education policy.*

(1) The Task Force shall, within 2 years of the date of this order, develop a comprehensive Federal Indian education policy to support the accomplishment of the goals of this order. The policy shall be designed to:

(A) improve Federal interagency cooperation;

(B) promote intergovernmental collaboration; and

(C) assist tribal governments in meeting the unique educational needs of their children, including the need to preserve, revitalize, and use native languages and cultural traditions.

(2) In developing the policy, the Task Force shall consider ideas in the Comprehensive Federal Indian Education Policy Statement proposal developed by the NIEA and the NCAI.

(3) The Task Force shall develop recommendations to implement the policy, including ideas for future interagency action.

(4) As appropriate, participating agencies may develop memoranda of agreement with one another to enable and enhance the ability of tribes and schools to provide, and to coordinate the delivery of, Federal, tribal, State, and local resources and services, including social and health-related services, to meet the educational needs of American Indian and Alaska Native students.

(h) *Reports.* The Task Force co-chairs shall submit the comprehensive Federal Indian education policy, and report annually on the agencies' activities, accomplishments, and progress toward meeting the goals of this order, to the Director of the Office of Management and Budget.

Sec. 3. *Regional partnership forums.* The Departments of Education and the Interior, in collaboration with the Task Force and Federal, tribal, State, and local government representatives, shall jointly convene, within 18 months, a series of regional forums to identify promising practices and approaches on how to share information, provide assistance to schools, develop partnerships, and coordinate intergovernmental strategies supportive of accomplishing the goals of this order. The Departments of Education and the Interior shall submit a report on the forums to the Task Force, which may include recommendations relating to intergovernmental relations.

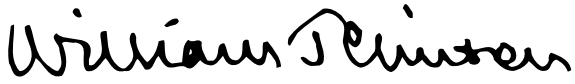
Sec. 4. *School pilot sites.* The Departments of Education and the Interior shall identify a reasonable number of schools funded by the Bureau of Indian Affairs (BIA) and public schools that can serve as a model for schools with American Indian and Alaska Native students, and provide them with comprehensive technical assistance in support of the goals of this order. A special team of technical assistance providers, including Federal staff, shall provide assistance to these schools. Special attention shall be given, where appropriate, to assistance in implementing comprehensive school reform demonstration programs that meet the criteria for those programs established by the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1998 (Public Law 105–78), and to providing comprehensive service delivery that connects and uses diverse Federal agency resources. The team shall disseminate effective and promising practices of the school pilot sites to other local educational agencies. The team shall report to the Task Force on its accomplishments and its recommendations for improving technical support to local educational agencies and schools funded by the BIA.

Sec. 5. *Administration.* The Department of Education shall provide appropriate administrative services and staff support to the Task Force. With the consent of the Department of Education, other participating agencies may provide administrative support to the Task Force, consistent with their statutory authority, and may detail agency employees to the Department of Education, to the extent permitted by law.

Sec. 6. *Termination.* The Task Force established under section 2 of this order shall terminate not later than 5 years from the date of this order.

Sec. 7. *General provisions.* This order is intended only to improve the internal management of the executive branch and is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or equity by a party against the United States, its agencies or instrumentalities, its officers or employees, or any other person. This order is not

intended to preclude, supersede, replace, or otherwise dilute any other Executive order relating to American Indian and Alaska Native education.



THE WHITE HOUSE,
August 6, 1998.

[FR Doc. 98–21643
Filed 8–10–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 63, No. 154
Tuesday, August 11, 1998

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

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending its rules of practice and procedure for original jurisdiction cases to permit assignment of certain of these cases to a judge other than an administrative law judge, to permit delegation of authority to an administrative law judge to decide Special Counsel stay requests, to permit delegation of authority to a member of the Board to rule on other matters related to a stay that has been granted to the Special Counsel (including motions for extension or termination of a stay), and to provide for judges to issue initial decisions, rather than recommended decisions, in Special Counsel complaints (including alleged violations of the Hatch Act) and proposed actions against administrative law judges. Certain other changes are made to reorganize and update the rules governing adjudication of original jurisdiction cases for the benefit of the Board's customers. These changes are intended to streamline the Board's adjudicatory procedures so that it can manage its original jurisdiction caseload more efficiently and effectively.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board previously published an interim rule amending its regulations for the processing of original jurisdiction cases (5 CFR part 1201, subpart D) to permit assignment of certain of these cases to a judge other than an administrative law judge, to permit delegation of authority to an administrative law judge to decide Special Counsel stay requests, and to provide for judges to issue initial decisions, rather than recommended decisions, in Special Counsel complaints (including alleged violations of the Hatch Act) and proposed actions against administrative law judges. The interim rule made other changes in subpart D to reorganize and update the rules governing adjudication of original jurisdiction cases for the benefit of the Board's customers. 62 FR 48449, September 16, 1997. In issuing the interim rule, the Board allowed 60 days for receipt of public comments. No comments were received by the closing date, November 17, 1997.

The Board has determined that three changes should be made in the interim rule. Amendments are being made to § 1201.125(c)(2), concerning exceptions to a recommended decision; § 1201.134(b), concerning the deciding official for Special Counsel stay requests and related matters; and § 1201.136(b), concerning Special Counsel requests for extensions of stays.

Section 1201.125(c) describes the procedures to be followed where an administrative law judge finds in a Hatch Act case involving a Federal or District of Columbia Government employee that the Hatch Act was violated but that the violation does not warrant removal. In this circumstance, the administrative law judge issues a recommended decision, rather than an initial decision. Under the interim rule, § 1201.125(c)(2) requires that any exceptions to a recommended decision be filed within 35 days after the date of service of the recommended decision.

In a final rule published on November 6, 1997 (62 FR 59991), the Board amended various filing time limits, including the time limit for filing a petition for review of a judge's initial decision. The amendments made by that rule to §§ 1201.113 and 1201.114 govern the time for filing a petition for review of an initial decision in original jurisdiction cases, as well as in appellate jurisdiction cases. No amendment was made at that time, however, to the filing time limit for exceptions to a recommended decision.

To conform the filing time limit for exceptions to a recommended decision, therefore, the Board is amending § 1201.125(c)(2) to provide that any exceptions to a recommended decision must be filed within 35 days after the date of service of the recommended decision or, if the filing party shows that the recommended decision was received more than 5 days after the date of service, within 30 days after the date the filing party received the recommended decision.

Under the interim rule at § 1201.134(b), any member of the Board may delegate his or her authority to decide a Special Counsel request for an initial stay to an administrative law judge. To expedite the processing of matters related to a stay that has been granted to the Special Counsel, including motions for extension or termination of a stay, the Board is amending § 1201.134(b) to also provide for delegation of the authority to rule on such matters to a single Board member. To the extent that *Kling* v. *Department of Justice*, 2 M.S.P.R. 464 (1980), holds that the Board may not delegate unreviewable decisionmaking authority, it is overruled.

Under the interim rule, § 1201.136(b) requires that the Special Counsel file any request for extension of a stay, along with its supporting brief, at least 15 days before the expiration date of the stay. The provision also requires that any agency response be filed within 10 days of the date of service of the Special Counsel's brief. The intent of prescribing specific time limits in this section was to allow sufficient time for Board attorneys to prepare a proposed decision on the extension request, and for the Board members to consider and vote on it, before the expiration date of the stay.

Experience operating under the interim rule, however, has demonstrated that the time limits prescribed by § 1201.136(b) often leave insufficient time for the preparation and consideration of a decision on an extension request. Furthermore, an agency may have insufficient time to respond to the Special Counsel's extension request if it is filed as late as 15 days before the stay expiration date and served on the agency by regular mail. Therefore, the Board is amending § 1201.136(b) to require that a Special Counsel request for extension of a stay, along with its supporting brief, be *received* by the Board *and the agency* no later than 15 days before the expiration date of the stay. The Special Counsel

may use any method of filing and service described in § 1201.134(f) that will ensure *receipt* by the due date. Section 1201.136(b) is further amended to require that any agency response to a Special Counsel request for extension of a stay be *received* by the Board no later than 8 days before the expiration date of the stay. The agency may use any method of filing described in § 1201.134(f) that will ensure *receipt* by the due date.

Subsequent to the issuance of the interim rule on September 16, 1997, the Board issued an interim rule at 62 FR 66813, December 22, 1997, that, among other things, amended §§ 1201.121 and 1201.131. This final rule, therefore, notes that those two sections continue to read as amended on December 22, 1997.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

Accordingly, the Board adopts as final its interim rule published at 62 FR 48449, September 16, 1997, with the following changes:

PART 1201—[AMENDED]

1. The authority citation for Part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701, and 38 U.S.C. 4331, unless otherwise noted.

1a. Sections 1201.121 and 1201.131 continue to read as amended by 62 FR 66813, December 22, 1997.

§ 1201.125 [Amended]

2. Section 1201.125 is amended at paragraph (c)(2) by removing the period at the end of the second sentence and by adding in its place the following: ''or, if the filing party shows that the recommended decision was received more than 5 days after the date of service, within 30 days after the date the filing party received the recommended decision.''

§ 1201.134 [Amended]

3. Section 1201.134 is amended at paragraph (b) by adding the following sentence at the end of the paragraph: ''The Board may delegate to a member of the Board the authority to rule on any matter related to a stay that has been granted to the Special Counsel, including a motion for extension or termination of the stay.''

4. Section 1201.136 is amended by revising paragraph (b) to read as follows:

§ 1201.136 [Amended]

* * * * *

(b) *Extension of stay.* Upon the Special Counsel's request, a stay granted under 5 U.S.C. 1214(b)(1)(A) may be extended for an appropriate period of time, but only after providing the agency with an opportunity to comment on the request. Any request for an extension of a stay under 5 U.S.C. 1214(b)(1)(B) must be received by the Board and the agency no later than 15 days before the expiration date of the stay. A brief describing the facts and any relevant legal authority that should be considered must accompany the request for extension. Any response by the agency must be received by the Board no later than 8 days before the expiration date of the stay.

* * * * *

Dated: August 4, 1998.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 98–21288 Filed 8–10–98; 8:45 am]

BILLING CODE 7400–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 948

[Docket No. FV98–948–2 IFR]

Irish Potatoes Grown in Colorado; Exemption From Area No. 2 Handling Regulation for Potatoes Shipped for Experimentation and the Manufacture or Conversion Into Specified Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule exempts shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the handling regulations of the Colorado Potato Marketing Order for Area No. 2 (San Luis Valley). This rule was unanimously recommended by the Colorado Potato Administrative Committee for Area No. 2 (Committee), the agency responsible for local administration of the marketing order. This rule is designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

DATES: Effective August 12, 1998; comments received by October 13, 1998 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Dennis L. West, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George J. Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 97 and Marketing Order No. 948 (7 CFR part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, hereinafter referred to as the ''order.'' The order is authorized by the Agricultural Marketing Agreement Act of 1937, as amended, (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the

petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

This rule exempts shipments of potatoes handled for the purposes of experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 (San Luis Valley).

Section 948.22 authorizes the issuance of regulations for grade, size, quality, maturity, and pack for any variety or varieties of potatoes grown in different portions of the production area during any period. Section 948.23 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under § 948.22 or to facilitate the handling of potatoes for special purposes. Section 948.24 requires adequate safeguards to be prescribed to ensure that potatoes handled pursuant to § 948.23 enter authorized trade channels. Safeguard procedures for special purpose shipments are specified in §§ 948.120 through 948.125.

At its meeting on June 18, 1998, the Committee unanimously recommended that handlers of potatoes shipped for experimentation and for the manufacture or conversion into specified products be exempted from the grade, size, maturity, and inspection requirements prescribed under the order's handling regulations for Area No. 2 in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments.

As is currently required for all special purpose shipments, handlers would apply and obtain Certificates of Privilege for handling such potatoes and furnish the Committee such information as the Committee may require.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have irregular shapes or are small in size, and that prevents them from being shipped except under the minimum quantity exemption of 1,000 pounds specified in paragraph (f) of § 948.386. This has prevented handlers from shipping larger quantities. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have ''similar'' varietal characteristics.

For the purpose of this action, the term ''manufacture or conversion into specified products'' means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing. Under the current regulation, potatoes for manufacture or conversion into products must be inspected and certified as meeting specified quality requirements prior to preparation for market. This action will exempt shipments handled for experimentation or the manufacture or conversion into products from these requirements, thus, relieving handlers of this regulatory burden.

These changes to the Area No. 2 handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose shipments authorized by this action are fresh use markets so it is appropriate that the handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, in determining whether applicable requirements have been met, and in determining whether the potatoes ended up in the proper trade channel. This rule is designed to expand markets for potatoes and to increase fresh utilization. These changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

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

There are approximately 100 handlers of Colorado Area No. 2 potatoes who are subject to regulation under the marketing order and approximately 285 producers of Colorado potatoes in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of potato producers and handlers regulated under the marketing agreement and order may be classified as small entities.

This rule exempts shipments of potatoes handled for experimentation and the manufacture or conversion into specified products from the grade, size, maturity, and inspection requirements that are prescribed under the order's handling regulations for Area No. 2 in § 948.386.

At its meeting on June 18, 1998, the Committee unanimously recommended that potatoes shipped for the purposes of experimentation and for the manufacture or conversion into specified products be considered special purpose shipments and be exempt from the grade, size, maturity, and inspection requirements prescribed in § 948.386. The Committee recommended that experimentation and manufacture or conversion into specified products be added under § 948.386(d)(2) as special purpose shipments.

As is currently required for all special purpose shipments, handlers would apply and obtain Certificates of Privilege for handling such potatoes and furnish the Committee such information as the Committee may require to track such shipments, determine whether applicable requirements have been met, and whether proper disposition has occurred.

Several producers and handlers within the production area are attempting to develop new fresh uses for potatoes using experimental varieties and packs. The Committee also anticipates that some handlers may want to ship experimental varieties, or traditional varieties, for use in the manufacture or conversion into special products, or perform the manufacture or conversion themselves prior to shipment. Handlers are, for example, attempting to develop new special products such as fresh cut potatoes shipped in vacuum sealed bags. The Committee strongly encourages innovation that could result in the

development of new varieties, markets, or opportunities for fresh potatoes that would be good for the Colorado potato industry. Some of the new varieties have characteristics, such as small size or misshape, that prevent them from being shipped fresh except under the minimum quantity exemption of 1,000 pounds in paragraph (f) of § 948.386. This has placed a burden on handlers desiring to ship larger quantities of such potatoes. Handlers have also expressed a desire to experiment with the shipment of potatoes of different varieties in the same container. This is not currently possible because the potatoes do not meet the minimum grade requirement that a particular lot of potatoes have ''similar'' varietal characteristics.

For purpose of this action, the term ''manufacture or conversion into specified products'' means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the Committee, but not including other processing.

These changes to the handling regulation are expected to encourage new product development and could lead to market expansion which would benefit producers, handlers, buyers, and consumers of Colorado potatoes.

The special purpose outlets authorized by this action are fresh use markets so it is appropriate that handlers taking advantage of the exemptions be assessed to defray the costs the Committee incurs in administering the program, tracking such shipments, determining whether applicable requirements have been met, and whether the potatoes end up in proper trade channels. Currently, the assessment rate is $0.0030 per hundredweight of potatoes handled. Effective September 1, 1998, the rate will be $0.0015 per hundredweight of potatoes handled. This rule is designed to expand markets for potatoes and to increase fresh utilization. The changes are expected to improve the marketing of Colorado potatoes and increase returns to producers.

There is no available information detailing how many potatoes this relaxation will allow to be marketed.

No viable alternatives to this action were identified that would ensure that innovations in marketing and product development. Furthermore, the goals expressed by the committee could not be solved absent this action.

The Committee estimates that three or four handlers may apply for and obtain Certificates of Privilege for the handling of potatoes for experimentation or for the manufacture or conversion into specified products. It is estimated that the time taken by the handlers who apply will total less than ten hours and this time is currently approved under OMB No. O581–0111 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the Colorado potato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the June 18, 1998, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 12 members, of which 5 are handlers and 7 are producers, the majority of whom are small entities.

Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling regulation prescribed for Area No. 2 under the Colorado potato marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements on Area No. 2 handlers and provides additional marketing opportunities; (2) this action must be taken promptly so handlers can take advantage of the additional marketing opportunities as soon as possible; (3) the Committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 948

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 948 is amended as follows:

PART 948—IRISH POTATOES GROWN IN COLORADO

1. The authority citation for 7 CFR part 948 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 948.386, paragraph (d)(2) is revised, and in paragraph (g) a new sentence is added before the last sentence to read as follows:

§ 948.386 Handling regulation.

* * * * *

(d) * * *

(1) * * *

(2) The grade, size, maturity and inspection requirements of paragraphs (a), (b), and (c) of this section shall not be applicable to shipments of potatoes for experimentation, the manufacture or conversion into specified products, or for seed pursuant to section 948.6, but such shipments shall be subject to assessments.

* * * * *

(g) *Definitions.* * * * The term *manufacture or conversion into specified products* means the preparation of potatoes for market into products by peeling, slicing, dicing, applying material to prevent oxidation, or other means approved by the committee, but not including other processing. * * *

Dated: August 5, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–21480 Filed 8–10–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV98–989–2 FIR]

Raisins Produced From Grapes Grown In California; Increase in Desirable Carryout Used to Compute Trade Demand

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule that increased the desirable carryout used to compute the yearly trade demand for raisins covered under the Federal marketing order for California raisins. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the next crop year to meet market needs, before new crop raisins are available for shipment. This rule continues to increase the desirable carryout from 2 to 2½ months of prior year's shipments. This increase allows for a higher free tonnage percentage which makes more raisins available to handlers for immediate use early in the season.

EFFECTIVE DATE: September 10, 1998.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 205–6632.

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

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

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

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

This rule continues to increase the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified in the order, and is used to determine volume regulation percentages for each crop year, if necessary. This rule continues to increase the desirable carryout, one factor in this formula, from 2 to 2½ months of prior year's shipments. This increase allows for a higher free tonnage percentage which makes more raisins available to handlers for immediate use early in the season. This rule was unanimously recommended by the Committee at a meeting on June 11, 1998.

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

Section 989.54 of the order prescribes procedures to be followed in establishing volume regulation and includes methodology used to calculate percentages. Trade demand is based on a computed formula specified in this section, and is used to determine volume regulation percentages. Trade demand is equal to 90 percent of the prior year's shipments, adjusted by the carryin and desirable carryout inventories.

At one time, § 989.54(a) also specified actual tonnages for desirable carryout for each varietal type regulated. However, in 1989, these tonnages were suspended from the order, and flexibility was added so that the Committee could adopt a formula for desirable carryout in the order's rules and regulations. The formula has allowed the Committee to periodically adjust the desirable carryout to better reflect changes in each season's marketing conditions.

The formula for desirable carryout has been specified since 1989 in § 989.154. Initially, the formula was established so that desirable carryout was based on shipments for the first 3 months of the prior crop year—August, September, and October (the crop year runs from August 1 through July 31). This amount was gradually reduced to 2½ months in 1991–92, 2¼ months in 1995–96, and to a level of 2 months in 1996–97. The Committee reduced the desirable carryout because it believed that an excessive supply of raisins was available early in a new crop year creating unstable market conditions.

At its June 11, 1998, meeting, the Committee evaluated the 2-month desirable carryout level and recommended adjusting the formula back up to 2½ months of prior year's shipments (August, September, and one-half of October). In its deliberations, the Committee considered the impact of the reduction in desirable carryout over the past few years along with a change to one of its export programs operated under the order. Prior to 1995, the Committee administered an industry export program whereby handlers who exported California raisins could purchase, at a reduced rate, reserve raisins for free use. This effectively blended down the cost of the raisins which were exported, allowing handlers to be price competitive in export

markets (prices in export markets are generally lower than the domestic market). One problem that the industry found with this ''raisin-back'' program was that the reserve raisins which handlers received went back into free tonnage outlets creating an excessive supply of raisins. To correct this problem, the industry gradually switched to a program which offered cash, rather than reserve raisins, to exporting handlers. The desirable carryout was reduced to 2 months in 1996–97 to help decrease the supply of raisins available early in a season and, thus, stabilize market conditions.

The Committee now believes that not enough raisins are being made available for growth. Increasing the desirable carryout allows for a higher trade demand figure and, thus, a higher free tonnage percentage which makes more raisins available to handlers for immediate use early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

At the meeting, the Committee also compared the average desirable carryout for the past 7 years with the average, actual tonnage that all handlers have in inventory at the end of a crop year. Desirable carryout has averaged 66,033 tons at 2½ months, 63,424 tons at 2¼ months, and 63,364 tons at 2 months. For the past 7 years, an average of 101,459 tons has been held in inventory by all handlers at the end of a crop year. Increasing the desirable carryout to 2½ months allows this factor to move towards what handlers are actually holding in inventory at the end of a crop year.

Much of the discussion at the Committee's meeting concerned the desirable carryout of Natural (sun-dried) Seedless raisins (Naturals). Naturals are the major commercial varietal type of raisin produced in California. Volume regulation has been implemented for Naturals for the past several seasons. However, the Committee also believes that the increase in desirable carryout to 2½ months should apply to the other varietal types of raisins covered under the order.

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

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

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule continues to increase the desirable carryout used to compute the yearly trade demand for raisins regulated under the order. Trade demand is computed based on a formula specified under § 989.54(a) of the order, and is used to determine volume regulation percentages for each crop year, if necessary. Desirable carryout, one factor in this formula, is the amount of tonnage from the prior crop year needed during the first part of the succeeding crop year to meet market needs, before new crop raisins are available for shipment. This rule continues to increase the desirable carryout specified in § 989.154 from 2 to 2½ months of prior year's shipments.

The 2½ month desirable carryout level applies uniformly to all handlers in the industry, whether small or large, and there are no known additional costs incurred by small handlers. As previously mentioned, increasing the desirable carryout increases trade demand and the free tonnage percentage which makes more raisins available to handlers early in the season. A higher free tonnage percentage may also improve early season returns to producers (producers are paid an established field price for their free tonnage).

The Committee considered a number of alternatives to the one-half month increase in the desirable carryout level. The Committee has an appointed subcommittee which periodically holds public meetings to discuss changes to the order and other issues. The subcommittee met on April 21 and June 9, 1998, and discussed desirable carryout. The subcommittee considered establishing a set tonnage for desirable carryout (i.e., 75,000 tons for Naturals). However, this alternative would not allow the desirable carryout to fluctuate with changing market conditions from year to year. The subcommittee considered lowering the desirable carryout for Naturals by 15,000 tons to tighten the supply of raisins early in the season even more. However, the majority of subcommittee members believed that the early season supply of raisins needed to be increased rather than decreased.

Another alternative raised at the Committee meeting was to make more raisins available to handlers at the end of a crop year through the industry's ''10 plus 10'' offers. The ''10 plus 10'' offers are two offers of reserve pool raisins which are made available to handlers during each season. Handlers may sell their ''10 plus 10'' raisins as free tonnage to any market. For each such offer, a quantity of reserve raisins equal to 10 percent of the prior year's shipments is made available for free use. The Committee considered offering for sale to handlers as free use an additional quantity of reserve raisins equal to 5 percent of the prior year's shipments. Such an additional offer could generate revenue that could be used to sustain the Committee's ''cash-back'' export program. As previously explained, under this program, handlers who export raisins to certain markets may receive cash from the reserve pool. This effectively blends down the cost of the raisins which were exported, allowing handlers to be price competitive in export markets (prices in export markets are generally lower than the domestic market). However, there is currently no provision in the order for this additional 5 percent offer.

Another alternative that was raised at the Committee's meeting was to include a policy statement concerning reserve pool equity along with the recommendation to increase the desirable carryout. Some industry members are concerned that increasing desirable carryout, thereby increasing the free tonnage percentage, may reduce handler purchases of ''10 plus 10'' raisins and, thus, impact pool revenue. As previously mentioned, net proceeds from sales of reserve raisins are distributed to reserve pool equity holders, primarily small producers. After much discussion, the majority of Committee members agreed that reserve pool equity was a separate issue from desirable carryout and would be addressed by the Committee's Audit Subcommittee.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's subcommittee meetings on April 21 and June 9, 1998, and the Committee meeting on June 11, 1998, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal Register** on July 24, 1998 (63 FR 39699). Copies of the rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 10-day comment period which ended August 3, 1998. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (63 FR 39699, July 24, 1998), will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

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

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 63 FR 39699 on July 24, 1998, is adopted as a final rule without change.

Dated: August 7, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–21578 Filed 8–7–98; 10:31 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–51–AD; Amendment 39–10703; AD 98–17–01]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to AlliedSignal Inc. TFE731 series turbofan engines, that currently requires the installation of a clamp assembly to support the rigid fuel tube. This action would require the installation of a clamp assembly to support the rigid fuel tube. This amendment requires installation of an improved flexible (flex) fuel tube. This amendment is prompted by reports of fuel leaks from a cracked fuel tube in engines that have already installed a clamp assembly in accordance with the current AD. The actions specified by this AD are intended to prevent cracking of the fuel tube and the subsequent leakage of fuel on or around electrical components, which can cause an engine fire.

DATES: Effective October 13, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 13, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712; telephone (562) 627–5246, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 93–10–10, Amendment 39–8589 (58 FR 32835, June 14, 1993), applicable to Allied-Signal Aerospace Company, Garrett Engine Division (now AlliedSignal Inc.) TFE731 series turbofan engines, was published in the **Federal Register** on February 23, 1998 (63 FR 8885). That action proposed to require the installation of an improved flex fuel tube.

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

There are approximately 3,325 series engines of the affected design in the worldwide fleet. The FAA estimates that 2,319 engines installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $300 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $973,980.

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.

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8589 (58 FR 32835, June 14, 1993) and by adding a new airworthiness directive, Amendment 39–10703, to read as follows:

98–17–01 AlliedSignal Inc.: Amendment 39–10703. Docket 98–ANE–36–AD. Supersedes AD 93–10–10, Amendment 39–8589.

Applicability: AlliedSignal Inc. (formerly Allied-Signal Aerospace Company, Garrett Engine Division and Garrett Turbine Engine Co.) TFE731–2, –3, and –4 series turbofan engines with fuel tubes, part numbers (P/Ns) 3071051–1, 3073729–1, or 3072886–1, installed. These engines are installed on but not limited to the following aircraft: Avions Marcel Dassault Falcon 10, 50, and 100 series; Cessna Model 650, Citation III, VI, and VII; Learjet 31 (M31) 35, 36 and 55 series, Raytheon British Aerospace HS–125 series; and Sabreliner NA–265–65.

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

Compliance: Required as indicated, unless accomplished previously.

To prevent cracked fuel tubes and the subsequent leakage of fuel on and around electrical components, which can cause an engine fire, accomplish the following:

(a) Within 160 hours time in service (TIS) after the effective date of this AD, or prior to December 20, 1999, whichever occurs first, install an improved flexible fuel tube, as follows:

(1) For engines installed on Cessna aircraft, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. Alert Service Bulletin (ASB) No. TFE731–A73–3132, dated April 9, 1997.

(2) For engines installed on all other aircraft except for the Learjet 35, 36 and 55 series, install in accordance with the Accomplishment Instructions of AlliedSignal Inc. ASB No. TFE731–A73–3128, dated February 26, 1997.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(c) 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 aircraft to a location where the requirements of this AD can be accomplished.

(d) The actions required by this AD shall be done in accordance with the following AlliedSignal Inc. ASBs:

Document No.	Pages	Date
TFE731–A73–3132 Total pages: 12.	1–12	April 9, 1997.
TFE731–A73–3128 Total pages: 14.	1–14	February 26, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on October 13, 1998.

Issued in Burlington, Massachusetts, on August 3, 1998.

David A. Downey,

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

[FR Doc. 98–21398 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–29]

Amendment to Class E Airspace; Denison, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Denison Municipal Airport, Denison, IA. A review of the Class E airspace for Denison Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area is enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the geographic coordinates for the Denison Nondirectional Radio Beacon (NDB) is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, and amend the geographic coordinates for the Denison NDB.

DATES: Effective date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 19, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–29, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Denison, IA. A

review of the Class E airspace for Denison Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1,200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, the Class E airspace area includes a minor revision to the geographic coordinates for the Denison NDB. The amendment at Denison Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D and amend the coordinates for the Denison NDB. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 No. 98–ACE–29.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Denison, IA [Revised]

Dension Municipal Airport, KS
(lat. 41°59′11″N., long. 95°22′51″W.)
Denison NDB
(lat. 41°59′03″N., long. 95°22′46″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Denison Municipal Airport and within 2.6 miles each side of the 116° bearing from the Denison NDB extending from the 6.5-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on July 28, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–21475 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–30]

Amendment to Class E Airspace; Forest City, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Forest City Municipal Airport, Forest City, IA. A review of the Class E airspace for Forest City Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The area is enlarged to conform to the criteria of FAA Order 7400.2D. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR) and comply with the criteria of FAA Order 7400.2D.

DATES: Effective date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–30, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Forest City, IA. A review of the Class E airspace for Forest City Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the Airport Reference Point (ARP) to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile. The amendment at Forest City Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR and comply with the criteria of FAA Order 7400.2D. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, 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.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action will be filed in the Rules Docket.

Comments 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 No. 98–ACE–30.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Forest City, IA [Revised]

Forest City Municipal Airport, IA
(lat. 43°14′05″ N., long. 93°37′27″ W.)
Forest City NDB
(lat. 43°14′07″ N, long. 93°37′16″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Forest City Municipal Airport and within 2.6 miles each side of the 162° bearing from the Forest City NDB extending from the 6.9-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on July 28, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–21474 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–ACE–31]

Amendment to Class E Airspace; Spencer, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends Class E airspace area at Spencer Municipal Airport, Spencer, IA. A review of the Class E airspace area for Spencer Municipal Airport indicates it does not comply with the criteria for 700 feet Above Ground Level (AGL) airspace required for diverse departures as specified in FAA Order 7400.2D. The Class E airspace area has been enlarged to conform to the criteria of FAA Order 7400.2D.

In addition, a minor revision to the geographic coordinates of the Airport Reference Point (ARP) is included in this document. The intended effect of this rule is to provide additional controlled Class E airspace for aircraft operating under Instrument Flight Rules (IFR), comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates.

DATES: Effective date: 0901 UTC, December 3, 1998.

Comments for inclusion in the Rules Docket must be received on or before September 25, 1998.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 98–ACE–31, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR 71 revises the Class E airspace at Spencer, IA. A review of the Class E airspace for Spencer Municipal Airport indicates it does not meet the criteria for 700 feet AGL airspace required for diverse departures as specified in FAA Order 7400.2D. The criteria in FAA Order 7400.2D for an aircraft to reach 1200 feet AGL is based on a standard climb gradient of 200 feet per mile plus the distance from the ARP to the end of the outermost runway. Any fractional part of a mile is converted to the next higher tenth of a mile.

In addition, the Class E airspace area includes a minor revision to the geographic coordinates of the ARP. The amendment at Spencer Municipal Airport, IA, will provide additional airspace for aircraft operating under IFR, comply with the criteria of FAA Order 7400.2D, and revise the ARP coordinates. The area will be depicted on appropriate aeronautical charts.

Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E, dated September 10, 1997, and effective September 16, 1997, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, 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 or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related 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 action 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 No. 98–ACE–31.'' The postcard will be date stamped and returned to the commenter.

Agency Findings

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 noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Spencer, IA [Revised]

Spencer Municipal Airport, IA
(Lat. 43°09′56″N, long. 95°12′10″W.)
Spencer VOR/DME
(Lat. 43°09′44″N, long. 95°12′04″W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of the Spencer Municipal Airport and within 3.5 miles each side of the 122° radial of the Spencer VOR/DME extending from the 6.6-mile radius to 10.8 miles southeast of the airport and within 3.5 miles each side of the 314° radial of the Spencer VOR/DME extending from the 6.6-mile radius to 7.4 miles northwest of the airport.

* * * * *

Issued in Kansas City, MO, on July 28, 1998.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 98–21473 Filed 8–10–98; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–34]

Establishment of Class E Airspace; Tioga, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tioga, ND. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 30 has been developed for Tioga Municipal Airport. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL), and controlled airspace extending upward from 1200 AGL, is needed to contain aircraft executing the approach. This action creates controlled airspace at and nearby Tioga Municipal Airport to accommodate the approach.

EFFECTIVE DATE: 0901 UTC, October 8, 1998.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, June 3, 1998, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Tioga, ND (63 FR 30157). The proposal was to add controlled airspace extending upward from 700 to 1200 feet AGL and upward from 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Tioga, ND, to accommodate aircraft executing the proposed GPS Rwy 30 SIAP at Tioga Municipal Airport by creating controlled airspace at and nearby the airport. Controlled airspace extending upward from 700 to 1200 feet AGL, and controlled airspace extending upward from 1200 feet AGL, is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts.

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. Therefore, this regulation—(1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this 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—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Tioga, ND [New]

Tioga Municipal Airport, ND
(Lat. 48°22′30″N., long. 102°53′51″W.)
Minot AFB, ND
(Lat. 48°24′56″N., long. 101°21′28″W.)
Williston VORTAC
(Lat. 48°15′12″N., long. 103°45′02″W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of the Tioga Municipal Airport and that airspace within 2 miles either side of the 133° bearing from the Tioga Municipal Airport extending from the 6.7-mile radius to 9.4 miles southeast of the airport; and that airspace extending upward from 1,200 feet above the surface bounded on the north by latitude 49°00′00″N., on the east by the 47.0-mile radius of Minot AFB, on the south by V–430, on the southwest by the 21.8-mile radius of the Williston VORTAC and on the west by the north Dakota/Montana state boundary.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21472 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

Policy Statement—Reasonable and Representative Testing To Assure Compliance With The Standard for the Flammability of Clothing Textiles

AGENCY: Consumer Product Safety Commission.

ACTION: Interpretation and policy statement; final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (CPSC) issues this guidance to notify manufacturers, importers, distributors, and retailers of fabric and garments of factors that the Commission considers in deciding whether to seek civil penalties for violations of the Standard for the Flammability of Clothing Textiles (General Wearing Apparel), 16 CFR part 1610.

DATES: Effective August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Marilyn Borsari, Compliance Officer, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0608, extension, 1370 or e-mail mborsari@cpsc.gov.

SUPPLEMENTARY INFORMATION:

Introduction

The U.S. Consumer Product Safety Commission (CPSC) issues the following policy statement to provide guidance to manufacturers, importers, distributors, and retailers of factors the Commission considers in deciding whether to seek civil penalties for violations of the Standard for the Flammability of Clothing Textiles (General Wearing Apparel). CPSC adds this policy statement as Section 1610.62 of Subpart C of Part 1610, Chapter II, Title 16, Code of Federal Regulations. Since this document is interpretative and a general statement of policy, it is exempt from the requirement of 5 U.S.C. 553(b) for a general notice of proposed rulemaking and from the requirement of 5 U.S.C. 553(c) for an opportunity for public comments. It is also exempt from the requirement of 5 U.S.C. 553(d) for a 30-day delay in the effective date of the policy. Accordingly, the policy will become effective August 11, 1998.

Applicable Executive Orders and Statutes

This policy has been evaluated for federalism implications in accordance with Executive Order No. 12,612, and the policy raises no substantial federalism concerns.

The policy has also been evaluated under Executive Order No. 12,898, and it does not have any of the exclusionary effects specified in that order.

The policy also has been evaluated under Executive Order No. 12,988. The policy is not a ''flammability standard or other regulation for a fabric, related material, or product'' that would have a preemptive effect under 15 U.S.C. 1203.

The policy is not expected to have any environmental effects. Therefore, an environmental assessment is not required.

The policy is not a ''covered regulatory action'' as that term is defined in Executive Order No. 13,045.

This policy is not a ''rule'' as defined in 5 U.S.C. 804(3). Accordingly, 5 U.S.C. 801–808 does not require a report to Congress.

List of Subjects in 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Reporting and recordkeeping requirements, Textiles, Warranties.

For the reasons set forth in the preamble, the CPSC amends 16 CFR part 1610 as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

1. The authority citation for part 1610 is amended to read as follows:

Authority: 16 U.S.C. 1191–1204.

2. Add § 1610.62 to read as follows:

§ 1610.62 Reasonable and representative testing to assure compliance with the standard for the clothing textiles.

(a) *Background.* (1) The CPSC administers the Flammable Fabrics Act (FFA), 15 U.S.C. 1191–1204. Under the FFA, among other things, the Commission enforces the Flammability Standard for Clothing Textiles (the ''general wearing apparel standard''), 16 CFR Part 1610. That standard establishes requirements for the flammability of clothing and textiles

intended to be used for clothing (hereinafter ''textiles'').

(2) The general wearing apparel standard applies both to fabrics and finished garments. The standard provides methods of testing the flammability of textiles, and sets forth the requirements that textiles must meet to be classified into one of three classes of flammability (classes 1, 2 and 3). 16 CFR 1610.2. Class 1 textiles, those that exhibit normal flammability, are acceptable for use in clothing. 16 CFR 1610.3(a)(1). Class 2 textiles, applicable only to raised fiber surfaces, are considered to be of intermediate flammability, but may be used in clothing. 16 CFR 1610.3(a)(2). Finally, class 3 textiles, those that exhibit rapid and intense burning, are dangerously flammable and may not be used in clothing. 16 CFR 1610.3(a)(3). The manufacture for sale, offering for sale, importation into the U.S., and introduction or delivery for introduction of Class 3 articles of wearing apparel are among the acts prohibited by section 3(a) of the FFA, 15 U.S.C. 1192(a).

(3) CPSC currently uses retail surveillance, attends appropriate trade shows, follows up on reports of noncompliance and previous violations, and works with U.S. Customs in an effort to find textiles that violate CPSC's standards. The Commission has a number of enforcement options to address prohibited acts. These include bringing seizure actions in federal district court against violative textiles, seeking an order through an administrative proceeding that a firm cease and desist from selling violative garments, pursuing criminal penalties, or seeking the imposition of civil penalties for ''knowing'' violations of the FFA. Of particular relevance to the latter two remedies are whether reasonable and representative tests were performed demonstrating that a textile or garment meets the flammability standards for general wearing apparel. Persons who willfully violate flammability standards are subject to criminal penalties.

(4) Section 8(a) of the FFA, 15 U.S.C. 1197(a), exempts a firm from the imposition of criminal penalties if the firm establishes that a guaranty was received in good faith signed by and containing the name and address of the person who manufactured the guarantied wearing apparel or textiles or from whom the apparel or textiles were received. A guaranty issued by a person who is not a resident of the United States may not be relied upon as a bar to prosecution. 16 CFR 1608.4. The guaranty must be based on the exempted types of fabrics or on reasonable and representative tests showing that the fabric covered by the guaranty or used in the wearing apparel covered by the guaranty is not so highly flammable as to be dangerous when worn by individuals, *i.e.*, is not a class 3 material.[1] Under 16 CFR 1610.37, a person, to issue a guaranty, should first evaluate the type of fabric to determine if it meets testing exemptions (16 CFR 1610.37(d));[2] if not, the person issuing the guaranty must devise and implement a program of reasonable and representative tests to support the guaranty. The number of tests and frequency of testing is left to the discretion of that person, but at least one test is required.

(5) In determining whether a firm has committed a ''knowing'' violation of a flammability standard that warrants imposition of a civil penalty, the CPSC considers whether the firm had actual knowledge that its products violated the flammability requirements. The CPSC also considers whether the firm should be presumed to have the knowledge that would be possessed by a reasonable person acting in the circumstances, including knowledge that would have been obtainable upon the exercise of due care to ascertain the truth of representations. 15 U.S.C. 1194(e). The existence of results of flammability testing based on a reasonable and representative program and, in the case of tests performed by another entity (such as a guarantor), the steps, if any, that the firm took to verify the existence and reliability of such tests, bear directly on whether the firm acted reasonably in the circumstances.

(b) *Applicability.* (1) When tested for flammability, a small number of textile products exhibit variability in the test results; that is, even though they may exhibit class 1 or class 2 burning characteristics in one test, a third test may result in a class 3 failure. Violative products that the Commission has discovered since 1994 include sheer 100% rayon skirts and scarves; sheer 100% silk scarves; 100% rayon chenille sweaters; rayon/nylon chenille and long hair sweaters; polyester/cotton and 100% cotton fleece/sherpa garments, and 100% cotton terry cloth robes. Since August 1994, there have been 21 recalls of such dangerously flammable clothing, and six retailers have paid civil penalties to settle Commission staff allegations that they knowingly sold garments that violated the general wearing apparel standard.

(2) The violations and resulting recalls and civil penalties demonstrate the critical necessity for manufacturers, distributors, importers, and retailers to evaluate, prior to sale, the flammability of garments made from the materials described above, or to seek appropriate guaranties that assure that the garments comply. Because of the likelihood of variable flammability in the small group of textiles identified above, one test is insufficient to assure reasonably that these products comply with the flammability standards. Rather, a person seeking to evaluate garments made of such materials should assure that the program tests a sufficient number of samples to provide adequate assurance that such textile products comply with the general wearing apparel standard. The number of samples to be tested, and the corresponding degree of confidence that products tested will comply, are to be specified by the individual designing the test program. However, in assessing the reasonableness of a test program, the Commission staff will specifically consider the degree of confidence that the program provides.

(c) *Suggestions.* The following are some suggestions to assist in complying with the general wearing apparel standard:

(1) Purchase fabrics or garments that meet testing exemptions listed in 16 CFR 1610.37(d). (If buyers or other personnel do not have skills to determine if the fabric is exempted, hire a textile consultant or a test lab for an evaluation.)

(2) For fabrics that are not exempt, conduct reasonable and representative testing before cutting and sewing, using standard operating characteristic curves for acceptance sampling to determine a sufficient number of tests.

(3) Purchase fabrics or garments that have been guarantied and/or tested by the supplier using a reasonable and representative test program that uses standard operating characteristic curves for acceptance sampling to determine a sufficient number of tests. Firms should also receive and maintain a copy of the guaranty.

(4) Periodically verify that your suppliers are actually conducting appropriate testing.

[1] The person proffering a guaranty to the Commission must also not, by further processing, have affected the flammability of the fabric, related material or product covered by the guaranty that was received.

[2] Some textiles never exhibit unusual burning characteristics and need not be tested. 16 CFR 1610.37(d). Such textiles include plain surface fabrics, regardless of fiber content, weighing 2.6 oz. or more per sq. yd., and plain and raised surface fabrics made of acrylic, modacrylic, nylon, olefin, polyester, wool, or any combination of these fibers, regardless of weight.

Dated: August 5, 1998.

Sadye Dunn,

Secretary to the Commission.

[FR Doc. 98–21387 Filed 8–10–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 814

[Docket No. 98N–0168]

Medical Devices; 30–Day Notices and 135–Day PMA Supplement Review

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; withdrawal.

SUMMARY: The Food and Drug Administration (FDA) published, in the **Federal Register** of April 27, 1998 (63 FR 20530), a direct final rule to implement the amendments to the premarket approval provisions of the Federal Food, Drug, and Cosmetic Act, as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). The comment period closed on July 13, 1998. FDA is withdrawing the direct final rule because the agency received significant adverse comment.

DATES: The direct final rule published at 63 FR 20530, April 27, 1998, is withdrawn on August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, the direct final rule published on April 27, 1998, at 63 FR 20530 is withdrawn.

Dated: August 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–21470 Filed 8–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Parts 250 and 253

RIN 1010–AC33

Oil Spill Financial Responsibility for Offshore Facilities

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Final rule.

SUMMARY: This final regulation establishes new requirements for demonstrating oil spill financial responsibility (OSFR) for removal costs and damages caused by oil discharges and substantial threats of oil discharges from oil and gas exploration and production facilities and associated pipelines. This rule applies to the Outer Continental Shelf (OCS), State waters seaward of the line of ordinary low water along that portion of the coast that is in direct contact with the open sea, and certain coastal inland waters. This rule implements the authority of the Oil Pollution Act (OPA) of 1990.

DATES: This final regulation is effective October 13, 1998. However, the information collection aspects of this rule will not become effective until approved by the Office of Management and Budget (OMB). MMS will publish a document at that time in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Steve Waddell, Adjudication Unit Supervisor, at (504) 736–1710.

SUPPLEMENTARY INFORMATION: Title I of OPA (33 U.S.C. 2701 *et seq.*), as amended by section 1125 of the Coast Guard Authorization Act of 1996 (Pub. L. 104–324), provides at section 1016 that parties responsible for offshore facilities must establish and maintain OSFR for those facilities according to methods determined acceptable to the President. Section 1016 supersedes the OSFR provisions of the Outer Continental Shelf Lands Act (OCSLA). The Executive Order (E.O.) implementing OPA (E.O. 12777; October 18, 1991) assigned the OSFR certification function to the Department of the Interior (DOI). The Secretary of the Interior, in turn, delegated this function to MMS.

This regulation replaces the current OSFR regulation at 33 CFR part 135, which was written to implement the OCSLA. The OCSLA regulation is limited to facilities located in the OCS and sets the amount of OSFR that must be demonstrated by responsible parties at $35 million. The regulation published today covers both the OCS and certain State waters. The regulation requires responsible parties to demonstrate as much as $150 million in OSFR if MMS determines that it is justified by the risks from potential oil spills from covered offshore facilities (COFs).

The minimum amount of OSFR that must be demonstrated is $35 million for COFs located in the OCS and $10 million for COFs located in State waters. The regulation provides an exemption for persons responsible for facilities having a potential worst case oil-spill discharge of 1,000 barrels (bbls) or less, unless the risks posed by a facility justify a lower threshold volume.

Background

The existing OSFR program for offshore facilities was developed under Title III of the OCSLA and initially administered by the U.S. Coast Guard (USCG). OPA replaced and rescinded the OCSLA OSFR requirements. However, section 1016(h) of OPA provides that any regulation relating to OSFR remains in force until superseded by a new regulation issued under OPA. The OSFR regulations for offshore facilities in the OCS (33 CFR part 135) will be phased out according to the timetable specified in § 253.44.

The Secretary of Transportation has authority for vessel oil pollution financial responsibility, and the USCG regulates the oil-spill financial responsibility program for vessels. A mobile offshore drilling unit (MODU) is classified as a vessel. However, a well drilled from a MODU is classified as an offshore facility under this rule.

Upon request from the USCG, MMS will provide available information for any COF involved in an oil pollution incident (i.e., oil-spill discharge or a substantial threat of a discharge) including:

(1) The lease, permit, or right-of-use and easement (RUE) for the area in which the COF is located;

(2) The designated applicant and guarantors and their contacts for claims;

(3) U.S. agents for service of process;

(4) Amounts indemnified; and

(5) List of all responsible parties.

Analysis of Comments on the Proposed Rule and Changes for the Final Rule

A Notice of Proposed Rulemaking (NPR) was published on March 25, 1997 (62 FR 14052–14079). We received 28 written comments. We also received oral comments during a public workshop on the proposed rule that MMS sponsored in New Orleans, Louisiana, on June 5, 1997. All of the comments were considered in developing this final regulation. The

rulemaking issues raised in the comments and the MMS responses are presented below.

General Applicability

For clarity and completeness, we have added in the final rule a definition of ''oil spill financial responsibility,'' referred to by the acronym ''OSFR,'' which is used throughout the rule. It refers to the requirements of section 1016 of OPA to evidence the capability to meet one's liabilities under Title I of OPA for removal costs and damages, as those terms are defined in OPA. The term was explained in the preamble to the proposed rule, but not expressly defined in the rule itself.

Types of Facilities—Several commenters asked us to clarify whether their facilities are covered by this OSFR regulation. The types of facilities that might be subject to MMS OSFR are specified in the 1996 amendments to OPA. They include offshore facilities used for exploring for, drilling for, or producing oil. They also include facilities other than vessels that are used to transport oil from drilling, exploration, or production facilities.

Several commenters asked us to verify that shore-based petroleum terminals, refineries, marinas, and appurtenances such as pipelines are not subject to this regulation. We agree. The only facilities that can be COFs under this rule are those used for exploring for, drilling for, or producing oil, and facilities used to transport oil from drilling, exploration, or production facilities. None of the facilities identified above fits these categories.

One commenter asked us to clarify that a pipeline cannot be a COF unless it is connected to a COF. We disagree. A pipeline can be a COF if it is used to transport oil from a facility engaged in oil exploration, drilling, or production. However, that facility does not need to be located within the geographic area covered by this rule or have a worst case oil-spill discharge volume greater than 1,000 bbls. Thus, your pipeline can be a COF, even if the exploration, drilling, or production facility to which it connects is not a COF. As noted in the previous paragraph, the terminal or other shore-based facility to which the pipeline connects would not be a COF.

One commenter asked us to clarify how this regulation applies to a MODU. The concern was that the wording of the proposed definition of a COF is confusing with respect to a MODU. We agree. It is important that we make clear the distinction between a MODU and a well drilled from a MODU. A MODU cannot be a COF under this regulation because it is a vessel. The OSFR for a vessel is covered in the regulations administered by the USCG (see 33 CFR part 138). However, a well drilled from a MODU may be a COF if it meets all the COF criteria listed in § 253.3. The definition of COF has been revised for the final rule to clarify that a well drilled from a MODU may be a COF, but that a MODU is not a COF. The revision incorporates most of the language suggested by the commenter. However, the reference to MODU has been retained to emphasize that a well drilled from a MODU may be a COF.

Natural Gas Condensate—Several natural gas interests asserted that facilities producing or transporting natural gas condensate should not be subject to OSFR requirements because condensate is not oil. Further, one commenter stated that applicability of this rule to a facility should depend on whether the facility handles condensate that is ''recoverable'' (i.e., possible to remove from the water before it becomes highly dispersed or evaporates into the atmosphere).

We disagree with both comments. Condensate is petroleum, and petroleum is expressly included in OPA's statutory definition of oil. As such, facilities that handle condensate must be addressed by this regulation. This makes practical sense because condensates exhibit properties that could cause damages that are subject to claims under the OPA, even if the condensate discharge leading to the claim is difficult to ''recover.'' Therefore, you must demonstrate OSFR for any facility that handles condensate if it meets the COF criteria included in § 253.3.

One commenter said that we should exclude gas condensate from our definition of oil because the Department of Transportation (DOT) did not include condensate in the oil definition used for its OPA-based regulation on response plans for onshore oil pipelines. We do not agree. The OSFR rule implements the OPA requirement that valid claims resulting from an oil-spill discharge are paid by the person(s) responsible for the discharge. As explained in the previous paragraph, we have determined that condensate is a form of petroleum that is covered under OPA. Further, there is ample evidence that condensate discharges can cause damages which are compensable under the Act. Thus, it is appropriate for MMS to apply OSFR requirements to a facility that handles condensate, if the facility satisfies the COF criteria specified in § 253.3. Whether it is either necessary or practical to require plans to respond to condensate discharges is a matter that is beyond the scope of this rulemaking.

Private Lands—One commenter offered that this rule should not apply to facilities located on private property. We disagree, because OPA's definition of a responsible party for an offshore facility applies to a person who holds a lease, permit, or RUE granted under applicable state law, regardless of the identity of the grantor.

Covered Offshore Facility

Facility—One commenter asked us to clarify what the term ''facility'' means. The proposed regulation characterized a facility as any structure or group of structures (including wells), etc. The commenter's question is whether a single facility can represent more than one COF. The commenter cited an example in which a production facility might have an oil storage capacity greater than 1,000 bbls, and one or more wells with a worst case oil-spill discharge of greater than 1,000 bbls.

A single facility cannot constitute more than one COF. Although an oil production facility may have several components each with a worst case oil-spill discharge potential of greater than 1,000 bbls, it is the facility, rather than its components, that is the COF. The components of a facility include a pipeline connected to the production structure, unless the pipeline is located on a RUE. However, a structure-related well that is completed at a remote location (e.g., satellite well completed at the seafloor) may be considered a discrete facility that could be a separate COF.

In determing the worst case oil-spill discharge for a COF, the extent that a pipeline connected to a production structure contributes to the worst case discharge will depend on the potential for a structure incident to cause a discharge from the pipeline. For example, the volume of the potential discharge from a connected pipeline should depend on the use and placement of flow-controlled shutoff devices in the pipeline. This approach is consistent with the MMS response planning regulation which requires you to sum the volumes of all the platform components that might discharge oil. If the rule allowed you to separately consider the COF potential of each platform component, it would ignore the potential for the failure of one component to lead to the failure of others. This would not be consistent with the purposes of OPA because the volume of a discharge from a facility caused by multiple component failures would be greater than the worst case oil-spill discharge volume calculated for any individual component. We have

revised the COF definition to clarify this issue (see § 253.3).

Geography—Another factor you must consider in determining whether your facility is a COF is its location. According to the statute, the OSFR requirement applies to the OCS, State waters seaward of the coastline (see the definition at § 253.3), and coastal inland waters, like bays and estuaries, that lie seaward of the line of ordinary low water along that portion of the coast that is not in direct contact with the open sea. The proposed rule described the area covered by OSFR as an area along the coast, affected by the tides, and submerged even during low tide. To determine the landward limit of this area, we considered two options: include all submerged coastal areas subject to tidal influence; or those within a band 50 to 100 miles inland from the coast. We proposed the first option and asked for comments on both options.

Commenters expressed concerns that the proposed options arbitrarily and inappropriately included areas that lie too far inland from the coast and were not limited to bays and estuaries as suggested in OPA. Also, the commenters asked us to limit OSFR jurisdiction to inland waters that open to the sea. One commenter asked MMS to develop a map showing the inland jurisdictional limit because it would be difficult for you to determine whether a facility located in an inland area is covered by the rule.

In recognition of arguments presented in the comments, we reviewed our interpretations of the statutory language ''along the coast'' and ''coastal inland waters.'' Although we do not accept that OSFR jurisdiction should be limited to the extent suggested by some commenters, we agree that it is appropriate to limit the inland areas described in the proposed rule based on the following considerations.

There are no applicable statutory definitions for the phrases ''along the coast'' and ''coastal inland waters.'' As such, there is no specific guidance for identifying inland areas that should be subject to this rule. The only specific geographic alternative offered in the comments was to limit OSFR coverage to areas that share a common border with the ''coastline,'' as defined in the Submerged Lands Act. We did not accept this alternative because it does not include any inland waters that are *not* in direct contact with the open sea. Instead, we relied on our assessment of the intent of OPA to establish the geographic scope of the offshore facility OSFR program.

The common definition of coast is the land next to the sea, or seashore. Thus, it is reasonable for us to interpret ''along the coast'' to mean along the seashore, which forms the boundary between the land and the sea. The seaward extent of the seashore is depicted on maps as a line; the shoreline. We believe it is reasonable to interpret ''coastal inland waters'' to mean the submerged area that is located near the shoreline, but not considered part of the open sea. To help us more precisely define the types of submerged areas that should be covered, the statute includes the examples of ''bays and estuaries.'' Therefore, we believe that the intent of OPA is met by limiting the scope of this rule to bodies of water which, like bays and estuaries, are indentations of the coastline, and which connect with the open sea, either directly or through one or more other bays.

It is also practical to use the U.S. Geological Survey (USGS) Geographic Names Information System (GNIS) to identify specific submerged areas that should be subject to the rule. The GNIS contains a submerged feature class, ''bay,'' that includes the types of features we think OPA intended for OSFR purposes. The GNIS is the federally recognized source of geographic names for all known places, features, and areas in the U.S. that are identified by a proper name. Each feature is located by State, county, and geographic coordinates; and referenced to the appropriate USGS topographic map on which it appears. The GNIS bay feature class is defined as an ''indentation of a coastline or shoreline enclosing a part of a body of water; a body of water partly surrounded by land.'' The features in the GNIS bay class include the bays and estuaries cited in OPA as examples of the types of water bodies that should be covered by this rule. Other features in the bay class include arm, bight, cove, gulf, inlet, and sound.

It is also practical to use USGS topographic maps to identify the shoreline and the submerged areas subject to OSFR because both are depicted on USGS maps, the USGS established and maintains the national mapping standards, and USGS maps are readily available to the public. Thus, we have defined the limits of the coastal inland areas subject to OSFR using specific USGS maps, and those maps are listed in the Appendix.

The USGS produces topographic maps of various scales for each State. We chose scales of 1:63,360 (15-minute quadrangle) for Alaska and 1:24,000 (7.5-minute quadrangle) for all other States because these are the map scales used for the GNIS. The specific maps included in the Appendix were chosen because they depict areas proximate to the shoreline, where oil and gas facilities exist now or may be placed in the foreseeable future. The maps listed in the Appendix depict a narrow band along the coast that extends approximately 20 miles inland for Alaska and 10 miles inland for other States. We may need to add maps to the Appendix if we determine that additional areas along the coast contain facilities that should be subject to this rule. You will be allowed to comment on any changes before we add maps to the list.

For OSFR purposes, the area within the coastal band created by the listed maps is limited to the GNIS bays depicted on the maps. The data on GNIS bays are publicly available from USGS in formats ranging from hard copy reports to digital data on the Internet. For clarity we included definitions for bay and GNIS in the final rule. Your facility could be a COF if it is located in a GNIS bay depicted on a listed map that is connected to the sea either directly or through other bays. Where any portion of a bay is included on a listed map, this rule applies to the entire bay. Also, it is important to note that a feature's name does not necessarily indicate which GNIS feature class it represents.

Worst Case Oil-spill Discharge Calculations—Many commenters expressed concerns about our proposed method for calculating the worst case oil-spill discharge volume for a facility. The greatest concern is over the method we prescribed for calculating the worst case volume for a well located seaward of the coastline. The proposed rule requires you to use the formula included in the MMS regulation on Response Plans for Facilities Located Seaward of the Coast Line (see § 253.14). The commenters asked us to clarify the relationship between a planned 30-day response to uncontrolled flow from a well and the OSFR worst case volume for that well. The commenters assert that it would be inappropriate to calculate the worst case volume for a well by multiplying the estimated daily uncontrolled discharge rate times 30 days. The commenters reason that it does not account for the volume of oil that would be recovered during those 30 days as a result of cleanup efforts.

We reviewed the alternative method offered by one commenter for calculating the worst case discharge for a facility. That method subtracts the volume of oil assumed to be recovered from the total volume discharged from the facility, including the well. In effect,

it eliminates from the OSFR dollar amount calculation all of the oil that is recovered during cleanup. We disagree with this approach because it does not account for the cost associated with recovering the oil. The purpose of OSFR is to ensure that the designated applicant is able to pay for cleanup as well as damages. Also, the suggested alternative does not consider that some damage may occur before the oil is removed from the water. As such, it would be inappropriate to subtract the total volume of oil removed from the water from the volume used to determine an appropriate OSFR dollar amount. We believe that, for OSFR purposes, the worst case discharge for a well should account for a portion of oil that is removed from the water during the period of uncontrolled flow from a well.

In response to the comment that some allowance should be made for oil that is recovered during cleanup, the final rule incorporates a 4-day multiplier which is a discounting factor that you must use to calculate the worst case oil-spill discharge volume for a well located seaward of the coastline. It is based on a formula that fixes the daily volume of uncontrolled flow from a well at 75 percent of the volume calculated for the previous day. For example, if you determine that the initial daily volume of uncontrolled flow from your well is 1,000 bbls, the worst case volume attributed to the second day is 750 bbls, or 75 percent of the first-day volume. Similarly, the volume attributed to the third day is about 565 bbls, or 75 percent of the second-day volume. When this algorithm is extended to 30 days, the sum of the daily worst case volumes equals approximately 4 times the volume discharged on the first day. Rather than asking you to make a complex calculation for each well, the final rule only requires that you multiply the worst case volume for the first day of uncontrolled flow by 4, and use the product as the well's worst case oil-spill discharge volume. We believe this change clarifies how the worst case volume for a well must be calculated, and, in our judgment, establishes a reasonable credit for ongoing cleanup activities.

MMS also considered whether it would be appropriate to create credits for cleanup of discharges from sources other than a well (e.g., pipelines, oil storage vessels). We did not find it appropriate for the following reasons. Discharges from these sources tend to be pre-response and of short duration. The potential for the cleanup to reduce damages from these discharges is much smaller than for an ongoing discharge because the response activity is least effective at the time of the initial discharge. As such, the potential for damages from initial discharges is greater because less of the oil is likely to be recovered, and the oil that is recovered later has had more time and opportunity to do damage. Also, for any given volume of oil, initial discharges tend to cost more to recover than sustained discharges because there is more time for initial discharges to spread.

One commenter said that OSFR should not be based on the worst case volumes calculated using the MMS response planning regulation, because that regulation discounts the capacity of spill response equipment by 80 percent. We disagree with this comment. The worst case oil-spill scenario in the oil-spill response regulation is calculated independently of the capacity of the oil-spill response equipment. Thus, no relation exists between the oil-spill response equipment and the determination of the worst case spill-volume for OSFR purposes.

Finally, one commenter questioned how a worst case can be calculated for a well that will not be drilled until after a COF determination must be made. For wells drilled seaward of the coastline, the method you must use to calculate a worst case discharge for an exploration well is included in the MMS response planning regulations. If the worst case volume that you calculate for an undrilled well is greater than 1,000 bbls, the well may be a COF (see additional COF criteria on facility type and location). It would be inconsistent with the purposes of OPA to allow you to defer the COF determination and OSFR demonstration (if needed) until after the well is completed, because an oil spill can occur during drilling.

Number of OSFR Layers

One commenter asked us to create more OSFR amount layers (see § 253.13(b)) in order to minimize insurance costs. For example, the commenter noted that a worst case oil-spill discharge volume of 35,000 bbls requires $35 million in OSFR while a volume of 35,001 bbls requires $70 million.

We did not create more OSFR amount layers for the final rule. We believe that very few designated applicants will use insurance to demonstrate OSFR for amounts over $35 million. We expect that designated applicants with COFs that have worst case oil-spill discharge volumes of more than 35,000 bbls will probably use self-insurance or an indemnity. Also, if more OSFR amount layers were allowed, a small change in the worst case volume might lead to additional expense and delay for the designated applicants who use insurance or surety bonds as OSFR to obtain the additional OSFR evidence needed.

Self-insurance as OSFR Evidence

Most of the comments we received on self-insurance fall into two categories. One category of concern is the recommendations presented in the MMS-funded review by Talley and Associates of the proposed self-insurance formulas. The other category includes commenters' suggestions for revising the proposed formulas.

Report of Talley and Associates—The report identified a need to define several terms that were used in the proposed self-insurance formulas. There also is general agreement among commenters that the terms we used should be defined in the final OSFR regulation. We disagree for the following reasons. All the terms used in the self-insurance formulas are commonly used in business and accounting. As such, the meanings of those terms should be well understood. Further, the self-insurance terms we used were taken from the types of financial statements that you normally prepare on an annual basis for other purposes. The meanings of the terms as applied to OSFR are the same as they are for purposes of reporting to the Securities and Exchange Commission (SEC) (e.g., Form 10-K and Form 20-F) or preparing other documents that must conform with U.S. Generally Accepted Accounting Principles (GAAP). For these reasons, it is unnecessary to define the OSFR self-insurance terms in the regulation.

The report makes several recommendations for developing self-insurance formulas that better reflect the future financial stability of a designated applicant. Commenters opposed these changes, including the suggested multiple regression analysis, because they are unnecessarily complex and would lead to higher OSFR compliance costs. We agree with the commenters, and this final rule does not incorporate any changes to the self-insurance formulas that are recommended in the Talley and Associates report.

Self-insurance Formulas—Commenters made several recommendations for modifying the self-insurance formulas in the proposed rule. All of the recommendations have the net effect of making a greater self-insurance allowance than the formulas we proposed. Specific recommendations included using values of 2 or 6 rather than 10 as a net worth divisor, using the greater rather than the lesser of the 2 net

worth amounts calculated, allowing a portion of paid up pollution insurance to be added to identifiable assets, and factoring the designated applicant's most recent bond rating into the self-insurance calculation (see § 253.25). We did not adopt any of these recommendations. MMS performed an analysis to test divisors from one through 20 using 72 recent self-insurance applications received over a 1-year period. The divisor of 10 created self-insurance indemnity opportunities for all the companies that we think would be able to cover incident liabilities that might arise over a 6-year period after the incident. Using Standard & Poors Compustat, we analyzed 338 publicly traded companies for the past 6 years to ensure that potentially insolvent companies could be identified. The results indicated that the self-insurance formulas we proposed provide the needed consistency and reliability, while remaining simple for you to use.

One commenter suggested that we replace the term ''value'' in the net worth and net assets formulas with either ''amount'' or ''figure,'' because it might be confused with another, more subjective, use of the term (e.g., fair market value). We agree, and the term ''amount'' replaces ''value'' in the final rule in §§ 253.23 to 253.28. Also, the basis for determining the net unencumbered asset value you submit must be the same basis you use to prepare your audited annual financial statements. For example, if historical book value minus accumulated depreciation and amortization is used for your audited annual financial statements, then you must use historical book value minus accumulated depreciation and amortization for unencumbered and unimpaired U.S. assets. This requirement is in § 253.27(b).

One commenter asked us to clarify whether the value of the unencumbered net assets you must reserve for self-insurance must be twice the dollar amount of self-insurance you want to demonstrate. The proposed rule requires you to identify the assets you want to reserve and promise that they won't be encumbered during the period covered by the self-insurance (see §§ 253.26(a) and (c)). Although the proposed rule did not indicate explicitly, you must reserve to MMS $2.00 in unencumbered assets for every dollar of self-insurance you want to demonstrate. For example, if you want to qualify for $35 million in self-insurance, then you must reserve for possible future claims unencumbered and unimpaired plant, property, or equipment (i.e., long-term assets held for use) that has a value of $70 million. Also, the amount of net unencumbered assets shown on your audited financial statements must be at least $70 million and the amount shown for stockholder's/owner's equity must be at least $140 million. Section 253.26 of the rule makes this requirement clear.

One commenter suggested that a financial instrument is a better form of collateral to use in unencumbered assets calculations because it is more portable and liquid than property, plant, and equipment. We disagree. The unencumbered assets formulas are intended to focus more on fiscal stability than financial liquidity. We believe that property, plant and equipment are good long-term indicators of financial stability. This is important from the OSFR perspective because you qualify for self-insurance or indemnity based on financial information that is historical, rather than real-time. Also, you might be liable for a claim made as long as 6 years after an incident occurs at a COF that you self-insured or indemnified. Thus, it is desirable that property, plant, and equipment are not readily liquidated or compromised because it helps insure that those assets will be available to meet OSFR obligations over an extended time period.

One commenter asked us to include the ''SEC–10'' measure of discounted estimated future net cash inflows from proved oil and gas reserves in the formulas for calculating the allowable self-insurance amount. The commenter offered that this measure could be made more conservative by subtracting the designated applicant's long-term debt from the SEC–10 value and dividing the difference by 2. We think the commenter may not fully understand what is included in the self-insurance formulas. This item is a component of stockholder's/owner's equity, so it is already considered in both the net worth test (§ 253.25) and the unencumbered net assets test (§ 253.28). Therefore, no change to the formulas was needed.

One commenter asked that we include an additional ''working capital'' test to the suite of self-insurance formulas included in the rule. The formula suggested for this test is: Working capital equals current U.S. assets minus current worldwide liabilities. A working capital test would be used in the same manner that the USCG applies it in the regulations on OSFR for vessels. We reviewed the working assets test used by the USCG and find it unsuited to this OSFR regulation because it unduly penalizes companies that have world-wide operations, and it does not provide adequate assurance that claims for cleanup and damages would be paid. As such, we did not include a working assets test in the rule.

One commenter asked why we did not include insurance proceeds in the net worth calculation. We did not include insurance proceeds in the net worth calculation because the test uses the results of audited annual financial statements produced in accordance with U.S. GAAP, or equivalent, and their adequacy is attested to by an independent auditor using U.S. generally accepted auditing standards (GAAS), or equivalent. Since neither GAAP nor GAAS recognizes insurance proceeds until they are actually paid, we do not believe that it is justified to incorporate these potential future payments. Once insurance payments are made, they are incorporated in the receiving company's audited annual financial statements and will then be considered in the MMS net worth test.

We did not adopt the suggestion to establish a self-insurance allowance based on a combination of bond ratings and net worth because the information used in the MMS net worth test is the basis for the ratings given for corporate bonds. If consideration of corporate bond ratings were included in the MMS net worth test, it would be similar to considering the same financial information twice.

One commenter said we should eliminate the requirement for an independent auditor's assessment of the value of unencumbered assets because the auditor may not know the value of the assets. MMS disagrees with this comment. Section 253.27(b) specifies that an independent auditor certify that:

''(1) The value of the unencumbered assets is reasonable and uses the same valuation method used in your audited annual financial statements;

(2) Any existing encumbrances are noted;

(3) The assets are long-term assets held for use; and

(4) The valuation method in the audited annual financial statements is for long-term assets held for use.''

This is exactly the type of information that the independent auditor is required to address during the audit of a company's financial statements by the generally accepted auditing standards of the United States of America (GAAP) and that are required to be addressed by the SEC. Therefore, no change has been made to the regulation relative to this comment.

Finally, one commenter asked how MMS would secure or monitor reserved assets to ensure they remain unencumbered. The regulation requires

you to submit to MMS a written promise that you will not compromise the availability of assets that you reserve for OSFR purposes (see § 253.26(c)). This promise is the only form of security MMS requires. We recognize the potential for impropriety regarding the maintenance of reserved assets, such as selling them. However, an OSFR demonstration based on self-insurance is valid for no more than 1-year, so the asset profiles are reviewed frequently by MMS and your auditor during the process of preparing the audited financial statements for your next fiscal year. Finally, the regulation requires you to report any change in your financial condition, including a change in unencumbered assets, that would adversely affect a valid OSFR demonstration (see § 253.15(c)). The potential imposition of a civil penalty for not complying with this requirement, and possibly other operational restrictions for failing to maintain acceptable OSFR evidence, should provide sufficient incentive for you to make alternative OSFR arrangements before compromising reserved assets. For these reasons the rule does not require you to formally pledge any of your assets to MMS, and we will not take possession of any assets. To clarify, the word ''pledged'' was replaced by ''reserved'' in the final rule.

Insurance as OSFR Evidence

Insurer Liability—Some commenters questioned the willingness of the insurance industry to participate as guarantors in this OSFR program because there are broader guarantor liabilities under OPA than there were under the OCSLA. Although the responsible party's oil-spill liabilities are greater under OPA than under the OCSLA, you should not infer that the OPA OSFR provisions or this rule extend guarantor liabilities beyond the amount of OSFR that is provided. OPA states that ''nothing in the Act shall impose liability with respect to an incident on any guarantor for damages or removal costs which exceed, in the aggregate, the amount of financial responsibility required under this Act which that guarantor has provided for a responsible party.'' (See OPA, section 1016 (g)). This protection went into effect when OPA was signed into law in 1990, and it does not change because of this rule.

One commenter asked us to clarify how OPA's joint and several liability provision applies to a guarantor that shares the risk covered by an insurance guaranty. The concern is that an individual insurer might be subject to liability beyond its specified quota share of the guaranty. Our intent is to limit an insurer's liability to the quota share of risk indicated on an insurance certificate that we accept as OSFR evidence. This limit to guarantor liability is now specified in § 253.61(b) of the rule.

Insurance Layers—The proposed rule allowed you to use insurance as OSFR evidence if it is packaged in four or fewer insurance certificates, and a certificate covers one of the allowed amounts. Several commenters asked us to remove the proposed restrictions on both the number of layers allowed and amount covered by each layer. The commenters argued that restrictions on insurance layers may result in higher insurance costs because the limits we proposed may not be the most economical way to allocate insurance risk. Also, the commenters said that the insurance industry has no technical limitations related to the number of layers that can be developed or the amount included in a particular layer.

We have not removed any of these restrictions on the number of layers allowed or the amounts within a layer. The reason we placed a limit on the number of insurance certificates and the amounts in the OSFR layers is that in the past we received insurance certificates that did not add up to the total amount of coverage indicated. We found that insurance certificate problems likely would increase with the number of certificates. Many times the problem was associated with ''horizontal'' layering, which is the allocation of risk within an insurance sub-layer. Verifying that the total amount of the certificate was properly allocated among participating insurers is a burdensome process that can delay our acceptance of OSFR evidence. Also, submission of an inaccurate certificate might result in a civil penalty. Therefore, to minimize insurance certificate problems, we decided to limit the number of insurance layers by establishing a minimum size for each layer and requiring that the certificate indicate each participant's quota share in the total amount covered by the certificate.

Insurer Qualifications—The proposed rule provided that you could use insurers that are syndicates of Lloyds of London (Lloyds), members of the Institute of London Underwriters (ILU), or other insurers that have achieved a rating of ''secure'' by an insurer rating service acceptable to MMS. One commenter recommended that we make all insurers subject to the same qualifying standards. That is, if any insurer must be rated secure in order to participate in MMS OSFR, then all must be rated secure to participate. The commenter argued that the double standard in the proposed rule puts insurers that must pass a ratings test at an unfair competitive advantage.

In the past, insurance rating services did not assess the claims paying ability of some insurers that industry typically has used to demonstrate OSFR. We did not want to exclude Lloyds or the ILU from participating as guarantors under this regulation because both insurance syndicates have been the main insurers of current OCSLA OSFR Certificates. They also have internal processes that prevent loss of OSFR coverage if one of their member companies fails. However, there is no longer any need to give these syndicates special dispensation because both are now rated for claims paying ability. In the ILU case, all members must maintain a ''secure'' rating from Standard & Poors. Lloyds has been rated by Standard & Poors since October 1997. Section 253.29(a) of the final regulation has been revised so that the same rating standard is applied to all insurers.

Insurance Deductible—One commenter asked us to clarify that self-insurance may be used as an insurance deductible in the OSFR base layer. We allow you to apply any of the approved non-insurance forms of OSFR evidence (e.g., indemnity, self-insurance, surety bond) toward an insurance deductible, provided that it is applied to the insurance certificate that covers your base OSFR amount layer. See § 253.29(c)(5) of the rule.

Corporate Captive Insurance—One commenter asked us to allow you to use corporate captive insurance as OSFR evidence. The rule allows you to use any insurance company as an OSFR guarantor, provided that the company has achieved the required ''secure'' rating for claims paying ability.

Insurance Expiration—The proposed regulation requires you to submit an insurance certificate specifying that termination of an insurance policy will not affect liability for claims arising from an incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that occurs on or before the termination date (see § 253.41(a)). One commenter asked us to delete this requirement because insurance companies probably will not accept the condition.

Except for ''quit claim'' insurance policies, it is standard practice for insurance companies to pay claims after the policy term ends, as indicated by payments made for damage claims for exposure to asbestos and other hazardous materials several years before. OPA makes guarantors subject to

liability for claims made up to 6 years after an oil-spill discharge occurs. Thus, this final rule retains the post-termination liability requirement.

Fax Binder—One commenter asked us to continue to allow you to use a fax ''binder'' as temporary evidence of insurance. We agree, and a fax binder provision is included in § 253.29(d) of the final rule.

Insurance Certificate (Form MMS–1019)—One commenter objected to the insurance certificate because it appears to permit an agent or broker to bind the participating insurers by signing the certificate. The commenter offered that brokers and agents generally are not representatives of the participating insurers and, thus, cannot commit them to any OSFR risk. We agree that an insurance agent or broker may not have the authority to bind an insurer. We do not agree that the signature of the agent or broker has the effect of binding any of the participating insurers. That is why § 253.29(b)(2) of the rule requires you to submit to MMS an authorized signature for each participating insurer. The broker or agent signature merely attests that the certificate was prepared according to the rules and that changes will be reported, upon demand, to you and MMS. Therefore, no revision of the proposed rule was needed to respond to the comment.

One commenter misinterpreted the facility coverage option check boxes on the certificate to extend the insurance coverage from COFs to all of the designated applicant's facilities. It is not our intent to have an insurance certificate apply to a facility that is not a COF, and Form MMS–1019 was revised to eliminate any ambiguity.

One commenter expressed concerns that insurers may not be willing to participate in a certificate by checking the box on Form MMS–1019 that established coverage for all COFs on a lease, permit, or RUE. We disagree. MMS has received an increasing number of insurance certificates with the ''general option'' box checked. Therefore, we made no change to the form.

Direct Purchase of Insurance—Several commenters asked that this rule and associated insurance certificate (Form MMS–1019) provide for the case where the designated applicant purchases insurance directly from the insurer, rather than using an insurance agent or broker. The commenters suggested that in this case it would be appropriate for each insurer to sign the insurance certificate. However, the commenters believe it would be inappropriate for MMS to require a signature from an agent or broker.

You may purchase OSFR coverage directly from insurance companies. If you do, you act as your own insurance agent or broker. Therefore, you must sign Form MMS–1019 in the space provided for the agent or broker's signature. By signing, you certify that the information contained in the insurance certificate is accurate and the named insurers comply with the requirement of § 253.29. The insurance underwriters must sign the Form MMS–1019 in every case.

Guarantee as OSFR Evidence

In order to avoid possible confusion between the meanings and applications of the terms ''guarantee'' and ''guaranty,'' we have changed ''guarantee'' to ''indemnity'' for the final rule.

One commenter asked why we allow only one indemnitor to provide a guarantee (i.e., indemnity) for a designated applicant (see § 253.30(a)). The proposed limit on indemnitors appeared to be inconsistent with § 253.32 which would allow pools of guarantors. The commenter asked us to allow more than one indemnitor as long as all the appropriate self-insurance tests are passed and one indemnitor is designated as the primary guarantor.

We understand how the commenter might be confused by the apparent inconsistency between the two sections of the rule that were cited. Section 253.32 of the proposed rule should have listed ''pooling'' instead of ''pools of guarantors'' as a possible alternative method for demonstrating OSFR. Pooling is a method that might be proposed by some designated applicants to share the cost of demonstrating OSFR. For example, two or more designated applicants might form a partnership (i.e., pool) that provides an OSFR indemnity for all of the partners who are also its corporate affiliates or subsidiaries. The amount of the indemnity would be determined using the procedures in § 253.30. The partnership's financial resources would come from commitments of property, plant and equipment made by the pool members. Each pool member would use the indemnity as a basis for demonstrating OSFR. For this final rule the term ''pooling'' has replaced ''pools of guarantors'' in § 253.32. As specified in the rule, the specific terms of a pooling arrangement, or any alternative method for demonstrating OSFR, must be acceptable to MMS.

MMS will allow only one indemnitor to provide an indemnity as OSFR evidence under either § 253.30(a) or § 253.32. This approach is consistent with the OCSLA OSFR program operated under 33 CFR part 135, first by the USCG and then, after October 1992, by MMS. When the USCG first started operating the OCSLA OSFR program in the late 1970's, more than one indemnitor was allowed for any one OSFR demonstration. However, this proved to be unworkable because the failure of any one of the indemnitors could and did cause the failure of the whole package of OSFR evidence. Once the USCG began allowing only one indemnitor per OSFR application, there was a significantly greater amount of stability in OSFR demonstrations. We believe that it is necessary to maintain this stability, and thus this limitation on indemnities, to provide the necessary protection for potential claimants under OPA.

One commenter correctly observed that the indemnitor provisions of § 253.30 are structured so that only a corporate relative of the designated applicant may provide an OSFR indemnity. To clarify, we made this limitation explicit in § 253.30(b) of the final rule. This rule prevents an indemnitor from assuming an unacceptable amount of OSFR risk. Without this restriction on who may provide an indemnity, it would be possible for a single indemnitor to provide an indemnity for all the designated applicants and all the offshore facilities subject to this regulation. We believe a single indemnitor scenario would threaten the security of the entire OSFR program because there would be no reasonable assurance that the obligations attendant to all the indemnities could be met. We also believe that the corporate affiliate requirement fosters the OPA objective to ensure that claims are resolved in an orderly and expeditious manner. If the designated applicant and the indemnitor share non-OSFR business objectives, then the potential for disputes over who will pay a claim should be minimized. Likewise, the corporate affiliate requirement should maximize the potential for timely settlement of valid claims without resorting to the Oil Spill Liability Trust Fund.

One commenter noted that § 253.30 bases the amount of an indemnitor's indemnity solely on financial strength requirements. Further, the commenter asserts that no security would be lost if we allowed an insurer to be an indemnitor provided that we find the insurer acceptable based on the insurer's rating of claims paying ability. We do not believe it would be in the best interest of potential claimants to allow an insurer to act as an indemnitor based on its rating or status. This rating

or status typically considers the following financial, operating, and market issues:

- Leverage and capitalization;
- Holding companies and their associated capital structures;
- Reinsurance;
- Adequacy of loss reserves policy;
- Quality and diversification of assets;
- Liquidity;
- Profitability of insurance operations;
- Revenue composition, diversification, and volatility;
- Management experience and objectives in the insurance business;
- Market risk;
- Competitive market position;
- Spread of risk; and
- Event risk.

Although some of these issues are common financial considerations for any company, most are specific to the insurance industry. In addition, they are quite different than the self-insurance considerations and tests described or referred to in § 253.30. There are instances where insurance companies are partial lessees of OCS offshore facilities, and there may be instances where they are partial lessees of State offshore facilities. In this capacity, an insurance company can be identified as a designated applicant and may submit financial information in accordance with §§ 253.21 thru 253.28 to evidence self-insurance capability. Likewise, if an insurance company is a corporate parent or affiliate of a designated applicant, it may submit financial information in accordance with § 253.30 to evidence indemnitor capability.

Designated Applicant

Many oil and gas industry interests expressed dissatisfaction with the proposed requirement that a single ''designated applicant'' demonstrate OSFR for all the COFs on a lease, permit, or RUE. The principal objections are that the designated applicant concept is inconsistent with the way MMS approaches management of lease operations, and it fails to recognize that the COFs on a lease, permit, or RUE might be operated by different parties. The commenters are concerned that the proposed, area-based approach to demonstrating OSFR will result in needless paperwork and confusion, and force one responsible party to assume liability for another's operations. As a result, the commenters consider an area-based OSFR demonstration unworkable.

We do not accept the argument that demonstrating OSFR on an area-specific basis will result in improper assignment of liability for a COF. It is OPA, not this regulation, that defines who is liable for cleanup and damages related to a COF incident. The OPA prescribes that all parties with an ownership or working interest in a lease, permit, or RUE are jointly and severally liable for oil-spill discharges from facilities on that lease, permit, or RUE. Thus, the rule on who demonstrates OSFR for a COF on a lease, permit, or RUE cannot excuse from liability anyone whom the statute makes liable.

The main reason the proposed rule required one designated applicant to demonstrate OSFR on a permit or area-specific basis is that it would make it easier for us to accurately track COFs and ensure continuous OSFR coverage for all COFs. However, we share the concerns that the proposed area-based OSFR demonstration may cause confusion for responsible parties and possibly result in unneeded duplication of effort. In response, this final regulation does not require you to demonstrate OSFR on a lease, permit, or RUE basis. Instead, you must demonstrate OSFR on a COF-specific basis. The designated applicant concept is retained in the final rule in the sense that any responsible party or other party approved by MMS may demonstrate OSFR for a COF. This means that a lessee, operator, or other approved person may be a designated applicant. This change between proposed and final rule affected many sections of the regulation.

Although this final rule allows you to demonstrate OSFR on a COF-specific basis, it retains the requirement for one OSFR demonstration per COF. As discussed above in the preamble section on *Facility*, it would be inconsistent with the purposes of OPA to allow OSFR coverage for a single facility to be sub-divided, because it tends to understate the worst case oil-spill discharge volume for a facility and would frustrate the claims process should a discharge occur. This means that if there is more than one operator for a COF, you must decide who will demonstrate OSFR for the COF.

The final rule also requires you to submit and maintain a single OSFR demonstration for all your COFs. We believe this is essential in order to track OSFR coverage for COFs and to ensure continuous OSFR coverage.

One commenter recommended that we require the owner or operator of a COF to be the designated applicant because it is consistent with OPA's polluter-pays premise, eliminates involvement of lessees with no knowledge of COF operations, and creates compatibility with the spill response planning regulations. We did not adopt this recommendation because OPA provides that any responsible party for a COF may demonstrate OSFR for the COF, and all responsible parties are jointly and severally liable for cleanup and damages resulting from a COF incident.

Amending an OSFR Demonstration

The comments we received on the proposed procedures for amending an existing OSFR demonstration focused on timing and methods. Some commenters are confused about the meaning of the terms ''add'' and ''drop.'' Some commenters believe that we should not require you to submit to us any information about adds or drops because we already get that information at the time we consider your request for approval of an assignment of lease ownership or working interest. If the COF is not on the OCS, the commenters suggested that we should obtain information about adds and drops from the appropriate State officials.

We have considered the comments we received on *Amending an OSFR Demonstration* and we find that the proposed requirements are necessary for the following reasons. First, we are not sure that we can obtain the necessary information about non-OCS COFs from the States. Therefore, you must provide information about changes in responsibility for non-OCS COFs. If the States accept the responsibility for providing that information in the future, then we will revisit the requirement that you must provide it to us.

Also, for OCS COFs, you may decide to transfer designated applicant responsibilities to another person without requesting MMS to approve an assignment of lease ownership or operating rights. In these cases, we would not have the information needed to accurately track OSFR coverage. Again, you must provide the information we need to monitor compliance with this regulation, to ensure that there is an OSFR demonstration for each COF, and to clearly establish to whom a claim should be presented.

Implementation Schedule

The proposed regulation required you to submit OSFR evidence that covers all your COFs to MMS within 60 days after the effective date of the regulation. Commenters from both the oil and gas and insurance industries objected to this compliance schedule. One objection is based on concerns that the rule would go into effect before some of you are required to prepare facility response plans under the MMS response planning regulations. The methods you

must use to calculate worst case oil-spill discharge volumes for facilities located seaward of the coastline are in those regulations. Some commenters believe it would be an unnecessary burden to require worst case discharge calculations under the OSFR rule unless it is coordinated with the requirement for oil-spill response planning purposes. The commenters recommended that the effective date of this regulation be deferred until after you must comply with the MMS response plan rule. Insurance industry interests expressed concerns that a 60-day compliance window will generate an overwhelming administrative burden on insurance providers because a large number of designated applicants will request insurance coverage over a short period of time. One commenter suggested that this problem could be mitigated if a designated applicant were allowed to defer submittal of OSFR evidence under this rule until the OSFR demonstrations they made under the current rule covering OCS facilities expire.

We do not find the arguments for linking OSFR demonstrations and MMS response plan compliance compelling. It is not necessary for you to prepare an MMS response plan in order to do worst case oil-spill discharge calculations for your facilities. Likewise, we do not accept that requiring you to do these calculations is burdensome. If you do not have to prepare an MMS response plan before you must submit your OSFR demonstration, the worst case data that is generated to support the demonstration can later be used to prepare a response plan. Also, the MMS response plan regulations do not prohibit you from developing a response plan at the time you must submit an OSFR demonstration under this regulation. Finally, we believe that OSFR for COFs not covered under the current OCS OSFR program should be established as soon as practicable. For these reasons, we find that the benefits of implementing this new OSFR program in a timely fashion outweigh the potential burdens cited in the comments.

We share the concerns expressed by commenters that you must be given sufficient time to assemble acceptable OSFR evidence. This is especially important if you rely primarily on insurance to demonstrate OSFR, or if you are not currently subject to the OCS OSFR program that this regulation replaces. Therefore, we have revised the language in § 253.44 so that submissions of OSFR demonstrations will be staged over the 180-day period following the effective date of the regulation. If you are demonstrating OSFR for any OCS facility on the effective date, you must submit OSFR evidence for all your COFs before any of your existing OSFR coverage expires, or within 180 days after the effective date of the rule, whichever is earlier. If you are not demonstrating OSFR for an OCS facility, you must submit OSFR evidence for all your COFs within 180 days after the effective date of this regulation. We expect this implementation schedule to spread OSFR submissions out over a period of months, and give insurers and designated applicants with no prior OSFR experience sufficient time to prepare acceptable evidence.

Claims for Cleanup and Damages

Direct Action—One commenter stated that the proposed rule, in § 253.41(d), should mirror the statutory language word-for-word regarding the circumstances under which a guarantor is subject to direct action. The concern is that insurance companies will hesitate to participate if they believe the regulation broadens the statutory language.

This section merely provides that OSFR evidence submitted by a designated applicant must include a statement by the instrument insurer agreeing to the direct action terms and conditions established by OPA. The terms and conditions cited in the section are entirely consistent with those in OPA. The rule does not ''broaden'' the statutory language. Thus, no change to § 253.41(d) is necessary.

Defenses Against Direct Action—OPA provides that MMS may, by regulation, designate defenses available to guarantors in addition to the two categories of defenses specifically established by OPA, (1) defenses that are available to the responsible party, or (2) the defense that the incident (oil-spill discharge or substantial threat of the discharge of oil) was caused by the willful misconduct of the assured. MMS did not establish additional defenses in the proposed regulation. One commenter said that MMS should, at the very least, allow insurance companies a defense whenever the insured commits fraud or makes misrepresentations in the course of procuring the underlying OSFR policy.

Allowing such a defense is inconsistent with two objectives of the OSFR program: Ensure that claims for oil-spill damages and cleanup costs are paid promptly; and make responsible parties or their guarantors pay claims rather than the Oil Spill Liability Trust Fund (Fund).

Limiting the types of defenses guarantors may use to avoid payment of claims is consistent with and furthers the achievement of these objectives. Furthermore, there is no evidence that fraud and misrepresentation have been a problem in the current OSFR program. We will monitor this situation.

Insolvency as a Condition for Direct Action—One commenter said that MMS had incorrectly suggested in § 253.61(a)(1) that the mere assertion of insolvency is sufficient to allow a claimant to present a claim directly to the guarantor. The commenter stated that the responsible party must actually be insolvent as a condition for direct action.

The section cited is meant to state, not merely suggest, that a responsible party's claim of insolvency is sufficient to permit claimants to proceed with direct action against guarantors. Our interpretation is that if a responsible party denies or fails to pay a claim *asserting* that he or she is insolvent and further *asserts* that the conditions of his or her insolvency are equivalent to the insolvency criteria set forth at OPA section 1016(f)(2), then claimants may proceed against the responsible party's guarantor. The phrase, ''as defined under section 101(31) of Title 11, United States Code and applying generally accepted accounting principles,'' simply defines the word ''insolvent'' and does not establish a requirement that MMS or others actually verify the responsible party's financial status. The commenter also seems to suggest that claimants might make self-serving assertions that the designated applicant was insolvent. The statute and the proposed regulation both state that a claimant may proceed against a guarantor when a responsible party denies or fails to pay a claim because of insolvency. We do not believe it is unreasonable to expect that the guarantor contact the designated applicant to verify that the designated applicant, in fact, has denied or failed to pay a claim because of insolvency.

The commenter, consistent with the above comments, stated that MMS should establish through regulations a process whereby MMS would make an official determination of insolvency. Again, all that is required in order for claimants to present claims to a guarantor is for the designated applicant to deny or fail to pay a claim citing insolvency. One of the principal objectives of OPA is to ensure that people who suffer damage from an oil spill are compensated quickly to minimize their economic loss and hardship. Establishing a regulatory process that might require a lengthy insolvency determination procedure before compensation could begin would

be totally inconsistent with that objective.

Accordingly, we are not changing the regulation in response to comments about requiring MMS to determine insolvency as a condition for direct action.

Bankruptcy/Insolvency of All Responsible Parties—One commenter said that *ALL* responsible parties, not just the designated applicant, must be bankrupt or insolvent before a claim may be presented directly to a guarantor.

The 1996 OPA amendments provide that ''a responsible party,'' rather than all responsible parties, will provide evidence of financial responsibility. Thus, the statute allows one party (i.e., the designated applicant) to make the demonstration on behalf of all responsible parties, rather than requiring a demonstration by each responsible party. The designated applicant is, in effect, an agent for the other parties. Since all parties are not required to obtain evidence of financial responsibility, it is not reasonable to require that all responsible parties be bankrupt or insolvent before claims can be presented to the guarantor. Furthermore, such a requirement would slow the processing and payment of claims contrary to OPA's objective of ensuring that people who suffer damage as a result of a spill are compensated expeditiously to minimize their economic loss and hardship.

We will not change the regulation to require that all responsible parties be bankrupt or insolvent before a claim may be presented to a guarantor. We revised § 253.60 of the final rule to clarify that, in accordance with the statute, a claimant may present a claim first to the guarantor if the designated applicant (i.e., responsible party) has filed a petition for bankruptcy. (See § 253.60(a)).

90-day Trigger for Court Action—One commenter said that the 90-day trigger for taking court action against the guarantor (see § 253.60(b)(5)) was inappropriate and could result in needless litigation. Since the 90-day time period begins when the claim is filed with the *designated applicant*, there is no assurance that the guarantor will have a reasonable time to examine the claim before being sued.

We recognize the validity of the comment. However, it is beyond our authority to rectify the situation because the OPA provisions are quite explicit on this issue, and they are implemented by the courts, not MMS. OPA section 1013(c) clearly states that if a claim is not settled by payment within 90 days by the person to whom the claim was submitted, the claimant may elect to commence an action in court against the responsible party or guarantor or to present the claim to the Fund.

We do require, however, that designated applicants notify their guarantor(s) within 15 calendar days of a receipt of a claim. Moreover, once a facility has been designated a source of a spill under OPA section 1014, we would expect the designated applicant and the guarantor to work closely together in the review of claims.

During the course of our review of proposed § 253.60 that was prompted by this comment, we discovered that it did not explicitly identify the relationship between advertising a claim and the 90-day trigger for direct action. The statute provides that, absent denial by the responsible party (i.e., designated applicant) or guarantor, a claimant must wait at least 90 days after the date that the incident source and claims procedures are advertised before a claim may be presented to the Fund. This limitation is now covered in paragraph § 253.60(b), and the term ''source of the incident'' was added to the list of terms in § 253.3.

Advertising Requirements—One commenter said that USCG regulations (33 CFR 136.301) must be modified to make the responsible party do the initial advertising of claims procedures.

Without addressing the merits of the comment, such a change cannot be made in this rule because advertising of claims was neither a subject of the proposed rule nor a matter within our jurisdiction. Any change in USCG regulations would have to be made by that agency, not MMS. To clarify that procedures for advertising claims is within USCG jurisdiction, rather than MMS jurisdiction, we added the term ''advertise'' to the list of terms in § 253.3.

OSFR Forms—This final regulation does not include the MMS forms that you must use to submit information supporting your OSFR demonstration. They will be published in a separate **Federal Register** document announcing that they have been approved by OMB. These forms will reflect our consideration of comments we received on their format and content.

Civil Penalty Regulations—MMS is amending the regulations at 30 CFR 250.1404 to include violations of the OSFR requirements (reference § 253.51 of the OSFR rule). MMS will process OSFR penalties under 30 CFR 250.1400 using the penalty assessment matrix presented in the proposed OSFR rule (62 FR 14056). To obtain a copy of the OSFR penalty matrix, send your request to the address listed in § 253.45.

Regulatory Flexibility Act—Several commenters said we did not properly assess the effects of this rule on small businesses. In particular, the commenters disagreed with our estimates of the number of small businesses that will be affected and the costs of compliance. We agree. In response, we revised our analysis using data provided by the commenters, our reassessment of the likely cost of OSFR insurance, the decreased geographic area covered by the final rule, and the estimates of information collection costs. In general, we increased our estimate of the number of small businesses that would be affected and decreased the estimated per-business cost of compliance. We do not agree with the comment that the costs of complying with this regulation threaten the viability of many small businesses, because our estimated annual compliance cost is only $14,000 per business (e.g., designated applicant). See the analysis presented later in this notice of final rulemaking on the Regulatory Flexibility Act.

Paperwork Reduction Act—We received numerous comments on the information collection associated with this regulation. In general, the commenters asserted that we underestimated the paperwork burden, or that we asked for information we already have or don't need.

One commenter said that the frequency of responses from designated applicants will be monthly or perhaps weekly, rather than annually, as stated in the NPR. To clarify, we stated in the NPR that a designated applicant will submit information *at least* once per year. Although we do not agree that response frequency will be monthly or weekly for most designated applicants, we have reviewed and raised our estimates of reporting frequency for this final regulation. The principal bases for these estimates are historical data on the OCSLA OSFR program, requests for OCS drilling permits, and OCS assignment or transfer requests. These data are good indicators of possible COF changes that would require you to submit OSFR information under this rule.

The commenters also said that the underestimate of reporting frequency leads to a significant underestimate of reporting costs. We have revised the costs to account for the revised estimates of the reporting frequency and the associated reporting burden hours.

Some commenters said we should not require any data on COF changes because MMS or the States already require you to submit the information for other purposes (e.g., request for

approval of drilling plan, production plan, or drilling permit). Further, the commenters believe we should make arrangements with the States to obtain data you submit to them about non-OCS COFs. We disagree for the reasons presented above in the discussion on *Amending an OSFR Demonstration*.

One commenter suggested that it is unnecessary for us to require any information about a designated applicant's COFs, if the designated applicant is the designated operator and demonstrates the maximum OSFR amount (i.e., $150 million). We disagree, except for information about worst case oil-spill discharge volumes (see § 253.14(b)). Our reasons are the same as those presented above in the discussion on Amending an OSFR Demonstration. Thus, you must specify the COFs covered by your OSFR demonstration even if the amount of OSFR you demonstrate is $150 million.

Takings Implication Assessment—Several commenters suggested that the owners of some small companies that must comply with this rule will not be able to pay the associated costs. Also, if we award a $25,000 civil penalty for each day of non-compliance, the penalty would amount to nearly $10,000,000 per year. On those bases the commenters believe we must prepare a Takings Implications Assessment because the net effect of the rule could be a taking.

We disagree. Based on information we received from commenters about the number of small companies affected by the proposed rule, information we gathered about the likely cost of OSFR insurance, and the reduced area along the coast that is covered by the final rule, we re-evaluated the compliance costs. We now estimate that the companies that will be affected most significantly by this rule will spend about $14,000 per year to comply. We could find no evidence that any company with a COF will be subject to a taking because of this incremental economic burden. Moreover, we do not agree that penalties for non-compliance with this rule should be considered in assessing a possible taking.

Author: Raymond L. Beittel, Performance and Safety Branch, MMS, prepared this document.

E.O. 12886

This final rule is not a significant rule requiring review by the OMB under E.O. 12866.

All of the oil and gas companies currently operating in the OCS, including those considered to be small businesses, had to comply with the existing OSFR regulations (i.e., 33 CFR part 135). MMS does not expect that these companies will incur any significant operating cost increases from complying with this rule. Also, of the estimated 45 oil and gas companies operating in State coastal waters that would be affected by the rule, about half hold, have applied for, or have held a Certificate of Financial Responsibility under 33 CFR part 135. If 25 companies operating in State coastal waters are subject to OSFR for the first time and each company uses only insurance to demonstrate OSFR, the estimated annual cost of the insurance is $10,000 per company. Also, we estimate that the annual administrative cost to each of these 25 companies will be approximately $4,000. Overall, the annual, incremental, industry-wide cost of compliance is estimated to be $350,000.

This rule does not generate any adverse effects on competition, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, OMB review of this final rule under E.O. 12866 is unnecessary.

Regulatory Flexibility Act

Approximately 200 businesses will pay the costs of complying with this regulation. These 200 businesses will demonstrate OSFR to MMS on behalf of themselves and approximately 400 other holders of oil and gas leases, permits and RUEs that are subject to the rule. Although some other businesses, such as insurance brokers, also may be affected because they have OSFR-related agreements with designated applicants, none are expected to incur any compliance costs. See the discussion below for Paperwork Reduction Act for more information on estimates of the total number of affected businesses.

We estimate that the total annual cost of compliance with this new regulation will be $7.1 million. This estimate represents the sum of the estimated annual administrative costs (i.e., $800,000) and the estimated cost of OSFR evidence using insurance or a surety (i.e., $6.3 million). See the discussion below on Reporting and Recordkeeping ''Hour'' Burden for more information administrative cost estimates. The figure for annual cost of OSFR evidence was derived using the assumptions that 90 percent of the 200 designated applicants will demonstrate an average of $35 million in financial responsibility using insurance or a surety that costs $35,000.

Most of the estimated 200 businesses affected by this new regulation demonstrated OSFR under the previous regulation. We estimate that the annual cost of compliance with the previous OSFR rule was $5.9 million. This figure represents the sum of the estimated annual administrative costs (i.e., $1.1 million) and estimated annual cost of OSFR evidence using insurance or a surety (i.e., $4.8 million). The figure for the annual cost of OSFR evidence under the previous program was derived using the assumptions that insurance-or surety-based demonstrations were made for 1,200 OCS facilities at an average cost of $4,000 per facility. Although the cost of compliance for this new rule is estimated to be higher than for the previous OSFR rule, we expect that the *de minimis* provision in the rule will exclude some small businesses from the requirement to demonstrate OSFR.

Approximately 45 of the estimated 200 businesses that we expect to be affected by this regulation have oil and gas facilities located in State waters where Federal OSFR requirements did not previously apply. Of these 45 businesses, about 35 could be considered small businesses under Small Business Administration criteria. Each of the remaining 10 businesses employs more than 500 people, so none of them meet the Small Business Administration small business criteria. Based, in part, on data received in comments on the proposed rule, we estimate that 25 of the 35 small businesses with State oil and gas facilities will be required to demonstrate OSFR for the first time. The remaining 10 affected small businesses demonstrated OSFR for facilities located in the OCS under the previous regulation. Based on our knowledge of the types of oil and gas facilities that are owned or operated by the estimated 25 newly-regulated small businesses, we expect that each business will be required to demonstrate $10 million in OSFR.

It is reasonable to assume that each of the estimated 25 newly-regulated small businesses will use OSFR evidence that costs no more than insurance, and that the annual premium for a $10 million OSFR insurance policy will be about $10,000. Further, it is conservative to assume that, in addition to insurance costs, each small business will incur approximately $4,000 in annual administrative costs. This $4,000 figure represents the total estimated annual administrative cost (i.e., approximately $800,000) divided by the total number of affected businesses (i.e., 200). See the discussion below on Reporting and Recordkeeping ''Hour'' Burden for more information on administrative cost estimates. When the estimated annual administrative cost (i.e., $4,000) is added to the estimated annual cost of

OSFR insurance (i.e., $10,000), the total estimated annual cost of compliance for each of the 25 newly-regulated small businesses equals $14,000. Further, when the estimated annual newly-affected small business compliance cost (i.e., $14,000) is multiplied by the total number of newly-affected small businesses (i.e., 25), the total incremental annual economic impact on small businesses equals $350,000. We do not believe this amount represents a substantial economic effect on small business.

The amount of oil a company produces and the volumes of the associated worst case oil-spill discharges are generally proportional to the company's size. We do not expect smaller companies to be the designated applicants for any COFs that have a worst case oil-spill discharge volume of greater than 35,000 bbls. If a smaller company acquires an interest in a COF with a very large worst case oil-spill discharge volume, such as a deepwater facility in the Gulf of Mexico, we expect the company will do so in partnership with a larger company that can demonstrate OSFR using self-insurance. We further expect that the larger company will be selected as the designated applicant and demonstrate OSFR on behalf of the smaller partner. Therefore, we do not expect that implementing this regulation will require small businesses to demonstrate OSFR for amounts greater than $35 million.

This OSFR regulation will have no adverse effect on oil company service industries, such as the supply vessel and service vessel industries. The persons responsible for these vessels are not governed by this regulation but must comply with separate Coast Guard OSFR requirements under 33 CFR part 138.

Your comments are important. The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small business about Federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of MMS, call toll-free (888) 734–3247.

Paperwork Reduction Act (PRA) of 1995

As part of the proposed rulemaking process, we submitted the information collection requirements in 30 CFR part 253 and the related forms to OMB for approval. A discussion of the comments received on the information collection aspects of the proposed rule is included earlier in the preamble. Based on changes made in this rule and to the forms, we have submitted a revised information collection package to OMB for approval under section 3507(d) of the PRA. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The information collection aspects of this final rule will not take effect until approved by OMB. We will publish a document in the **Federal Register** announcing the OMB approval of the revised collection of information and forms associated with 30 CFR part 253. The title of this collection of information is ''30 CFR Part 253, Oil Spill Financial Responsibility for Offshore Facilities.''

We invite the public and other Federal agencies to comment on this collection of information. Send comments regarding any aspect of the collection to the Office of Information and Regulatory Affairs, OMB, Attention Desk Officer for the Department of the Interior (OMB control number 1010–0106), 725 17th Street, NW., Washington, DC 20503. Send a copy of your comments to the Minerals Management Service; Mail Stop 4230; 1849 C Street, NW., Washington, DC 20240. OMB is required to make a decision concerning the collection of information contained in this final rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, your comments are best assured of being considered by OMB if OMB receives them by September 10, 1998.

Section 3506(c)(2)(a) of the PRA requires each agency to specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

The final rule for 30 CFR part 253 makes very few changes to the information collection requirements approved for the proposed rulemaking. We have modified several of the proposed forms for minor editorial corrections and to more clearly title the forms and some of the headings within the forms. In addition, we proposed separate reporting forms for the two categories of covered offshore facilities: (1) Lease listing, and (2) permit or RUE listing. Separate report forms for changes to these listings were also proposed. We have collapsed those four forms into two. This will enable respondents to report any covered offshore facility on the same form (MMS–1021) and submit subsequent changes on the same form (MMS–1022), regardless of the type of covered offshore facility.

In addition, Form MMS–1017, Designation of Applicant, was changed. In the proposed rule, respondents would submit a separate form for each covered offshore facility. In the final rule, respondents will submit one form for all covered offshore facilities for which they are the Designated Applicant. The new page 2 for Form MMS–1017 will be used to provide a description of the applicable facilities. The hour burden of preparing this form does not change as the same time will be necessary to research and gather the information. However, the information will now be included on the form submitted to MMS.

Some of the respondents will be the approximately 600 holders of leases, permits, and RUEs in the OCS and in certain State coastal waters who will appoint approximately 200 designated applicants to submit OSFR evidence to MMS under this regulation. Other respondents will be the designated applicants' insurance agents and brokers, bonding companies, and indemnitors. MMS receives approximately 2,600 responses each year under the OSFR regulation that this final regulation replaces. The frequency of submission under the new regulation will vary, but most will respond at least once per year.

Reporting and Recordkeeping ''Hour'' Burden: We estimate the total annual burden of this collection of information to be 22,181 reporting hours and zero recordkeeping hours. Based on $35 per hour, the total burden hour cost to respondents is estimated to be $776,335. The public reporting burden for this information will vary by form and collection, as shown below. The burden per response is averaged to be 5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The information collected consists of the following, and the estimated burden for each is shown in parentheses:

• Form MMS–1016, Designated Applicant Information Certification (1 hour).
• Form MMS–1017, Designation of Applicant (9 hours).
• Form MMS–1018, Self-insurance or Indemnity Information (1 hour).
• Form MMS–1019, Insurance Certificate (120 hours).
• Form MMS–1020, Surety Bond (24 hours).
• Form MMS–1021, Covered Offshore Facilities (3 hours).
• Form MMS–1022, Covered Offshore Facility Changes (1 hour).
• Letter requesting a determination of applicability of the regulation (2 hours).
• Proposal to accept an alternative method to demonstrate OSFR (no burden—we anticipate no requests but have provided the option in the rule).
• Written notice to MMS of change in ability to comply (1 hour).
• Claims (assessment of the burden associated with claims is the responsibility of the USCG as part of its rulemaking on claims against the Oil Spill Liability Trust Fund. See 33 CFR parts 135, 136, and 137).

Reporting and Recordkeeping ''Cost'' Burden: In submitting the collection of information in the proposed rule to OMB for approval, we included an estimate of the costs for demonstrating OSFR as a reporting and recordkeeping cost burden. It has since been determined that this is considered a ''regulatory'' burden rather than a ''paperwork'' burden as defined by the PRA. Therefore, there are no reporting or recordkeeping cost burdens contained in this final rule.

Takings Implication Assessment

DOI has determined that this rule does not represent a governmental action capable of interfering with constitutionally protected property rights. The annual, incremental cost of complying with this regulation for approximately 25 businesses will be limited to about $14,000 per business per year. We do not believe that paying this cost will result in any takings. Thus, DOI does not need to prepare a Takings Implication Assessment under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

E.O. 12988

DOI has certified to OMB that this rule meets the applicable reform standards provided in section 3(a) and 3(b)(2) of E.O. 12988.

Unfunded Mandates Reform Act of 1995

DOI has determined and certifies under the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on State, local, and tribal governments or the private sector.

National Environmental Policy Act

The DOI Manual (Part 516 DM 5, Appendix 10.4) specifies that issuing or modifying regulations normally does not have a significant effect on the environment, either individually or cumulatively. As such, this rulemaking is categorically excluded from the requirement to prepare either an environmental assessment or an environmental impact statement. MMS reviewed the rule according to agency procedures and verified that none of the exceptions to the categorical exclusion apply.

List of Subjects

30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Investigations, Minerals Management Service, Oil and gas exploration, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, and Sulfur.

30 CFR Part 253

Continental shelf, Environmental protection, Insurance, Oil and gas exploration, Oil pollution, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, and Surety bonds.

Dated: July 17, 1998.

Sylvia V. Baca,

Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Minerals Management Service (MMS) amends part 250 and adds a new part 253 to Chapter II of Title 30 of the CFR as follows:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS ON THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1334.

Subpart N—Outer Continental Shelf (OCS) Civil Penalties

2. In § 250.1404, paragraph (d) is added to read as follows:

§ 250.1404 Which violations will MMS review for potential civil penalties?

* * * * *

(d) Violations of the oil spill financial responsibility requirements at 30 CFR part 253.

3. Part 253 is added to read as follows:

PART 253—OIL SPILL FINANCIAL RESPONSIBILITY FOR OFFSHORE FACILITIES

Subpart A—General

Sec.

253.1 What is the purpose of this part?
253.3 How are the terms used in this regulation defined?
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253.20 What methods may I use to demonstrate OSFR?
253.21 How can I use self-insurance as OSFR evidence?
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253.23 What information must I submit to support my net worth demonstration?
253.24 When I submit audited annual financial statements to verify my net worth, what standards must they meet?
253.25 What financial test procedures must I use to determine the amount of self-insurance allowed as OSFR evidence based on net worth?
253.26 What information must I submit to support my unencumbered net assets demonstration?
253.27 When I submit audited annual financial statements to verify my unencumbered assets, what standards must they meet?
253.28 What financial test procedures must I use to evaluate the amount of self-insurance allowed as OSFR evidence based on unencumbered assets?
253.29 How can I use insurance as OSFR evidence?
253.30 How can I use an indemnity as OSFR evidence?
253.31 How can I use a surety bond as OSFR evidence?
253.32 Are there alternative methods to demonstrate OSFR?

Subpart D—Requirements for Submitting OSFR Information

253.40 What OSFR evidence must I submit to MMS?
253.41 What terms must I include in my OSFR evidence?
253.42 How can I amend my list of COFs?
253.43 When is my OSFR demonstration or the amendment to my OSFR demonstration effective?
253.44 When must I comply with this subpart?
253.45 Where do I send my OSFR evidence?

Subpart E—Revocation and Penalties

253.50 How can MMS refuse or invalidate my OSFR evidence?
253.51 What are the penalties for not complying with this part?

Subpart F—Claims for Oil-Spill Removal Costs and Damages

253.60 To whom may I present a claim?
253.61 When is a guarantor subject to direct action for claims?
253.62 What are the designated applicant's notification obligations regarding a claim?

Appendix—List of U.S. Geological Survey Topographic Maps

Authority: 33 U.S.C. 2701 *et seq.*

Subpart A—General

§ 253.1 What is the purpose of this part?

This part establishes the requirements for demonstrating OSFR for covered offshore facilities (COFs) under Title I of the Oil Pollution Act of 1990 (OPA), as amended, 33 U.S.C. 2701 *et seq.*

§ 253.3 How are the terms used in this regulation defined?

Terms used in this part have the following meaning:

Advertise means publication of the notice of designation of the source of the incident and the procedures by which the claims may be presented, according to 33 CFR part 136, subpart D.

Bay means a body of water included in the Geographic Names Information System (GNIS) bay feature class. A GNIS bay includes an arm, bay, bight, cove, estuary, gulf, inlet, or sound.

Claim means a written request, for a specific sum, for compensation for damages or removal costs resulting from an oil-spill discharge or a substantial threat of the discharge of oil.

Claimant means any person or government who presents a claim for compensation under OPA.

Coastline means the line of ordinary low water along that portion of the coast that is in direct contact with the open sea which marks the seaward limit of inland waters.

Covered offshore facility (COF) means a facility:

(1) That includes any structure and all its components (including wells completed at the structure and the associated pipelines), equipment, pipeline, or device (other than a vessel or other than a pipeline or deepwater port licensed under the Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*)) used for exploring for, drilling for, or producing oil or for transporting oil from such facilities. This includes a well drilled from a mobile offshore drilling unit (MODU) and the associated riser and well control equipment from the moment a drill shaft or other device first touches the seabed for purposes of exploring for, drilling for, or producing oil, but it does not include the MODU; and

(2) That is located:

(i) Seaward of the coastline; or

(ii) In any portion of a bay that is:

(A) Connected to the sea, either directly or through one or more other bays; and

(B) Depicted in whole or in part on any USGS map listed in the Appendix to this part, or on any map published by the USGS that is a successor to and covers all or part of the same area as a listed map. Where any portion of a bay is included on a listed map, this rule applies to the entire bay; and

(3) That has a worst case oil-spill discharge potential of more than 1,000 bbls of oil, or a lesser volume if the Director determines in writing that the oil-spill discharge risk justifies the requirement to demonstrate OSFR.

Designated applicant means a person the responsible parties designate to demonstrate OSFR for a COF on a lease, permit, or right-of-use and easement.

Director means the Director of the Minerals Management Service.

Fund means the Oil Spill Liability Trust Fund established by section 9509 of the Internal Revenue Code of 1986 as amended (26 U.S.C. 9509).

Geographic Names Information System (GNIS) means the database developed by the USGS in cooperation with the U.S. Board of Geographic Names which contains the federally-recognized geographic names for all known places, features, and areas in the United States that are identified by a proper name. Each feature is located by state, county, and geographic coordinates and is referenced to the appropriate 1:24,000-scale or 1:63,360-scale USGS topographic map on which it is shown.

Guarantor means a person other than a responsible party who provides OSFR evidence for a designated applicant.

Guaranty means any acceptable form of OSFR evidence provided by a guarantor including an indemnity, insurance, or surety bond.

Incident means any occurrence or series of occurrences having the same origin that results in the discharge or substantial threat of the discharge of oil.

Indemnity means an agreement to indemnify a designated applicant upon its satisfaction of a claim.

Indemnitor means a person providing an indemnity for a designated applicant.

Independent accountant means a certified public accountant who is certified by a state, or a chartered accountant certified by the government of jurisdiction within the country of incorporation of the company proposing to use one of the self-insurance evidence methods specified in this subpart.

Insolvent has the meaning set forth in 11 U.S.C. 101, and generally refers to a financial condition in which the sum of a person's debts is greater than the value of the person's assets.

Lease means any form of authorization issued under the Outer Continental Shelf Lands Act or state law which allows oil and gas exploration and production in the area covered by the authorization.

Lessee means a person holding a leasehold interest in an oil or gas lease including an owner of record title or a holder of operating rights (working interest owner).

Oil means oil of any kind or in any form, except as excluded by paragraph (2) of this definition.

(1) Oil includes:

(i) Petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil;

(ii) Hydrocarbons produced at the wellhead in liquid form;

(iii) Gas condensate that has been separated from gas before pipeline injection.

(2) Oil does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601).

Oil Spill Financial Responsibility (OSFR) means the capability and means by which a responsible party for a covered offshore facility will meet removal costs and damages for which it is liable under Title I of the Oil Pollution Act of 1990, as amended (33 CFR 2701 *et seq.*), with respect to both oil-spill discharges and substantial threats of the discharge of oil.

Outer Continental Shelf (OCS) has the same meaning as the term ''Outer Continental Shelf'' defined in section

2(a) of the OCS Lands Act (OCSLA) (43 U.S.C. 1331(a)).

Permit means an authorization, license, or permit for geological exploration issued under section 11 of the OCSLA (43 U.S.C. 1340) or applicable state law.

Person means an individual, corporation, partnership, association (including a trust or limited liability company), state, municipality, commission or political subdivision of a state, or any interstate body.

Pipeline means the pipeline segments and any associated equipment or appurtenances used or intended for use in the transportation of oil or natural gas.

Responsible party has the following meanings:

(1) For a COF that is a pipeline, responsible party means any person owning or operating the pipeline;

(2) For a COF that is not a pipeline, responsible party means either the lessee or permittee of the area in which the COF is located, or the holder of a right-of-use and easement granted under applicable state law or the OCSLA (43 U.S.C. 1301–1356) for the area in which the COF is located (if the holder is a different person than the lessee or permittee). A Federal agency, State, municipality, commission, or political subdivision of a state, or any interstate body that as owner transfers possession and right to use the property to another person by lease, assignment, or permit is not a responsible party; and

(3) For an abandoned COF, responsible party means any person who would have been a responsible party for the COF immediately before abandonment.

Right-of-use and easement (RUE) means any authorization to use the OCS or submerged land for purposes other than those authorized by a lease or permit, as defined herein. It includes pipeline rights-of-way.

Source of the incident means the facility from which oil was discharged or which poses a substantial threat of discharging oil, as designated by the Director, National Pollution Funds Center, according to 33 CFR part 136, subpart D.

State means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States.

§ 253.5 What is the authority for collecting Oil Spill Financial Responsibility (OSFR) information?

(a) The Office of Management and Budget (OMB) has approved the information collection requirements in this part 253 under 44 U.S.C. 3501 *et seq.* and assigned OMB control number 1010–0106.

(b) MMS collects the information to ensure that the designated applicant for a COF has the financial resources necessary to pay for cleanup and damages that could be caused by oil discharges from the COF. MMS uses the information to ensure compliance of offshore lessees, owners, and operators of covered facilities with OPA; to establish eligibility of designated applicants for OSFR certification (OSFRC); and to establish a reference source of names, addresses, and telephone numbers of responsible parties for covered facilities and their designated agents, guarantors, and U.S. agents for service of process for claims associated with oil pollution from designated covered facilities. The requirement to provide the information is mandatory. No information submitted for OSFRC is confidential or proprietary.

(c) An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

(d) Send comments regarding any aspect of the collection of information under this part, including suggestions for reducing the burden, to the Information Collection Clearance Officer, Minerals Management Service, Mail Stop 4230, 1849 C Street, NW, Washington, DC 20240; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Department of the Interior (1010–0106), 725 17th Street NW., Washington, DC 20503.

Subpart B—Applicability and Amount of OSFR

§ 253.10 What facilities does this part cover?

(a) This part applies to any COF on any lease or permit issued or on any RUE granted under the OCSLA or applicable state law.

(b) For a pipeline COF that extends onto land, this part applies to that portion of the pipeline lying seaward of the first accessible flow shut-off device on land.

§ 253.11 Who must demonstrate OSFR?

(a) A designated applicant must demonstrate OSFR. A designated applicant may be a responsible party or another person authorized under this section. Each COF must have a single designated applicant.

(1) If there is more than one responsible party, those responsible parties must use Form MMS–1017 to select a designated applicant. The designated applicant must submit Form MMS–1016 and agree to demonstrate OSFR on behalf of all the responsible parties.

(2) If you are a designated applicant who is not a responsible party, you must agree to be liable for claims made under OPA jointly and severally with the responsible parties.

(b) The designated applicant for a COF on a lease must be either:

(1) A lessee; or

(2) The designated operator for the OCS lease under 30 CFR 250.108 or the unit operator designated under a Federally approved unit including the OCS lease. For a lease or unit not in the OCS, the operator designated under the lease or unit operating agreement for the lease may be the designated applicant only if the operator has agreed to be responsible for compliance with all the laws and regulations applicable to the lease or unit.

(c) The designated applicant for a COF on a permit must be the permittee.

(d) The designated applicant for a COF on a RUE must be the holder of the RUE or, if there is a pipeline on the RUE, the owner or operator of the pipeline.

(e) MMS may require the designated applicant for a lease, permit, or RUE to be a person other than a person identified in paragraphs (b) through (d) of this section if MMS determines that a person identified in paragraphs (b) through (d) cannot adequately demonstrate OSFR.

(f) If you are a responsible party and you fail to designate an applicant, then you must demonstrate OSFR under the requirements of this part.

§ 253.12 May I ask MMS for a determination of whether I must demonstrate OSFR?

You may submit to MMS a request for a determination of OSFR applicability. Address the request to the office identified in § 253.45. You must include in your request any information that will assist MMS in making the determination. MMS may require you to submit other information before making a determination of OSFR applicability.

§ 253.13 How much OSFR must I demonstrate?

(a) The following general parameters apply to the amount of OSFR that you must demonstrate:

If you are the designated applicant for	Then you must demonstrate
Only one COF	The amount of OSFR that applies to the COF.
More than one COF	The highest amount of OSFR that applies to any one of the COFs.

(b) You must demonstrate OSFR in the amounts specified in this section:

(1) For a COF located wholly or partially in the OCS you must demonstrate OSFR in accordance with the following table:

COF worst case oil-spill discharge volume	Applicable amount of OSFR
Over 1,000 bbls but not more than 35,000 bbls	$35,000,000
Over 35,000 but not more than 70,000 bbls	70,000,000
Over 70,000 but not more than 105,000 bbls	105,000,000
Over 105,000 bbls	150,000,000

(2) For a COF not located in the OCS you must demonstrate OSFR in accordance with the following table:

COF worst case oil-spill discharge volume	Applicable amount of OSFR
Over 1,000 bbls but not more than 10,000 bbls	$10,000,000
Over 10,000 but not more than 35,000 bbls	35,000,000
Over 35,000 but not more than 70,000 bbls	70,000,000
Over 70,000 but not more than 105,000 bbls	105,000,000
Over 105,000 bbls	150,000,000

(3) The Director may determine that you must demonstrate an amount of OSFR greater than the amount in paragraphs (b)(1) and (2) of this section based on the relative operational, environmental, human health, and other risks that your COF poses. The Director may require an amount that is one or more levels higher than the amount indicated in paragraph (b)(1) or (2) of this section for your COF. The Director will not require an OSFR demonstration that exceeds $150 million.

(4) You must demonstrate OSFR in the lowest amount specified in the applicable table in paragraph (b)(1) or (b)(2) for a facility with a potential worst case oil-spill discharge of 1,000 bbls or less if the Director notifies you in writing that the demonstration is justified by the risks of the potential oil-spill discharge.

§ 253.14 How do I determine the worst case oil-spill discharge volume?

(a) To calculate the amount of OSFR you must demonstrate for a facility under § 253.13(b), you must use the worst case oil-spill discharge volume that you determined under whichever of the following regulations applies:

(1) 30 CFR Part 254—Response Plans for Facilities Located Seaward of the Coast Line, except that the volume of the worst case oil-spill discharge for a well must be four times the uncontrolled flow volume that you estimate for the first 24 hours.

(2) 40 CFR Part 112—Oil Pollution Prevention; or

(3) 49 CFR Part 194—Response Plans for Onshore Oil Pipelines.

(b) If you are a designated applicant and you choose to demonstrate $150 million in OSFR, you are not required to determine any worst case oil-spill discharge volumes, since that is the maximum amount of OSFR required under this part.

§ 253.15 What are my general OSFR compliance responsibilities?

(a) You must maintain continuous OSFR coverage for all your leases, permits, and RUEs with COFs for which you are the designated applicant.

(b) You must ensure that new OSFR evidence is submitted before your current evidence lapses or is canceled and that coverage for your new COF is submitted before the COF goes into operation.

(c) If you use self-insurance to demonstrate OSFR and find that you no longer qualify to self-insure the required OSFR amount based upon your latest audited annual financial statements, then you must demonstrate OSFR using other methods acceptable to MMS by whichever of the following dates comes first:

(1) Sixty calendar days after you receive your latest audited annual financial statement; or

(2) The first calendar day of the 5th month after the close of your fiscal year.

(d) You may use a surety bond to demonstrate OSFR. If you find that your bonding company has lost its state license or has had its U.S. Treasury Department certification revoked, then you must replace the surety bond within 15 calendar days using a method of OSFR that is acceptable to MMS.

(e) You must notify MMS in writing within 15 calendar days after a change occurs that would prevent you from meeting your OSFR obligations (e.g., if you or your indemnitor petition for bankruptcy under Chapters 7 or 11 of Title 11, U.S.C.). You must take any action MMS directs to ensure an acceptable OSFR demonstration.

(f) If you deny payment of a claim presented to you under § 253.60(b) or (c)(4), then you must give the claimant a written explanation for your denial.

Subpart C—Methods for Demonstrating OSFR

§ 253.20 What methods may I use to demonstrate OSFR?

As the designated applicant, you may satisfy your OSFR requirements by using one or a combination of the following methods to demonstrate OSFR:

(a) Self-insurance under §§ 253.21 through 253.28;

(b) Insurance under § 253.29;

(c) An indemnity under § 253.30;

(d) A surety bond under § 253.31; or

(e) An alternative method the Director approves under § 253.32.

§ 253.21 How can I use self-insurance as OSFR evidence?

(a) If you use self-insurance to satisfy all or part of your obligation to demonstrate OSFR, you must annually pass either a net worth test under § 253.25 or an unencumbered net asset test under § 253.28.

(b) To establish the amount of self-insurance allowed, you must submit evidence of your net worth under § 253.23 or evidence of your unencumbered assets under § 253.26.

(c) You must identify a U.S. agent for service of process.

§ 253.22 How do I apply to use self-insurance as OSFR evidence?

(a) You must submit a complete Form MMS–1018 with each application to demonstrate OSFR using self-insurance.

(b) You must submit your application to renew OSFR using self-insurance by the first calendar day of the 5th month after the close of your fiscal year. You may submit to MMS your initial application to demonstrate OSFR using self-insurance at any time.

§ 253.23 What information must I submit to support my net worth demonstration?

You must support your net worth evaluation with information contained in your previous fiscal year's audited annual financial statement.

(a) Audited annual financial statements must be in the form of:

(1) An annual report, prepared in accordance with the generally accepted accounting practices (GAAP) of the United States or other international accounting practices determined to be equivalent by MMS; or

(2) A Form 10–K or Form 20–F, prepared in accordance with Securities and Exchange Commission regulations.

(b) Audited annual financial statements must be submitted together with a letter signed by your treasurer highlighting:

(1) The State or the country of incorporation;

(2) The total amount of the stockholders' equity as shown on the balance sheet;

(3) The net amount of the plant, property, and equipment shown on the balance sheet; and

(4) The net amount of the identifiable U.S. assets and the identifiable total assets in the auditor's notes to the financial statement (i.e., a geographic segmented business note).

§ 253.24 When I submit audited annual financial statements to verify my net worth, what standards must they meet?

(a) Your audited annual financial statements must be bound.

(b) Your audited annual financial statements must include the unqualified opinion of an independent accountant that states:

(1) The financial statements are free from material misstatement, and

(2) The audit was conducted in accordance with the generally accepted auditing standards (GAAS) of the United States, or other international auditing standards that MMS determines to be equivalent.

(c) The financial information you submit must be expressed in U.S. dollars. If this information was originally reported in another form of currency, you must convert it to U.S. dollars using the conversion factor that was effective on the last day of the fiscal year pertinent to your financial statements. You also must identify the source of the currency exchange rate.

§ 253.25 What financial test procedures must I use to determine the amount of self-insurance allowed as OSFR evidence based on net worth?

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by ten.

(b) Divide the net amount of the identifiable U.S. assets by the net amount of the identifiable total assets.

(c) Multiply the net amount of plant, property, and equipment shown on the balance sheet by the number calculated under paragraph (b) of this section and divide the resultant product by ten.

(d) The smaller of the numbers calculated under paragraphs (a) or (c) of this section is the maximum allowable amount you may use to demonstrate OSFR under this method.

§ 253.26 What information must I submit to support my unencumbered assets demonstration?

You must support your unencumbered assets evaluation with the information required by § 253.23(a) and a list of reserved, unencumbered, and unimpaired U.S. assets whose value will not be affected by an oil discharge from a COF. The assets must be plant, property, or equipment held for use. You must submit a letter signed by your treasurer:

(a) Identifying which assets are reserved;

(b) Certifying that the assets are unencumbered, including contingent encumbrances;

(c) Promising that the identified assets will not be sold, subjected to a security interest, or otherwise encumbered throughout the specified fiscal year; and

(d) Specifying:

(1) The State or the country of incorporation;

(2) The total amount of the stockholders'/owners' equity listed on the balance sheet;

(3) The identification and location of the reserved U.S. assets; and

(4) The value of the reserved U.S. assets less accumulated depreciation and amortization, using the same valuation method used in your audited annual financial statement and expressed in U.S. dollars. The net value of the reserved assets must be at least two times the self-insurance amount requested for demonstration.

§ 253.27 When I submit audited annual financial statements to verify my unencumbered assets, what standards must they meet?

Any audited annual financial statements that you submit must:

(a) Meet the standards in § 253.24; and

(b) Include a certification by the independent accountant who audited the financial statements that states:

(1) The value of the unencumbered assets is reasonable and uses the same valuation method used in your audited annual financial statements;

(2) Any existing encumbrances are noted;

(3) The assets are long-term assets held for use; and

(4) The valuation method used in the audited annual financial statements is for long-term assets held for use.

§ 253.28 What financial test procedures must I use to evaluate the amount of self-insurance allowed as OSFR evidence based on unencumbered assets?

(a) Divide the total amount of the stockholders'/owners' equity listed on the balance sheet by 4.

(b) Divide the value of the unencumbered U.S. assets by 2.

(c) The smaller number calculated under paragraphs (a) or (b) of this section is the maximum allowable amount you may use to demonstrate OSFR under this method.

§ 253.29 How can I use insurance as OSFR evidence?

(a) If you use insurance to satisfy all or part of your obligation to demonstrate OSFR, you may use only insurance certificates issued by insurers that have achieved a ''Secure'' rating for claims paying ability in their latest review by A.M. Best's Insurance Reports, Standard & Poor's Insurance Rating Services, or other equivalent rating made by a rating service acceptable to MMS.

(b) You must submit information about your insurers to MMS on a completed and unaltered Form MMS–1019. The information you submit must:

(1) Include all the information required by § 253.41 and

(2) Be executed on one original insurance certificate (i.e., Form MMS–1019) for each OSFR layer (see paragraph (c) of this section), showing all participating insurers and their proportion (quota share) of this risk. The certificate must bear the original signatures of each insurer's underwriter or of their lead underwriters, underwriting managers, or delegated brokers, depending on who is authorized to bind the underwriter.

(3) For each insurance company on the insurance certificate, indicate the insurer's claims-paying-ability rating and the rating service that issued the rating.

(c) The insurance evidence you provide to MMS as OSFR evidence may be divided into layers, subject to the following restrictions:

(1) The total amount of OSFR evidence must equal the total amount you must demonstrate under § 253.13;

(2) No more than one insurance certificate may be used to cover each OSFR layer specified in § 253.13(b) (i.e., four layers for an OCS COF, and five layers for a non-OCS COF);

(3) You may use one insurance certificate to cover any number of consecutive OSFR layers;

(4) Each insurer's participation in the covered insurance risk must be on a proportional (quota share) basis, must be expressed as a percentage of a whole layer, and the certificate must not contain intermediate, horizontal layers;

(5) You may use an insurance deductible. If you use more than one insurance certificate, the deductible amount must apply only to the certificate that covers the base OSFR amount layer. To satisfy an insurance deductible, you may use only those methods that are acceptable as evidence of OSFR under this part; and

(6) You must identify a U.S. agent for service of process on each insurance certificate you submit to MMS. The agent may be different for each insurance certificate.

(d) You may submit to MMS a temporary insurance confirmation (fax binder) for each insurance certificate you use as OSFR evidence. Submit your fax binder on Form MMS–1019, and each form must include the signature of an underwriter for at least one of the participating insurers. MMS will accept your fax binder as OSFR evidence during a period that ends 90 days after the date that you need the insurance to demonstrate OSFR.

§ 253.30 How can I use an indemnity as OSFR evidence?

(a) You may use only one indemnity issued by only one indemnitor to satisfy all or part of your obligation to demonstrate OSFR.

(b) Your indemnitor must be your corporate parent or affiliate.

(c) Your indemnitor must complete a Form MMS–1018 and provide an indemnity that:

(1) Includes all the information required by § 253.41; and

(2) Does not exceed the amounts calculated using the net worth or unencumbered assets tests specified under §§ 253.21 through 253.28.

(d) You must submit your application to renew OSFR using an indemnity by the first calendar day of the 5th month after the close of your indemnitor's fiscal year. You may submit to MMS your initial application to demonstrate OSFR using an indemnity at any time.

(e) Your indemnitor must identify a U.S. agent for service of process.

§ 253.31 How can I use a surety bond as OSFR evidence?

(a) Each bonding company that issues a surety bond that you submit to MMS as OSFR evidence must:

(1) Be licensed to do business in the State in which the surety bond is executed;

(2) Be certified by the U.S. Treasury Department as an acceptable surety for Federal obligations and listed in the current Treasury Circular No. 570;

(3) Provide the surety bond on Form MMS–1020; and

(4) Be in compliance with applicable statutes regulating surety company participation in insurance-type risks.

(b) A surety bond that you submit as OSFR evidence must include all the information required by § 253.41.

§ 253.32 Are there alternative methods to demonstrate OSFR?

The Director may accept other methods to demonstrate OSFR that provide equivalent assurance of timely satisfaction of claims. This may include pooling, letters of credit, pledges of treasury notes, or other comparable methods. Submit your proposal, together with all the supporting documents, to the Director at the address listed in § 253.45. The Director's decision whether to approve your alternative method to evidence OSFR is by this rule committed to the Director's sole discretion and is not subject to administrative appeal under 30 CFR part 290 or 43 CFR part 4.

Subpart D—Requirements for Submitting OSFR Information

§ 253.40 What OSFR evidence must I submit to MMS?

(a) You must submit to MMS:

(1) A single demonstration of OSFR that covers all the COFs for which you are the designated applicant;

(2) A completed and unaltered Form MMS–1016;

(3) MMS forms that identify your COFs (Form MMS–1021, Form MMS–1022), and the methods you will use to demonstrate OSFR (Form MMS–1018, Form MMS–1019, Form MMS–1020). Forms are available from the address listed in § 253.45;

(4) Any insurance certificates, indemnities, and surety bonds used as OSFR evidence for the COFs for which you are the designated applicant;

(5) A completed Form MMS–1017 for each responsible party, unless you are the only responsible party for the COFs covered by your OSFR demonstration; and

(6) Other financial instruments and information the Director requires to support your OSFR demonstration under § 253.32.

(b) Each MMS form you submit to MMS as part of your OSFR demonstration must be signed. You also must attach to Form MMS–1016 proof of your authority to sign.

§ 253.41 What terms must I include in my OSFR evidence?

(a) Each instrument you submit as OSFR evidence must specify:

(1) The effective date, and except for a surety bond, the expiration date;

(2) That termination of the instrument will not affect the liability of the instrument issuer for claims arising from an incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that occurred on or before the effective date of termination;

(3) That the instrument will remain in force until the termination date or until the earlier of:

(i) Thirty calendar days after MMS and the designated applicant receive from the instrument issuer a notification of intent to cancel; or

(ii) MMS receives from the designated applicant other acceptable OSFR evidence; or

(iii) All the COFs to which the instrument applies are permanently abandoned in compliance with 30 CFR part 250 or equivalent State requirements;

(4) That the instrument issuer agrees to direct action for claims made under OPA up to the guaranty amount, subject to the defenses in paragraph (a)(6) of this section and following the procedures in § 253.60 of this part;

(5) An agent in the United States for service of process; and

(6) That the instrument issuer will not use any defenses against a claim made under OPA except:

(i) The rights and defenses that would be available to a designated applicant or responsible party for whom the guaranty was provided; and

(ii) The incident (i.e., oil-spill discharge or a substantial threat of the discharge of oil) leading to the claim for removal costs or damages was caused by willful misconduct of a responsible party for whom the designated applicant demonstrated OSFR.

(b) You may not change, omit, or add limitations or exceptions to the terms and conditions in an MMS form that you submit as part of your OSFR demonstration. If you attempt to do this, MMS will disregard the changes, omissions, additions, limitations, or exceptions and by operation of this rule MMS will consider the form to contain all the terms and conditions included on the original MMS form.

§ 253.42 How can I amend my list of COFs?

(a) If you want to add a COF that is not identified in your current OSFR demonstration, you must submit to MMS a completed Form MMS–1022. If applicable, you also must submit any additional indemnities, surety bonds, insurance certificates, or other instruments required to extend the coverage of your original OSFR demonstration to the COFs to be added. You do not need to resubmit previously accepted audited annual financial statements for the current fiscal year.

(b) If you want to drop a COF identified in your current OSFR demonstration, you must submit to MMS a completed Form MMS–1022. You must continue to demonstrate OSFR for the COF until MMS approves OSFR evidence for the COF from another designated applicant, or OSFR is no longer required (e.g., until a well that is a COF is properly plugged and abandoned).

§ 253.43 When is my OSFR demonstration or the amendment to my OSFR demonstration effective?

(a) MMS will notify you in writing when we approve your OSFR demonstration. If we find that you have not submitted all the information needed to demonstrate OSFR, we may require you to provide additional information before we determine whether your OSFR evidence is acceptable.

(b) Except in the case of self-insurance or an indemnity, MMS acceptance of OSFR evidence is valid until the surety bond, insurance certificate, or other accepted OSFR instrument expires or is canceled. In the case of self-insurance or indemnity, acceptance is valid until the first day of the 5th month after the close of your or your indemnitor's current fiscal year.

§ 253.44 When must I comply with this part?

If you are the designated applicant for one or more COFs covered by a Certificate of Financial Responsibility (CFR) issued under 33 CFR part 135 that expires after October 13, 1998, you must submit to MMS your evidence of OSFR for all your COFs no later than the earliest date that an existing CFR for any of your COFs expires. All other designated applicants must submit to MMS evidence of OSFR for their COFs no later than April 8, 1999.

§ 253.45 Where do I send my OSFR evidence?

Address all correspondence and required submissions related to this part to: U.S. Department of the Interior, Minerals Management Service, Gulf of Mexico Region, Oil Spill Financial Responsibility Program, 1201 Elmwood Park Boulevard, New Orleans, Louisiana 70123.

Subpart E—Revocation and Penalties

§ 253.50 How can MMS refuse or invalidate my OSFR evidence?

(a) If MMS determines that any OSFR evidence you submit fails to comply with the requirements of this part, we may not accept it. If we do not accept your OSFR evidence, then we will send you a written notification stating:

(1) That your evidence is not acceptable;

(2) Why your evidence is unacceptable; and

(3) The amount of time you are allowed to submit acceptable evidence without being subject to civil penalty under § 253.51.

(b) MMS may immediately and without prior notice invalidate your OSFR demonstration if you:

(1) Are no longer eligible to be the designated applicant for a COF included in your demonstration; or

(2) Permit the cancellation or termination of the insurance policy, surety bond, or indemnity upon which the continued validity of the demonstration is based.

(c) If MMS determines you are not complying with the requirements of this part for any reason other than paragraph (b) of this section, we will notify you of our intent to invalidate your OSFR demonstration and specify the corrective action needed. Unless you take the corrective action MMS specifies within 15 calendar days from the date you receive such a notice, we will invalidate your OSFR demonstration.

§ 253.51 What are the penalties for not complying with this part?

(a) If you fail to comply with the financial responsibility requirements of OPA at 33 U.S.C. 2716 or with the requirements of this part, then you may be liable for a civil penalty of up to $25,000 per COF per day of violation (that is, each day a COF is operated without acceptable evidence of OSFR).

(b) MMS will determine the date of a noncompliance. MMS will assess penalties in accordance with an OSFR penalty schedule using the procedures found at 30 CFR part 250, subpart N. You may obtain a copy of the penalty schedule from MMS at the address in § 253.45.

(c) MMS may assess a civil penalty against you that is greater or less than the amount in the penalty schedule after taking into account the factors in section 4303(a) of OPA (33 U.S.C. 2716a).

(d) If you fail to correct a deficiency in the OSFR evidence for a COF, then the Director may suspend operation of a COF in the OCS under 30 CFR 250.110 or seek judicial relief, including an order suspending the operation of any COF.

Subpart F—Claims for Oil-Spill Removal Costs and Damages

§ 253.60 To whom may I present a claim?

(a) If you are a claimant, you must present your claim first to the designated applicant for the COF that is the source of the incident resulting in your claim. If, however, the designated applicant has filed a petition for bankruptcy under 11 U.S.C. chapter 7 or 11, you may present your claim first to any of the designated applicant's guarantors.

(b) If the claim you present to the designated applicant or guarantor is denied or not paid within 90 days after you first present it or advertising begins,

whichever is later, then you may seek any of the following remedies that apply:

If the reason for denial or nonpayment is	then you may elect to
(1) *Not* an assertion of insolvency or petition in bankruptcy under 11 U.S.C. chapter 7 or 11.	(i) Present your claim to any of the responsible parties for the COF; or (ii) Initiate a lawsuit against the designated applicant and/or any of the responsible parties for the COF; or (iii) Present your claim to the Fund using the procedures at 33 CFR part 136.
(2) An assertion of insolvency or petition in bankruptcy under 11 U.S.C. chapter 7 or 11.	(i) Pursue any of the remedies in items (1)(i) through (iii) of this table; or (ii) Present your claim to any of the designated applicant's guarantors; or (iii) Initiate a lawsuit against any of the designated applicant's guarantors.

(c) If no one has resolved your claim to your satisfaction using the remedy that you elected under paragraph (b) of this section, then you may pursue another available remedy, unless the Fund has denied your claim or a court of competent jurisdiction has ruled against your claim. You may not pursue more than one remedy at a time.

(d) You may ask MMS to assist you in determining whether a guarantor may be liable for your claim. Send your request for assistance to the address listed in § 253.45. You must include any information you have regarding the existence or identity of possible guarantors.

§ 253.61 When is a guarantor subject to direct action for claims?

(a) If you are a guarantor, then you are subject to direct action for any claim asserted by:

(1) The United States for any compensation paid by the Fund under OPA, including compensation claim processing costs; and

(2) A claimant other than the United States if the designated applicant has:

(i) Denied or failed to pay a claim because of being insolvent; or

(ii) Filed a petition in bankruptcy under 11 U.S.C. chapters 7 or 11.

(b) If you participate in an insurance guaranty for a COF incident (i.e., oil-spill discharge or substantial threat of the discharge of oil) that is subject to claims under this part, then your maximum, aggregate liability for those claims is equal to your quota share of the insurance guaranty.

§ 253.62 What are the designated applicant's notification obligations regarding a claim?

If you are a designated applicant, and you receive a claim for removal costs and damages, then within 15 calendar days of receipt of a claim you must notify:

(a) Your guarantors; and

(b) The responsible parties for whom you are acting as the designated applicant.

Appendix—List of U.S. Geological Survey Topographic Maps

Alabama (1:24,000 scale): Bellefontaine; Bon Secour Bay; Bridgehead; Coden; Daphne; Fort Morgan; Fort Morgan NW; Grand Bay; Grand Bay SW; Gulf Shores; Heron Bay; Hollingers Island; Isle Aux Herbes; Kreole; Lillian; Little Dauphin Island; Little Point Clear; Magnolia Springs; Mobile; Orange Beach; Perdido Beach; Petit Bois Island; Petit Bois Pass; Pine Beach; Point Clear; Saint Andrews Bay; West Pensacola.

Alaska (1:63,360 scale): Afognak (A–1, A–2, A–3, A–4, A–5, A–0&B–0, B–1, B–2, B–3, C–1&2, C–2&3, C–5, C–6, D–1, D–4, D–5); Anchorage (A–1, A–2, A–3, A–4, A–8, B–7, B–8); Barrow (A–1, A–2, A–3, A–4, A–5, B–3, B–4); Baird Mts. (A–6); Barter Island (A–3, A–4, A–5); Beechy Point (A–1, A–2, B–1, B–2, B–3, B–4, B–5, C–4, C–5); Bering Glacier (A–1, A–2, A–3, A–4, A–5, A–6, A–7, A–8); Black (A–1, A–2, B–1, C–1); Blying Sound (C–7, C–8, D–1&2, D–3, D–4, D–5, D–6, D–7, D–8); Candle (D–6); Cordova (A–1, A–2, A–3, A–4, A–7&8, B–2, B–3, B–4, B–5, B–6, B–7, B–8, C–5, C–6, C–7, C–8, D–6, D–7, D–8); De Long Mts. (D–4, D–5); Demarcation Point (C–1, C–2, D–2, D–3); Flaxman Island (A–1, A–3, A–4, A–5, B–5); Harrison Bay (B–1, B–2, B–3, B–4, C–1, C–3, C–4, C–5, D–4, D–5); Icy Bay (D1, D–2&3); Iliamna (A–2, A–3, A–4, B–2, B–3, C–1, C–2, D–1); Karluk (A–1, A–2, B–2, B–3, C–1, C–2, C–4&5, C–6); Kenai (A–4, A–5, A–7, A–8, B–4, B–6, B–7, B–8, C–4, C–5, C-6, C–7, D–1, D–2, D–3, D–4, D–5); Kodiak (A–3, A–4, A–5, A–6, B–1&2, B–3, B–4, B–6, C-1, C–2, C–3, C–5, C–6, D–1, D–2, D–3, D–4, D–5, D–6); Kotzebue (A–1, A–2, A–3, A–4, B–4, B–6, C–1, C–4, C–5, C–6, D–1, D–2); Kwiguk (C–6, D–6); Meade River (D–1, D–3, D–4, D–5); Middleton Island (B–7, D–1&2); Mt. Katmai (A–1, A–2, A–3; B–1); Mt. Michelson (D–1, D–2, D–3); Mt. St. Elias (A–5); Noatak (A–1, A–2, A–3, A–4, B–4, C–4, C–5, D–6, D–7); Nome (B–1, C–1, C–2, C–3, D–3, D–4, D–7); Norton Bay (A–4, B–4, B–5, B–6, C–4, C–5, C–6, D–4, D–5, D–6); Point Hope (A–1, A–2, B–2, B–3, C–2, C–3, D–1, D–2); Point Lay (A–3&4, B–2&3, C–2, D–1, D–2); Selawik (A–5, A–6, B–5, B–6, C–5, C–6, D–6); Seldovia (A–3, A–4, A–5, A–6, B–1, B–2, B–3, B–4, B–5, B–6, C–1, C–2, C–3, C–4, C–5, D–1, D–3, D–4, D–5, D–8); Seward (A–1, A–2, A–3, A–4, A–5, A–6, A–7, B–1, B–2, B–3, B–4, B–5, C–1, C–2, C–3, C–4, C–5, D–1, D–2, D–3, D–4, D–5, D–6, D–7, D–8); Shishmaref (A–2, A–3, A–4, B–1, B–2, B–3); Solomon (B–2, B–3, B–6, C–1, C–2, C–3, C–4, C–5, C–6); St. Michael (A–2, A–3, A–4, A–5, A–6, B–1, B–2, C–1, C–2); Teller (A–2, A–3, A–4, B–3, B–4, B–5, B–6, C–6, C–7, D–4, D–5, D–6, D–8); Teshekpuk (D–1, D–2, D–3, D–4, D–5); Tyonek (A–1, A–2, A–3, A–4, B–1, B–2); Unalakleet (B–5, B–6, C–4, C–5, D–4); Valdez (A–7, A–8); Wainwright (A–5, A–6&7, B–2, B–3, B–4, B–5&6, C–2, C–3 , D–1, D–2; Yakutat (A–1, A–2, A–2, B–3, B–4, B–5, C–4, C–5, C–6, C–7, C–8, D–3, D–4, D–5, D–6, D–8).

California (1:24,000 scale): Arroyo Grande NE; Beverly Hills; Carpinteria; Casmalia; Dana Point; Del Mar; Dos Pueblos Canyon; Encinitas; Gaviota; Goleta; Guadalupe; Imperial Beach; Laguna Beach; La Jolla; Las Pulgas Canyon; Lompoc Hills; Long Beach; Los Alamitos; Malibu Beach; Morro Bay South; National City; Newport Beach; Oceano; Oceanside; Oxnard; Pismo Beach; Pitas Point; Point Arguello; Point Conception; Point Dune; Point Loma; Point Mugu; Point Sal; Port San Luis; Rancho Santa Fe; Redondo Beach; Sacate; San Clemente; San Juan Capistrano; San Luis Rey; San Onofre Bluff; San Pedro; Santa Barbara; Saticoy; Seal Beach; Surf; Tajiguas; Topanga; Torrance; Tranquillon Mountain; Triunfo Pass; Tustin; Venice; Ventura; White Ledge Peak.

Florida (1:24,000 scale): Allanton; Alligator Bay; Anna Maria; Apalachicola; Aripeka; Bayport; Beacon Beach; Beacon Hill; Bee Ridge; Belle Meade; Belle Meade NW; Beverly; Big Lostmans Bay; Bird Keys; Bokeelia; Bonita Springs; Bradenton; Bradenton Beach; Bruce; Bunker; Cape Romano; Cape Saint George; Cape San Blas; Captiva; Carrabelle; Cedar Key; Chassahowitzka; Chassahowitzka Bay; Chiefland SW; Choctaw Beach; Chokoloskee; Clearwater; Clive Key; Cobb Rocks; Cockroach Bay; Crawfordville East; Crooked Island; Crooked Point; Cross City SW; Crystal River; Destin; Dog Island; Dunedin; East Pass; Egmont Key; El Jobean; Elfers; Englewood; Englewood NW; Estero; Everglades City; Fivay Junction; Flamingo; Fort Barrancas; Fort Myers Beach; Fort Myers SW; Fort Walton Beach; Freeport; Gandy Bridge; Garcon Point; Gator Hook Swamp; Gibsonton; Goose Island; Grayton Beach; Green Point; Gulf Breeze; Harney River; Harold SE; Holley; Holt SW; Homosassa; Horseshoe Beach; Indian Pass; Jackson River; Jena; Keaton Beach; Laguna Beach; Lake Ingraham East; Lake Ingraham West; Lake Wimico; Laurel; Lebanon Station; Lighthouse Point; Lillian; Long Point; Lostmans River Ranger Station; Manlin Hammock; Marco Island; Mary Esther; Matlacha; McIntyre;

Milton South; Miramar Beach; Myakka River; Naples North; Naples South; Navarre; New Inlet; Niceville; Nutall Rise; Ochopee; Okefenokee Slough; Oldsmar; Orange Beach; Oriole Beach; Overstreet; Ozello; Pace; Palmetto; Panama City; Panama City Beach; Panther Key; Pass-A-Grille Beach; Pavillion Key; Pensacola; Perdido Bay; Pickett Bay; Pine Island Center; Placida; Plover Key; Point Washington; Port Boca Grande; Port Richey; Port Richey NE; Port Saint Joe; Port Tampa; Punta Gorda; Punta Gorda SE; Punta Gorda SW; Red Head; Red Level; Rock Islands; Royal Palm Hammock; Safety Harbor; Saint Joseph Point; Saint Joseph Spit; Saint Marks; Saint Marks NE; Saint Petersburg; Saint Teresa Beach; Salem SW; Sandy Key; Sanibel; Sarasota; Seahorse Key; Seminole; Seminole Hills; Shark Point; Shark River Island; Shired Island; Snipe Island; Sopchoppy; South of Holley; Southport; Sprague Island; Spring Creek; Springfield; Steinhatchee; Steinhatchee SE; Steinhatchee SW; Sugar Hill; Sumner; Suwannee; Tampa; Tarpon Springs; Valparaiso; Venice; Vista; Waccassasa Bay; Ward Basin; Warrior Swamp; Weavers Station; Weeki Wachee Spring; West Bay; West Pass; West Pensacola; Whitewater Bay West; Withlacoochee Bay; Wulfert; Yankeetown.

Louisiana (1:24,000 scale): Alligator Point; Barataria Pass; Bastian Bay; Bay Batiste; Bay Coquette; Bay Courant; Bay Dosgris; Bay Ronquille; Bay Tambour; Bayou Blanc; Bayou Lucien; Belle Isle; Belle Pass; Big Constance Lake; Black Bay North; Black Bay South; Breton Islands; Breton Islands SE; Buras; Burrwood Bayou East; Burwood Bayou West; Calumet Island; Cameron; Caminada Pass; Cat Island; Cat Island Pass; Central Isles Dernieres; Chandeleur Light; Chef Mentur; Cheniere Au Tigre; Cocodrie; Coquille Point; Cow Island; Creole; Cypremort Point; Deep Lake; Dixon Bay; Dog Lake; Door Point; East Bay Junop; Eastern Isles; Dernieres; Ellerslie; Empire; English Lookout; False Mouth Bayou; Fearman Lake; Floating Turf Bayou; Fourleague Bay; Franklin; Freemason Island; Garden Island Pass; Grand Bayou; Grand Bayou du Large; Grand Chenier; Grand Gosier Islands; Grand Isle; Hackberry Beach; Hammock Lake; Happy Jack; Hebert Lake; Hell Hole Bayou; Hog Bayou; Holly Beach; Intercoastal City; Isle Au Pitre; Jacko Bay; Johnson Bayou; Kemper; Lake Athanasio; Lake Cuatro Caballo; Lake Eloi; Lake Eugene; Lake Felicity; Lake La Graisse; Lake Merchant; Lake Point; Lake Salve; Lake Tambour; Leeville; Lena Lagoon; Lost Lake; Main Pass; Malheureux Point; Marone Point; Martello Castle; Mink Bayou; Mitchell Key; Morgan City SW; Morgan Harbor; Mound Point; Mulberry Island East; Mulberry Island West; New Harbor Islands; North Islands; Oak Mound Bayou; Oyster Bayou; Pass A Loutre East; Pass A Loutre West; Pass du Bois; Pass Tante Phine; Pecan Island; Pelican Pass; Peveto Beach; Pilottown; Plumb Bayou; Point Au Fer; Point Au Fer NE; Point Chevreuil; Point Chicot; Port Arthur South; Port Sulphur; Pte. Aux Marchuttes; Proctor Point; Pumpkin Islands; Redfish Point; Rollover Lake; Sabine Pass; Saint Joe Pass; Smith Bayou; South of South Pass; South Pass; Stake Islands; Taylor Pass; Texas Point; Three Mile Bay; Tigre Lagoon; Timbalier Island; Triumph; Venice; Weeks; West of Johnson Bayou; Western Isles Dernieres; Wilkinson Bay; Yscloskey.

Mississippi (1:24,000 scale): Bay Saint Louis; Biloxi; Cat Island; Chandeleur Light; Deer Island; Dog Keys Pass; English Lookout; Gautier North; Gautier South; Grand Bay SW; Gulfport North; Gulfport NW; Gulfport South; Horn Island East; Horn Island West; Isle Au Pitre; Kreole; Ocean Springs; Pascagoula North; Pascagoula South; Pass Christian; Petit Bois Island; Saint Joe Pass; Ship Island; Waveland.

Texas (1:24,000 scale): Allyns Bright; Anahuac; Aransas Pass; Austwell; Bacliff; Bayside; Big Hill Bayou; Brown Cedar Cut; Caplen; Carancahua Pass; Cedar Lakes East; Cedar Lakes West; Cedar Lane NE; Christmas Point; Clam Lake; Corpus Christi; Cove; Crane Islands NW; Crane Islands SW; Decros Point; Dressing Point; Estes; Flake; Freeport; Frozen Point; Galveston; Green Island; Hawk Island; High Island; Hitchcock; Hoskins Mound; Jones Creek; Keller Bay; Kleberg Point; La Comal; La Leona; La Parra Ranch NE; Laguna Vista; Lake Austin; Lake Como; Lake Stephenson; Lamar; Long Island; Los Amigos; Windmill; Maria Estella Well; Matagorda; Matagorda SW; Mesquite Bay; Mission Bay; Morgans Point; Mosquito Point; Mouth of Rio Grande; Mud Lake; North of Port Isabel NW; North of Port Isabel SW; Oak Island; Olivia; Oso Creek NE; Oyster Creek; Palacios; Palacios NE; Palacios Point; Palacios SE; Panther Point; Panther Point NE; Pass Cavallo SW; Pita Island; Point Comfort; Point of Rocks; Port Aransas; Port Arthur South; Port Bolivar; Port Ingleside; Port Isabel; Port Isabel NW; Port Lavaca East; Port Mansfield; Port O'Connor; Portland; Potrero Cortado; Potrero Lopeno NW; Potrero Lopeno SE; Potrero Lopeno SW; Rockport; Sabine Pass; San Luis Pass; Sargent; Sea Isle; Seadrift; Seadrift NE; Smith Point; South Bird Island; South Bird Island NW; South Bird Island SE; South of Palacios Point; South of Potrero Lopeno NE; South of Potrero Lopeno NW; South of Potrero Lopeno SE; South of Star Lake; St. Charles Bay; St. Charles Bay SE; St. Charles Bay SW; Star Lake; Texas City; Texas Point; The Jetties; Three Islands; Tivoli SE; Turtle Bay; Umbrella Point; Virginia Point; West of Johnson Bayou; Whites Ranch; Yarborough Pass.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 191–0088a; FRL–6138–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the California State Implementation Plan (SIP). The revision concerns a rule from the Monterey Bay Unified Air Pollution Control District (MBUAPCD) which controls emissions of oxides of nitrogen (NO_X) and sulfur compounds. This approval action will incorporate this rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO_X and SO_2 in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, and SIPs for national primary and secondary ambient air quality standards.

DATES: This rule is effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comments by September 10, 1998. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Monterey Bay Unified Air Pollution Control District, Rule Development, 24580 Silver Cloud Ct., Monterey, CA 93940–6536.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION:

I. Applicability

This document addresses EPA's direct final action to approve Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 404, Sulfur Compounds and Nitrogen Oxides, into the California SIP. This rule was adopted by MBUAPCD on October 16, 1996. It was submitted by the California

Air Resources Board (CARB) to EPA on March 3, 1997.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. 40 CFR part 91.305 provides the attainment status designations for air districts in California. MBUAPCD is listed as being in attainment for the National Ambient Air Quality Standards (NAAQS) for ozone, NO_2, and SO_2; therefore stationary sources in the air district are not subject to the Reasonably Available Control Technology (RACT) requirements of section 182(b)(2).

On October 16, 1996 MBUAPCD adopted Rule 404, Sulfur Compounds and Nitrogen Oxides. On March 3, 1997, the State of California submitted this rule to EPA. This submitted rule was found to be complete on August 12, 1997 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V[1] and is being finalized for approval into the SIP. By today's document, EPA is taking direct final action to approve this submittal. This final action will incorporate this rule into the Federally approved SIP.

NO_X emissions contribute to the production of ground level ozone and smog. The combustion of fuels containing sulfur compounds leads to the production of SO_2. MBUAPCD Rule 404 provides emission limits for oxides of nitrogen and sulfur compounds. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of a NO_X and SO_2 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans) respectively. The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions in areas designated as nonattainment for ozone. Since MBUAPCD is in attainment for ozone, RACT requirements do not apply.

While MBUAPCD is in attainment with the NO_2, SO_2 and ozone NAAQS, many of the general SIP regulations regarding enforceability, for example, are still appropriate for the rule. In determining the approvability of this rule, EPA also evaluated it in light of the ''SO_2 Guideline Document'', EPA–452/R–94–008.

On May 31, 1972 EPA approved into the SIP a version of Rule 404—paragraphs (b) and (c), Sulfur Content and Oxides of Nitrogen, that had been adopted by San Benito APCD and Monterey-Santa Cruz Unified APCD. On October 27, 1977 EPA approved into the SIP Rule 404 paragraph (c), Sulfur Content and Oxides of Nitrogen that has been adopted by MBUAPCD. MBUAPCD submitted Rule 404, Sulfur Content and Oxides of Nitrogen, includes the following significant changes from the current SIP:

- Consolidates NO_X emission limits under MBUAPCD that were previously listed separately for Monterey-Santa Cruz Air Pollution Control District (APCD) and San Benito County APCD
- Adds a section on applicability.
- Adds a section on definitions.
- Adds a section on recordkeeping.
- Adds a section on test methods.
- Clarifies, through an exemptions section, that a source subject to Best Available Control Technology (BACT) would not be subject to the general emission limits contained in Rule 404.

A more detailed discussion can be found in the Technical Support Document (TSD) for Rule 404, dated July 17, 1998.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, MBUAPCD Rule 404, Sulfur Compounds and Oxides of Nitrogen, is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(f) and the NO_X Supplement to the General Preamble.

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.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 13, 1998 without further notice unless the Agency receives relevant adverse comments by September 10, 1998.

If the EPA received such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. 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 rule will be effective on October 13, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

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 impact on 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).

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5824) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound, sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the Federal Register on July 1, 1982.

Dated: July 28, 1998.

Sally Seymour,

Acting Regional Administrator Region IX.

Part 52, chapter I, title 40 of the 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 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(244)(i)(A)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(244) * * *

(i) * * *

(A) * * *

(*2*) Rule 404, adopted on October 16, 1996.

* * * * *

[FR Doc. 98–21353 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0087a; FRL–6138–2]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the California State Implementation Plan (SIP). The revision concerns South Coast Air Quality Management District (SCAQMD) Rule 1135. This rule controls oxides of nitrogen (NO_X) from electric power generating systems. This action will incorporate the rule into the Federally approved SIP. The intended effect of approving this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). Thus, EPA is finalizing the approval of this rule into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: This action is effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comments by September 10, 1998. If EPA receives such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

U.S. Environmental Protection Agency, Region IX, Rulemaking Office (AIR–4), Air Division, 75 Hawthorne Street, San Francisco, CA 94105–3901.

U.S. Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being approved into the California State Implementation Plan (SIP) is South Coast Air Quality Management District (SCAQMD) Rule 1135, Emissions of Oxides of Nitrogen from Electric Power Generating Systems, adopted by SCAQMD on July 19, 1991.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAA or the Act) were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of emissions of oxides of nitrogen (NO_X) through reasonably available control technology (RACT) are set out in section 182(f) of the CAA. On November 25, 1992, EPA published a notice of proposed rulemaking entitled ''State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,'' (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). 57 FR 55620. The NO_X Supplement should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X (''major'' as defined in section 302 and section 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compound (VOC) emissions, in moderate or above ozone nonattainment areas. The Los Angeles-South Coast Air Basin Area is classified as extreme;[1] therefore this area was subject to section 182(f), the RACT requirements of section 182(b)(2), and the November 15, 1992 deadline, cited below. This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.[2]

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions not covered by either a pre-enactment or post-enactment control techniques guideline (CTG) document by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

SCAQMD Rule 1135 was adopted on July 19, 1991 and submitted by the California Air Resources Board (CARB) to EPA on January 28, 1992. This submitted rule was found to be complete on April 3, 1992, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.[3] By today's document, EPA is taking direct final action to approve this rule into the SIP.

SCAQMD Rule 1135 controls emissions from electric power generating systems. NO_X emissions contribute to the production of ground level ozone and smog. The rule was adopted as part of SCAQMD's efforts to achieve the National Ambient Air Quality Standards for ozone and in response to the CAA requirements cited above. The following section contains EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA 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, appears in various EPA policy guidance documents.[4] Among these provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting state and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble Preamble, cited above (57 FR 55620). In the NO_X Supplement, EPA provides guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

There is currently no version of SCAQMD Rule 1135, Emissions of Oxides of Nitrogen from Electric Power Generating Systems, in the SIP. The submitted rule regulates utility boilers by specifying NO_X emission limits in pounds of NO_X per net megawatt hour of electricity produced. This rule requires the use of a continuous emissions monitoring system, and requires an approved compliance plan.

A more detailed discussion of the sources controlled,[5] the controls required, and the justification for why these controls represent RACT can be found in the Technical Support Document (TSD), available from the U.S. EPA Region IX office.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations and EPA policy. Therefore, SCAQMD Rule 1135 is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a), section 182(b)(2), section 182(f) and the NO_X Supplement to the General Preamble.

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

[1] The Los Angeles-South Coast Air Basin Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] The State has recently changed the names and boundaries of the air basins located within the Southeast Desert Modified AQMA. Pursuant to State regulation the Coachella-San Jacinto Planning Area is now part of the Salton Sea Air Basin (17 Cal. Code. Reg. § 60114); the Victor Valley/Barstow region in San Bernardino County and Antelope Valley Region in Los Angeles County are parts of the Mojave Desert Air Basin (17 Cal. Code. Reg. § 60109). In addition, in 1996 the California Legislature established a new local air agency, the Antelope Valley Air Pollution Control District, to have the responsibility for local air pollution planning and measures in the Antelope Valley Region (California Health & Safety Code § 40106).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] 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); and ''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).

[5] SCAQMD Rule 1135 will apply to sources which are not covered in the SCAQMD NO_X RECLAIM program.

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.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the Proposed Rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This action will be effective October 13, 1998, without further notice unless the Agency receives relevant adverse comments by September 10, 1998.

If EPA receives such comments, then EPA will publish a document withdrawing this direct final rule and informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the 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 on October 13, 1998 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget has exempted this regulatory action from Executive Order (E.O.) 12866 review.

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

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 impact on 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).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under state or local law, and imposes no new Federal requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the director of the **Federal Register** on July 1, 1982.

Dated: July 28, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the 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 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (187)(i)(C)(2) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(187) * * *

(i) * * *

(C) * * *

(*2*) Rule 1135, adopted on July 19, 1991.

* * * * *

[FR Doc. 98–21351 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0086a FRL–6137–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on a revision to the California State Implementation Plan. The revision concerns a rule from the San Diego Air Pollution Control District (SDAPCD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from organic solvents. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comments by September 10, 1998. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

SDAPCD Rule 66, Organic Solvents is being approved into the California SIP. This rule was submitted by the California Air Resources Board (CARB) to EPA on October 18, 1996.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the San Diego Area. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portion of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The San Diego Area is classified as serious.[1]

The State of California submitted many rules for incorporation into its SIP on October 18, 1996, including the rule being acted on in this document. This document addresses EPA's direct-final action for SDAPCD Rule 66, Organic Solvents. The SDAPCD adopted Rule 66 on July 25, 1995. This submitted rule was found to be complete on December 19, 1996 pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, Appendix V[2] and is being finalized for approval into the SIP.

Rule 66 controls the emission of VOCs from organic solvent use. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of the SDAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA 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 today's action, appears in ''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). In general, this guidance document has been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On July 12, 1990, EPA approved into the SIP a version of Rule 66, Organic Solvents that had been adopted by SDAPCD on September 17, 1985. SDAPCD's submitted Rule 66, Organic Solvents includes the following significant changes from the current SIP:

- Section d of the SIP rule which prohibits the use of photochemically reactive solvents to thin or reduce coatings has been removed. No coating sources in San Diego are subject to Rule 66. Coating sources within SDAPCD are now subject to source specific rules.
- Sections e, f, g, l, m, n, q, r, and s of the SIP rule which pertain to degreasing, drycleaning, and marine coating operations have been removed. These sources are now respectively covered by Rules 67.6, 67.8, and 67.18.
- Section i of the SIP rule which allows sources to discard, dump, or otherwise dispose of up to 1.5 gallons of photochemically reactive compounds per day has been removed.
- Section j of the submitted rule which contains a boiling point cutoff in the definition for organic solvents has been altered to allow for compliance determination via an ASTM test method.
- An exemption for sources that install and use Best Available Control Technology or Lowest Achievable Emission Rate control technology pursuant to the New Source Review rules has been added under Section n6 of the submitted rule.
- Section o of the submitted rule contains new recordkeeping

[1] The San Diego Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA as a severe ozone nonattainment area. See 56 FR 56694 (November 6, 1991). The San Diego area was subsequently reclassified as a serious ozone nonattainment area on January 19, 1995. See 60 FR 3771.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

requirements for sources subject to the rule.

• Section p of the submitted rule requires the use of test methods suitable for determining compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SDAPCD Rule 66, Organic Solvents is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

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

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective October 13, 1998 without further notice unless the Agency receives relevant adverse comments by September 10, 1998.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the 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 rule will be effective on October 13, 1998 and no further action will be taken on this action.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866 review.

The proposed and final rules are not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

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 impact on 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.* versus *U.S. EPA*, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. 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, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated; July 27, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the 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 et seq.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(241)(i)(A)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(241) * * *

(i) * * *

(A) * * *

(*3*) Rule 66, adopted on July 1, 1972, revised on July 25, 1995.

* * * * *

[FR Doc. 98–21349 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME014–01–6994a; A–1–FRL–6136–3]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Source Surveillance Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maine on June 30, 1994. This revision consists of a continuous emissions monitoring (CEM) regulation. The intended effect of this action is to approve Maine's CEM rule into the Maine SIP. This action is being taken in accordance with the Clean Air Act.

DATES: This direct final rule is effective on October 13, 1998 without further notice, unless EPA receives adverse comment by September 10, 1998. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Boston, MA 02203. Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA; and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On July 13, 1994, EPA received a formal SIP submittal from the Maine Department of Environmental Protection (DEP) containing the State's Chapter 117 ''Source Surveillance'' regulation.

I. Summary of SIP Revision

Maine's Chapter 117 was first adopted by the State on August 9, 1988 and submitted to EPA as a SIP revision on August 22, 1988. EPA approved this rule into the Maine SIP on March 21, 1989 (54 FR 11525). Maine has since repealed the 1988 version of the rule and replaced it with a new Chapter 117. This new version of Chapter 117 was submitted to EPA as a SIP revision on June 30, 1994 and is the subject of today's action. This regulation is briefly summarized below.

Chapter 117: Source Surveillance

This regulation requires certain air emissions sources to operate continuous emission monitoring systems and details the performance specifications, quality assurance procedures, and recordkeeping and reporting requirements for such systems.

EPA's Evaluation of Maine's Submittal

EPA has evaluated Maine's Chapter 117 and has found that it is consistent with the requirements of 40 CFR Part 51, Appendix P. Maine's regulation and EPA's evaluation are detailed in a memorandum, dated June 24, 1998, entitled ''Technical Support Document—Maine—Source Surveillance Rule.'' Copies of that document are available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document.

One aspect of Maine's Chapter 117 which is somewhat unique is the rule's data recovery requirements. The data recovery requirements of the Maine regulation contain a basic requirement that ''emission monitoring devices must record accurate and reliable data during all source-operating time except for periods when the emission monitoring devices are subject to established quality assurance and quality control procedures [(''QA/QC'')] or to unavoidable malfunction.'' (Chapter 117, Section 5.) This basic provision is consistent with both 40 CFR Part 51, Appendix P and 40 CFR part 60, appendix F. However, the regulation contains a limitation that prohibits the Department's enforcement of the basic requirement when a source's emission monitoring system records accurate and reliable data 90% of the time in a given quarter (95% of the time for opacity monitoring). The regulation further states that if the monitoring system does not record such data for the minimum percentage of time, then the Department may initiate an enforcement action for any period of down time that the owner or operator (''licensee'') cannot establish was due to QA/QC or unavoidable malfunctions. (See Chapter 117, Section 5.A and 5.B.)

The language in the Maine regulation and the authorizing state legislation, Title 38 MRSA Section 589(3), is not an express exemption from the basic data recovery requirement. If the regulation and the authorizing legislation were intended to provide an exemption, then a more direct statement of an exemption would have been drafted (e.g., ''Monitoring devices must record accurate and reliable data for 90% of the source-operating time * * * ''). Instead, the language simply provides direction to the Department on when it may initiate enforcement for failure to maintain operational CEMS. In this respect, the language is more of a mandate from the legislature on how the Department must manage its resources than a grant of immunity from all potential enforcement.

The EPA does not interpret the language restricting when the Department may initiate an enforcement action as applying to other potential enforcers such as citizens and the EPA. Otherwise, the basic underlying requirement to maintain operational CEMS at all times except during QA/QC and unavoidable malfunctions would have no binding effect. If this language were binding on other potential enforcers, then the limitation would make the Maine regulation less stringent than the requirements of Appendix P. Maine's regulation includes a note providing fair notice that the ''requirements under federal law may be more stringent than the requirements of Chapter 117 and Title 38 MRSA Section 589(3).'' (Chapter 117, section 5, Note.) This note confirms that the Department may have fewer opportunities to initiate enforcement under its regulation than others may have under federal law. Therefore, in incorporating by reference this rule into the SIP, the EPA adopts a literal interpretation of the language restricting when the Department may initiate an enforcement action as applying only to the Department and as not restricting when other potential enforcers may initiate enforcement action.

One other aspect of the data recovery requirements should be clarified as part of the EPA's approval of Chapter 117 into the SIP. The most natural reading of the affirmative defense available

when the licensee's monitors do not properly record data for the minimum percentage of time in the quarter would require the licensee to demonstrate a legitimate basis for all of the down time in the quarter. The affirmative defense (''unless the licensee can demonstrate * * * that the failure of the system to record accurate and reliable data was due to'') references the basic requirement to ''record accurate and reliable data'' without qualification rather than including a percent-of-the-time threshold (*e.g.*, ''record accurate and reliable data at least 90% of source-operating time'').

Under the interpretations discussed above, if an emission monitoring system recorded accurate and reliable data for 91% of the operating time in the quarter, then the Department could not initiate an enforcement action under the regulation no matter the cause of the down time. If a monitoring system provided accurate and reliable data for 85% of the operating time in a quarter, then the Department could proceed with an enforcement action because the monitors would not have been properly recording data for the minimum percentage of time (90% or 95% of the quarter). In the latter case, Maine may enforce the data recovery requirements unless the licensee can show that unavoidable malfunctions and QA/QC accounted for all of the time the system failed to properly record data. However, in all these cases, the EPA or a private citizen could initiate an enforcement action against the licensee for violation of the basic requirement to record accurate and reliable data during all operating time, subject to the licensee's affirmative defenses.

EPA seeks comment on whether it has correctly interpreted the continuous monitoring data recovery provisions of the Maine rule. Comments disagreeing with EPA's understanding of these provisions would be relevant and adverse to the basis of EPA's approval of these provisions into the SIP for Maine.

II. Final Action

EPA is approving Maine's Chapter 117 ''Source Surveillance'' regulation as a revision to the Maine SIP.

The EPA is publishing this action 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, the EPA is proposing to approve the SIP revision should relevant adverse comments be filed. This rule will be effective on October 13, 1998 without further notice, unless EPA receives relevant adverse comment by September 10, 1998.

If relevant adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule did not take effect. All public comments received will 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 October 13, 1998.

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.

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

The final rule is not subject to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies 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 small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of 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).

C. Unfunded Mandates

Under Sections 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action. Because small governments will not be significantly or uniquely impacted by this rule, the Agency is not required to develop a plan with regard to small governments.

D. Submission to Congress and the Comptroller General

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

''major rule'' as defined by 5 U.S.C. 804(2).

E. Petition for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. 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).) EPA encourages interested parties to comment in response to the proposed rule rather than petition for judicial review, unless the objection arises after the comment period allowed for in the proposal.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Maine was approved by the Director of the Federal Register on July 1, 1982.

Dated: July 29, 1998.

John P. DeVillars,

Regional Administrator, Region I.

Part 52 of chapter I, title 40 of the 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 et seq.

Subpart U—Maine

2. Section 52.1020 is amended by adding paragraph (c)(39) to read as follows:

§ 52.1020 Identification of plan.

* * * * * *

(c) * * *

(39) Revisions to the State Implementation Plan submitted by the Maine Department of Environmental Protection on June 30, 1994.

(i) Incorporation by reference.

(A) Letter from the Maine Department of Environmental Protection dated June 30, 1994 submitting a revision to the Maine State Implementation Plan.

(B) Chapter 117 of the Maine Department of Environmental Protection Regulations, ''Source Surveillance,'' effective in the State of Maine on May 9, 1994.

(ii) Additional materials.

(A) Nonregulatory portions of the submittal.

3. In § 52.1031, Table 52.1031 is amended by adding a new entry following existing state citation ''117'' to read as follows:

§ 52.1031 EPA-approved Maine regulations

* * * * *

TABLE 52.1031—EPA-APPROVED RULES AND REGULATIONS

State citation	Title/Subject	Date adopted by State	Date approved by EPA	Federal Register citation	52.1020
*	*	*	*	*	*
117	Source Surveillance	4/27/94	8–11–98	[Insert FR citation from published date]	(c)(39)
*	*	*	*	*	*

[FR Doc. 98–21347 Filed 8–10–98; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6136–8]

RIN: 2060–AI07

Protection of Stratospheric Ozone: Halon Recycling and Recovery Equipment Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final determination.

SUMMARY: Today's action consists of EPA's determination that it is neither necessary nor appropriate under section 608(a)(2) of the Clean Air Act as amended in 1990 (CAA or ''Act'') to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. Halons are gaseous or easily vaporized halocarbons used primarily for fire and explosion protection and are listed as group II, Class I ozone-depleting substances (ODSs) under 40 CFR part 82, subpart A. Section 608 of the CAA directs EPA to issue regulations which reduce the use and emissions of ozone-depleting substances to the lowest achievable level and which maximize the recapture and recycling of such substances. In developing regulations concerning use, emissions and recycling, EPA considers both technological and economic factors. The objective of an equipment certification program, and associated provisions allowing the removal of halons only through the use of certified equipment, would be to verify that all recycling and recovery equipment sold was capable of minimizing emissions, and that such certified equipment was in fact used, thereby minimizing emissions during recycling and recovery activities. Research completed by EPA in association with this determination, however, suggests that the great majority of halon recovery and recycling equipment currently in use or on the market consists of highly efficient halon closed recovery systems achieving a minimum recovery efficiency of 98%. Entities which perform the vast majority of halon transfers employ these efficient units. Operations utilizing less efficient halon recycling and recovery equipment and methods are estimated to account for less than 1% of total annual halon emissions in the United States during recycling and recovery activities. With regard to halon emissions arising from the use of inefficient, non-closed halon recovery and recycling devices, sections 82.270(d) and (e) of an EPA rule issued March 5, 1998 (63 FR 11084), were intended to eliminate the use of such devices and restrict halon recovery and recycling equipment to the highly efficient category of closed recovery

systems currently widely used in industry. For these reasons, EPA determines that no further environmental advances can be made in regard to the CAA section 608 goals of reducing halon use or emissions, or maximizing halon recapture or recycling, through a halon recovery and recycling equipment certification program.

EFFECTIVE DATE: This direct final determination is effective on October 13, 1998 without further notice unless the EPA receives adverse comment by September 10, 1998. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final determination in the **Federal Register** and inform the public that the determination will not take effect.

ADDRESSES: Comments on this determination should be sent to Docket No. A–98–37, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M–1500, Mail Code 6102, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., weekdays. The docket phone number is (202) 260–7548, and the fax number is (202) 260–4400. A reasonable fee may be charged for copying docket materials. A second copy of any comments should also be sent to Lisa Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460 if by mail, or at 501 3rd Street, N.W., Room 267, Washington, D.C. 20001 if comments are sent by courier delivery.

FOR FURTHER INFORMATION CONTACT: Lisa Chang at (202) 564–9742 or fax (202) 565–1096, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, 401 M Street, S.W., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: The contents of this direct final determination are listed in the following outline:

I. Background
A. Section 608 of the Clean Air Act
B. Sierra Club Suit
C. Halons
D. Today's Action
II. Basis for Today's Action
A. Halon Emissions
B. Current Practices
C. Existing Certification Programs
D. Prior Halon Regulation
E. Discussion and Conclusion
F. References
III. Administrative Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Submission to Congress and the Comptroller General
D. Paperwork Reduction Act
E. Unfunded Mandates Requirement Act
F. Executive Order 13045—Children's Health
IV. Judicial Review

I. Background

A. Section 608 of the Clean Air Act

Section 608 of the CAA (42 U.S.C. 7671g) sets forth certain requirements for a national recycling and emission reduction program aimed at Class I and Class II ozone-depleting substances, including halons, and their substitutes. Class I and Class II ozone-depleting substances are designated as such under section 602 of the Act, in accordance with the Montreal Protocol on Substances that Deplete the Ozone Layer, an international agreement to which the United States is a party. Section 608 further directs that the national recycling and emission reduction regulations must ''reduce the use and emission of such substances to the lowest achievable level,'' and ''maximize the recapture and recycling of such substances.'' Section 608(a)(1) of the Act provides for a national recycling and emission reduction program with respect to Class I substances that are used as refrigerants; section 608(a)(2) provides for such a program for all other Class I and Class II substances, including halons.

B. Sierra Club Suit

The Sierra Club sued EPA in the U.S. District Court for the District of Columbia on March 31, 1995, claiming that EPA had not fulfilled its obligation to promulgate regulations establishing standards and requirements regarding use and disposal for non-refrigerant Class I and Class II substances under section 608(a)(2) of the CAA. In a consent decree (notice of which was published on September 17, 1996, in the **Federal Register** at 61 FR 48950) EPA agreed to consider appropriate regulation of halons. Under the terms of the consent decree, EPA agreed to take the following actions with regard to halons: (1) To issue a proposed rule regarding a ban on the sale of all halon blends and to take final action on the proposal; (2) to issue a proposed rule or rules regarding the intentional release of halons during repair and testing of equipment containing halons; training concerning the use of such equipment; disposal of halons; and removal or disposal of equipment containing halons at the end of the life of such equipment; and to take final action on the proposal; and (3) to issue either a proposed rule requiring the certification of recycling and recovery equipment for halons and allowing the removal of halons only through the use of certified equipment or a direct final determination that no such rule is either necessary or appropriate under section 608(a)(2) of the Clean Air Act. EPA addressed items (1) and (2) with a proposed (62 FR 36428) and final (63 FR 11084) rule. Today's action addresses item (3).

EPA's agreement in regard to item (3) was based in part on EPA's commitment to complete a study assessing the feasibility of certifying halon recycling and recovery equipment and allowing removal of halons only through use of certified equipment. The study, ''Assessment of the Need for a Halon Recovery/Recycling Equipment Certification Program'' (hereafter referred to as ''the halon recovery/recycling equipment study,'' or ''EPA (1998)'') characterized the size and makeup of the domestic halon recovery and recycling industry, its current practices and equipment, and the likely environmental benefits achievable by its further regulation. During May-June of 1998, the report was reviewed by several technical experts as well as a larger group drawn from stakeholder communities including industry, non-governmental environmental organizations, and government. The report and reviewers' comments are available in the Docket for this action. These materials have provided an important foundation for today's direct final determination.

C. Halons

Halons are gaseous or easily vaporized halocarbons used primarily for putting out fires, but also for explosion protection. The two halons most widely used in the United States are Halon 1211 and Halon 1301. Halon 1211 is used primarily in streaming applications; recovered Halon 1211 is primarily used by the military and equipment distributors to fill or recharge portable fire extinguishers. Some Halon 1211 is also stockpiled and resold by commercial recycling facilities. Halon 1301 is typically used in total flooding applications; the market for recovered Halon 1301 is driven primarily by servicers of halon fire protection systems, the military, and large commercial interests including airlines. System servicers use recovered Halon 1301 to recharge systems, to stockpile for future sale, to sell to other servicers, or to sell to military or commercial interests (EPA, 1998). Very limited use of Halon 2402 exists in the United States as an extinguishing agent in engine nacelles on older aircraft and in the guidance system of Minuteman missiles. Although Halon 2402 is an

effective fire extinguishing agent, use in North America and Europe has been very limited due to safety concerns (UNEP, 1994). Halon 2402 was and continues to be used mainly in the Russian Federation and in other countries with economies in transition (CEIT) (UNEP, 1998). Because of the very limited use of Halon 2402, EPA's study, as well as the discussions contained within this final determination, focus on describing recovery and recycling practices for Halons 1211 and 1301. Nevertheless, all EPA halon regulations and determinations, including today's action, issued under Title VI of the CAA are intended to cover all group II, Class I substances listed in appendix A to subpart A of 40 CFR part 82—that is, Halon 1211, Halon 1301, Halon 2402, and all isomers of these substances. Halons are used in a wide range of fire protection applications because they combine several marked advantages over other extinguishing agents. For a further discussion of the properties of halons for fire protection applications see 63 FR 11084.

Despite these advantages, halons are among the most ozone-depleting chemicals in use today. With 0.2 ozone-depleting potential (ODP) representing the threshold for classification as a Class I substance, Halon 1301 has an estimated ODP of 10; Halon 1211 has an estimated ODP of 3. Thus, while total halon production (measured in metric tons) comprised just 2 percent of the total production of Class I substances in 1986, halons represented 23 percent of the total estimated ozone depletion attributable to Class I substances produced during that year. Prior to the early 1990's, the greatest releases of halon into the atmosphere occurred not in extinguishing fires, but during testing and training, service and repair, and accidental discharges. Data generated as part of the Montreal Protocol's technology assessment indicated that only 15 percent of annual Halon 1211 emissions and 18 percent of annual Halon 1301 emissions occur as a result of use to extinguish actual fires. These figures indicated that significant gains could be made in protecting the ozone layer by revising testing and training procedures and by limiting unnecessary discharges through better detection and dispensing systems for halon and halon alternatives. The fire protection community began to conserve halon reserves in response to the impending ban on the production and import of Halons 1211, 1301, and 2402 that occurred January 1, 1994. Through standards, research, and field practice, the fire protection community eliminated most discharge testing with halons and minimized use of halon for testing and training. Additionally, fire equipment distributors began to service and maintain fire suppression equipment regularly to avoid leaks, false discharges, and other unnecessary emissions.

Nevertheless, because of the significant environmental concern associated with halons, EPA contemplated further regulatory activity to strengthen already conservative halon use, transfer, and recycling practices in the industry. On March 5, 1998, EPA issued a final rule (63 FR 11084, hereafter referred to as ''the March 5 rule'') establishing training requirements for technicians who handle halon-containing equipment; banning releases of halons during the testing, maintenance, repair, servicing, and disposal of halons and halon-containing equipment and during technician training; and providing that halons and halon-containing equipment may be disposed of only by sending such halon or equipment for recycling or recovery, respectively, by a facility operating in accordance with the voluntary industry standards established by the National Fire Protection Association (NFPA), ''NFPA 10'' and ''NFPA 12A,'' or by sending halon for destruction by an EPA-approved method. This rule more fully extended conservative practices throughout the fire protection and halon recycling communities, and ensured continued observance of such practices in the event of changes in the halon market conditions that significantly contributed to their adoption. The effect of the March 5 rule on halon recycling and recovery practices is discussed further below.

D. Today's Action

Today's action consists of EPA's determination that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. The principal basis for this determination is that such requirements would provide no significant advancement toward the objectives of reducing halon use or emissions to lowest achievable levels, or maximizing their recapture and recycling, as directed by section 608. The environmental gains that could have been made in this regard through such requirements have already been realized through recently promulgated EPA regulations concerning halons (63 FR 11084).

II. Basis for Today's Action

A. Halon Emissions

Total annual Halon 1211 emissions (includes all legitimate—*e.g.*, fire extinguishing—as well as incidental—*e.g.*, transfer loss—releases) in the United States has been estimated at 1,079 tonnes for 1997 (this is against a total stock for North America, including the United States, of more than 27,000 tonnes of Halon 1211; UNEP, 1998; EPA, 1998). Estimated temporal trends in halon emissions suggest that emission data for 1997 are reasonably representative of recent and near-future years; trends in emissions are briefly noted at the end of this section. The quantity of Halon 1211 subjected to recovery attempts for the same year, for the United States, is estimated at 298 tonnes (EPA, 1998).

Facilities performing Halon 1211 recovery and recycling operations can be grouped into three broad classes: large-scale commercial recyclers, large servicers of halon extinguishers, and small servicers of halon extinguishers. The numbers of facilities in each of these categories, as well as the relative volume of Halon 1211 transfers performed by each category, have recently been estimated. While constituting the smallest number of such facilities, large-scale commercial recyclers accounted for the greatest quantity of Halon 1211 transfers, and the relatively large number of entities in the small servicer category accounted for a relatively small portion of halon transfers (EPA, 1998; Table 1). In addition, the types of equipment and practices employed among these groups of facilities have been evaluated. In general, facilities were found to employ either highly efficient, closed recovery units of the type called for under sections 82.270(d) and (e) of the March 5 rule, with halon recovery efficiencies of approximately 98%; or pressure transfer and other non-closed halon recovery systems and methods, with recovery efficiencies as low as 90%, and of the type whose use sections 82.270(d) and (e) of the March 5 rule were designed to prohibit.

It was further estimated that of the 298 tonnes of Halon 1211 subjected to recovery attempts for 1997, approximately 95% is recovered by large scale commercial recyclers and large servicers of halon extinguishing systems using highly efficient closed recovery units, and the remaining 5%

by small servicers utilizing a range of methods, including both high-efficiency halon recovery units, as well as low-efficiency non-closed equipment and methods. Annual Halon 1211 losses to the atmosphere arising from transfers from each group, as a percentage of total annual Halon 1211 emissions in the United States for 1997, are estimated at −0.3% (large-scale commercial recyclers); −0.2% (large servicers of halon extinguishers); and −0.1% (small servicers of halon extinguishers) (EPA, 1998; Table 1). It should be noted that the rate of Halon 1211 extinguisher decommissioning is expected to increase over the next several years, leading to a slight increase in emissions due to an increased volume of recovery and recycling activity (EPA, 1998), followed by decreases projected through the year 2030 (UNEP, 1998).

Regarding Halon 1301, total annual emissions (again, including all legitimate as well as incidental releases) in the United States was estimated at 786 tonnes for 1997). This compares to a total North America Halon 1301 stock of more than 17,000 tonnes (UNEP, 1998; EPA, 1998). Approximately 981 tonnes of Halon 1301 were subjected to recovery attempts for the same year in the United States. The high recovery rate relative to Halon 1211 reflects a higher demand for Halon 1301.

As with Halon 1211, the same three general classes of facilities performing halon recovery and recycling operations can be identified and their numbers and practices broadly characterized (Table 2). Significant economic and operational differences between Halon 1211 and Halon 1301 recovery and recycling practices and sectors exist. However, research indicates that as with Halon 1211, approximately 95% of the Halon 1301 recovered annually is recovered using highly efficient closed recovery units, with the remaining 5% by a range of methods including both high-efficiency closed recovery systems, as well as low-efficiency, non-closed equipment and methods (Table 2). Annual Halon 1301 losses to the atmosphere arising from transfers from each group of facilities performing recovery and recycling operations, expressed as a percentage of total annual Halon 1301 emissions in the United States for 1997, are estimated at −2% (large-scale commercial recyclers), −1% (large servicers of halon extinguishers); and −0.1–1% (small servicers of halon extinguishers) (EPA, 1998; Table 2). The rate at which Halon 1301 fire protection systems are decommissioned is expected to decrease over the next several years, leading to a slight decrease in emissions, with slowly declining emissions projected through the year 2030 (EPA, 1998; UNEP, 1998).

TABLE 1.—HALON 1211 RECOVERY AND RECYCLING IN THE UNITED STATES

[Data for 1997; EPA, 1998]

(A) Type of operation	(B) Number of organizations of this type	(C) Percent of Halon 1211 transferred by these organizations annually	(D) Quantity of Halon 1211 transferred annually (tonnes/yr) [1]	(E) Estimated recovery efficiency of equipment used (percent)	(F) Estimated emissions (tonnes/yr) [2]	(G) Contribution to Total U.S. Annual Halon 1211 Emissions (Percent) [3]
Large-scale commercial recyclers	4–6	60–65	179–194	98	3.6–3.9	−0.3
Large servicers of halon extinguishers	20	30–35	89–104	98	1.8–2.1	−0.2
Small servicers of halon extinguishers	[4]	5	15	90–98	0.3–1.5	−0.1

[1] Calculated by multiplying percent of Halon 1211 transferred by type of operation (column (C)) by 298 tonnes/yr, the estimated total quantity of Halon 1211 subjected to recovery attempts in 1997.

[2] Calculated by multiplying equipment transfer loss rate (100% minus estimated recovery efficiency of equipment, or column (E)) by total quantity of Halon 1211 recovered by each type of operation (column (D)).

[3] Calculated by dividing Halon 1211 estimated emissions for each type of operation (column (F)) in 1997 by the total mass of Halon 1211 emitted for 1997 (estimated at 1,079 tonnes).

[4] Several hundred.

TABLE 2.—HALON 1301 RECOVERY AND RECYCLING IN THE UNITED STATES

[Data for 1997; EPA, 1998]

(A) Type of operation	(B) Number of organizations of this type	(C) Percent of Halon 1301 transferred annually (excludes North Slope and military)	(D) Quantity of Halon 1301 recovered and recycled annually (tonnes/yr) [1]	(E) Estimated Recovery Efficiency of Equipment Used	(F) Estimated Emissions (tonnes/yr) [2]	(G) % of Total Annual Halon 1301 Emissions [3]
Large-scale commercial recyclers	4—6	70	686	98	14	−2
Large servicers of halon extinguishing systems	12	25	245	98	5	−1
Small servicers of halon extinguishing systems	−100	5	49	90—98	1—5	−0.1–1%

[1] Calculated by multiplying percent of Halon 1301 transferred by type of operation (column (C)) by 981 tonnes/yr, the estimated total quantity of Halon 1301 subjected to recovery attempts in 1997.

[2] Calculated by multiplying equipment transfer loss rate (100% minus estimated recovery efficiency of equipment, or column (E)) by total quantity of Halon 1301 recovered by each type of operation (column (D)).

[3] Calculated by dividing Halon 1301 estimated emissions for each type of operation (column (F)) in 1997 by the total mass of Halon 1301 emitted for 1997 (estimated at 786 tonnes).

B. Current Practices

The recovery and recycling infrastructure for both Halon 1211 and 1301 has been in place for many years, but since the signing of the Montreal Protocol, halon recovery and recycling have increased markedly. As a result, related services and necessary equipment have become widely available in the United States. Halon recovery and recycling, in general, are performed by large-scale commercial halon recycling concerns, large servicers of halon fire extinguishers, and small servicers of halon fire extinguishers (see previous section for further discussion). Research indicates that for Halon 1211 recovery and recycling, all units currently on the market, and most units currently in use, are highly efficient closed halon recovery systems, with recovery efficiencies of 98% or greater (EPA, 1998). Research similarly suggests that for Halon 1301 the majority of equipment currently in use, and all equipment currently on the market, are highly efficient halon closed recovery systems with recovery efficiencies exceeding 98% (EPA, 1998).

Halon recovery and recycling equipment includes equipment that processes Halon 1211, equipment that processes Halon 1301, equipment capable of processing more than one halon, and units capable of processing halon as well as other chemicals (EPA, 1998). The manufacture of halon recovery, recycling, and reclamation equipment in the United States has centered around several firms since 1980, including Getz Manufacturing (a subsidiary of Amerex Fire International Inc.), FRC International Corporation, Walter Kidde Aerospace, and Neutronics Inc.

Halon 1211 recycling equipment manufacture was most vigorous in the 1980s, with the majority of sales occurring just prior to the ban on halon manufacturing in January 1994. Over 1,000 Halon 1211 recovery/recycling units have been sold worldwide, with approximately half of these sales attributed to the U.S. military and Halon 1211 extinguishing system manufacturers in the United States. The market for Halon 1211 recovery/recycling units appears to be virtually saturated within the United States and equipment currently in use is expected to last as long as halon recovery and recycling equipment is needed domestically (EPA, 1998).

The high value of recovered Halon 1301 created a demand for recovery/recycling units as early as 1980. Hundreds of early models of relatively less-efficient recovery/recycling units were sold between 1980 and 1990, but sales of these units declined considerably with the introduction of more efficient, effective systems in the late 1980s. Consultation with industry experts suggests that it is highly unlikely that many of these less efficient units are still in use today (EPA, 1998); it is believed that the majority of operations that perform Halon 1301 transfers and recycling utilize systems that have recovery efficiencies exceeding 98%.

In summary, recent research suggests that the great majority of equipment currently in use or on the market for halon recovery and recycling is highly efficient halon closed recovery systems achieving a minimum recovery efficiency of 98%. Furthermore, the market for halon recovery/recycling equipment is virtually saturated. Entities which perform the vast majority of halon transfers employ these efficient, closed halon recovery units. Although there is some number of facilities performing halon transfers using devices with poor (e.g., 90 percent) recovery efficiencies, such operations at most are estimated to account for approximately 1 percent of total halon emission in the United States annually. It should be emphasized that certain provisions of the EPA rule published on March 5, 1998 were intended to prohibit the use of the less efficient, non-closed halon recovery and recycling methods responsible for these small releases of halons to the atmosphere.

C. Existing Certification Programs

The chief objective of an equipment certification program would be to verify that all recycling or recovery equipment sold was capable of minimizing emissions; a statement of this objective can be found in the discussion of a similar refrigerant recovery and recycling equipment certification program established under section 608(a) (58 FR 28660, 28682).[1] The specific provisions of the refrigerant recycling equipment certification program were developed based chiefly on (1) consideration of operating specifications of equipment extant at the time (*e.g.*, in establishing performance standards for vapor recovery efficiencies); (2) considerations of economics and the relative public benefits and private costs at stake (e.g., in considering the appropriateness of establishing equipment recovery rate standards); and (3) consideration of existing equipment capabilities, and capabilities likely to be achievable with technological advances (*e.g.*, in considering allowable purge losses).

A program to certify halon recovery and recycling equipment would likely require initial certification of equipment makes and models (and additional certification provisions for makes and/or models no longer in production) to be performed by laboratories or organizations to be approved by EPA and subsequent periodic certification of such equipment by conducting periodic inspections of equipment at manufacturing facilities to ensure that models have not undergone design changes that may affect their performance. Test performance criteria would have to be established, likely based to some extent on existing industry standards for the halon recovery and recycling units, where appropriate standards existed. Performance parameters of interest might include halon agent recovery efficiency. Different standards might have to be developed based on the type of halon system that the recycling/recovery equipment is designed for. It would further be necessary to establish criteria and an administrative program for EPA approval of equipment testing organizations. For enforcement purposes, it would be necessary to require manufacturers and importers to place a label on each piece of certified equipment indicating that it is certified and showing which organization tested and certified it. Finally, in order to ensure that only the equipment deemed and certified capable of minimizing releases of halons to the atmosphere is actually utilized during halon recovery and recycling activities, it would be necessary to establish and enforce the explicit requirement that only certified recovery and recycling equipment may be used during halon recovery and recycling activities.

[1] Significant contrasts between the commercial and technological contexts surrounding the refrigerants and the halons, however, lead to divergent conclusions regarding the necessity and appropriateness of recovery and recycling equipment certification programs for these broad groups of ozone-depleting substances (ODSs). For example, because the refrigerant recycling rule was issued in 1993, prior to the phaseout of refrigerant production (1996), economic incentives to develop high-efficiency refrigerant recovery practices and equipment were limited. In contrast, production of halons was phased out in 1994, strongly contributing to an increase in the economic value of halons, and incentives for the development of today's generally efficient recovery practices. As a result, while it was necessary for refrigerant recovery and recycling regulations to include a greater level of prescriptive detail regarding methods of recovery and recycling, much less need currently exists to prescribe efficient transfer, recovery, and recycling practices with respect to halons, as such practices have developed in the years since the phaseout of halon production.

D. Prior Halon Regulation

As noted earlier, EPA has already issued a rule under Section 608 of the CAA to reduce the use and emissions of halons and to maximize their recapture and recycling. The March 5 rule (63 FR 11084) established certain practices and requirements relative to halons including training requirements for technicians who handle halon-containing equipment, and prohibitions on releases of halons during the testing, maintenance, repair, servicing, and disposal of halons and halon-containing equipment and during technician training. The March 5 rule also provided that halons and halon-containing equipment may be disposed of only by sending such halon or equipment for recycling or recovery, respectively, by a facility operating in accordance with the voluntary NFPA 10 and 12A standards, or by sending halon for destruction by an EPA-approved method.

The intent of the disposal provisions (sections 82.270(d) and (e)) of the March 5 rule was twofold. First, in specifying disposal practices for halons and halon-containing equipment, it was established that recovery and recycling (as well as halon destruction by approved methods) are the only permissible disposal options for halons; *i.e.*, release of halons to the atmosphere, or other means of disposing of halons, are no longer permissible. This provision has the effect of shifting maximum quantities of halons intended for disposal into recovered and recycled pools. Second, it was intended to establish that recovery and recycling must be performed only through the use of the most efficient recovery and recycling practices and equipment available today by requiring that facilities to whom halon or halon-containing equipment had been sent for recovery or recycling operate in accordance with the NFPA 10 standard for portable fire extinguishers (NFPA, 1998) and the NFPA 12A standard for Halon 1301 systems (NFPA, 1997).[2] By specifying that the only permissible disposal options for halons are recovery, recycling, or destruction; and by requiring in effect that halon recovery and recycling occur only through the use of equipment achieving maximum recovery efficiencies currently available, the March 5 rule was intended to reduce emissions of halons to the lowest achievable level during recovery and recycling, and to maximize halon recapture and recycling. Thus, enforcement of this rule should lead to a great reduction, if not virtual elimination, of halon emissions attributable to the above-described transfer losses from non-closed halon recovery systems. As noted earlier, all halon recovery and recycling equipment currently on the market achieves efficiencies of 98 percent or greater. Therefore, the remaining environmental benefits achievable by further regulation of halon recovery and recycling practices are extremely small.

E. Discussion and Conclusion

Section 608 of the CAA provides the statutory basis under which today's action has been contemplated. That section directs EPA to issue regulations which ''reduce the use and emission of [ozone depleting] substances to the lowest achievable level'' and ''maximize the recapture and recycling of such substances.'' In applying these standards concerning use, emissions and recycling, EPA considers both technological and economic factors. The phrases ''lowest achievable level'' and ''maximize * * * recapture and recycling'' are not defined in the Act. EPA does not believe that these standards are solely technological in nature, but rather, include a role for economic factors in determining the lowest achievable levels and maximum amount of recapture and recycling. EPA therefore considers in an appropriate manner the technology available and potential benefits, among other factors, in establishing its regulatory programs under section 608. EPA believes that the language of the CAA and the legislative history of section 608 both support its approach. For a further discussion of this approach, see 58 FR 28667.

Up to 1% of halon emissions in North America, prior to the March 5 rule, was attributable to halon transfers that were performed using non-closed halon recovery systems (EPA, 1998)—that is, the inefficient halon transfer methods or systems whose use it would be the objective of an equipment certification program to eliminate. This suggests that the maximum environmental gain achievable by the elimination of the use of non-closed halon recovery systems and methods is up to 1% of annual domestic halon emissions. However, the March 5 rule established requirements that reduce the use and emission of halons, and maximize their recapture and recycling. Included in the requirements of the March 5 rule were provisions (40 CFR 82.270 (d) and (e)) regarding halon disposal with a twofold intent relevant to halon recovery and recycling. First, in specifying disposal practices for halons and halon-containing equipment, the Agency established that recovery and recycling (as well as halon destruction by approved methods) are the only permissible disposal options for halons. Second, the Agency intended to establish that recovery and recycling must be performed only through the use of closed halon recovery systems. Research has indicated that the majority of halon closed recovery systems in use today, as well as all units currently sold in this sector, meet or exceed industry standards that require minimum recovery efficiencies of 98% (EPA, 1998). Therefore, by specifying that the only permissible disposal options for halons are recovery, recycling, or destruction; and by requiring in effect that halon recovery and recycling occur only through the use of equipment achieving maximum recovery efficiencies currently available, EPA believes that the March 5 rule effectively reduces emissions of halons to the lowest achievable level during recovery and recycling, and maximizes their recapture and recycling.

As the objective of a halon recovery and recycling equipment certification program is to verify that all such equipment is capable of minimizing emissions, EPA finds that this objective will be met through the regulatory mechanism of the March 5 rule. Furthermore, as the objective of a requirement to use only certified equipment is to eliminate the use of equipment that does not meet current standards, EPA finds that this objective will also be met through the regulatory

[2] The NFPA 10 and NFPA 12A standards were cited because they prescribe the use of closed halon systems for halon transfers. Specifically, NFPA 10, the voluntary industry standard for portable fire extinguishers, including halon-containing portable fire extinguishers, states that the ''removal of Halon 1211 from fire extinguishers shall be done only using a listed halon closed recovery system. The removal of agent from other halogenated agent fire extinguishers shall be done only using a closed recovery system...'', where a closed recovery system for halons and halogenated agents is defined as a ''system that provides for the transfer of halogenated agents between fire extinguishers, supply containers, and recharge and recovery containers so that none of the halogenated agent escapes to the atmosphere'' (NFPA, 1998). NFPA 12A states that the ''charging or recharging of cylinders or the removal or transfer of agent should be done using a closed loop system. A closed loop system permits transfer of halon between supply cylinders, system cylinders, and recovery cylinders, with only minor loss of halon to the atmosphere'' (NFPA, 1997).

It has been brought to EPA's attention that the language in the NFPA 10 and NFPA 12A standards is not fully consistent with the intent of the provisions in 40 CFR 82.270(d) and (e). EPA will propose an amendment to the March 5 rule to clarify that in all cases, only a halon closed recovery system may be used in the transfer of halons during halon recovery and recycling operations, and that the requirement to use only a halon closed recovery system during halon recovery and recycling operations applies for all halons listed as group II, Class I ozone-depleting substances, and all their isomers.

mechanism of the March 5 rule. Therefore, EPA determines that it is neither necessary nor appropriate under section 608(a)(2) of the Act to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under that section to require that halons be removed only through the use of certified equipment at this time. Further information and discussion relevant to EPA's decision may be found in the halon recovery/recycling equipment study mentioned above (EPA, 1998), as well as in associated materials, all placed in the docket for this determination. Nothing in this determination should affect any existing legal requirements regarding halons, and this determination does not preclude future regulatory action regarding equipment certification, or other aspects of halon use, should information pointing to significant environmental benefit be produced.

F. References

National Fire Protection Association (NFPA), 1998. NFPA 10 Standard for Portable Fire Extinguishers. 1988 Edition. National Fire Protection Association, Quincy, MA. 56 pp.

NFPA, 1997. NFPA 12A Standard on Halon 1301 Fire Extinguishing Systems. 1997 Edition. National Fire Protection Association, Quincy, MA. 57 pp.

EPA, 1998. Assessment of the Need for a Halon Recovery/Recycling Equipment Certification Program. Draft report prepared for the Stratospheric Protection Division, U.S. Environmental Protection Agency, Washington, D.C. 17 pp.

United Nations Environment Program (UNEP), 1994. Montreal Protocol on Substances that Deplete the Ozone Layer—Report of the Halon Fire Extinguishing Agents Technical Options Committee, December, 1994. UNEP Ozone Secretariat, Nairobi, Kenya. 174 pp.

UNEP, 1998. Montreal Protocol on Substances that Deplete the Ozone Layer—Technology and Economic Assessment Panel, April 1998 Report. UNEP Ozone Secretariat, Nairobi, Kenya.

III. Administrative Requirements

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) provides for interagency review of ''significant regulatory actions.'' It has been determined by the Office of Management and Budget (OMB) and EPA that this action—which is a determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate—is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies, when developing regulations, consider the potential impact of those regulations on small entities. Because this action is a determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate, the Regulatory Flexibility Act does not apply. By its nature, this action will not have an adverse effect on the regulated community, including small entities.

C. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

D. Paperwork Reduction Act

This action does not add any new requirements or increase burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

It has been determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year.

F. Executive Order 13045—Children's Health

Executive Order 13045: ''Protection of Children from Environmental Health Risk and Safety Risk'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to E.O. 13045 because it is not a rule and is not likely to result in a rule.

IV. Judicial Review

Because this direct final determination is of nationwide scope and effect, under section 307(b)(1) of the Act, judicial review of this action is available only by the filing of a petition for review in the United States Court of Appeals for the District of Columbia Circuit within sixty days of publication of this action in the **Federal Register**.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: July 31, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–21525 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 98–36; DA 98–1553]

Assessment and Collection of Regulatory Fees for Fiscal Year 1998

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In a rule published on July 1, 1998, the Commission revised its Schedule of Regulatory Fees in order to recover the amount of Regulatory Fees that Congress has required it to collect for fiscal year 1998. This order establishes the dates when these regulatory fees must be paid.

DATES: Annual regulatory fees are due during the period September 14, 1998, through September 18, 1998, for all annual fee payors. Beginning on September 14, 1998, for applicants who pay fees in advance in combination with their application fee for new, renewal and reinstatement authorizations in the private wireless services.

FOR FURTHER INFORMATION CONTACT: Terry D. Johnson, Office of Managing Director at (202) 418–0445.

SUPPLEMENTARY INFORMATION:

Adopted: August 3, 1998.
Released: August 4, 1998.

1. The Managing Director has determined the dates for collection of the fees adopted in the above-captioned proceeding. *See Assessment and Collection of Regulatory Fees for Fiscal Year 1998,* MD Docket 98–36, FCC 98–115, released June 16, 1998, 63 FR 35847 (July 1, 1998). We are establishing collection dates as indicated paragraphs 2 and 3.

2. Annual regulatory fees for regulatees in the cable television, common carrier, international, mass media, and commercial wireless services are due during the period beginning *September 14, 1998,* and ending *September 18, 1998.* Parties paying these fees electronically must ensure that payment is received by Mellon Bank no later than *September 17, 1998,* however they are requested to submit them on *September 14th* or *September 15th* to facilitate their receipt and recording in a timely fashion.

3. Applicants for new, renewal and reinstatement licenses in the private wireless private mobile radio (PMRS) and the microwave radio services, which pay annual fees of $12.00 in advance for each year of their license term in combination with the appropriate application fee, are to begin paying the new fee on *September 14, 1998.* For private wireless licensees in the aviation, marine, general mobile (GMRS), and other land mobile radio services paying $6.00 in advance for each year of their license term in combination with the appropriate application fee, they also are to begin paying the new fee on *September 14, 1998.* Applicants for amateur vanity call signs paying $1.30 in advance for each year of their license term in combination with the appropriate application fee, they too are to begin paying the new fee on *September 14, 1998.*

4. Since the time for collecting fees is extremely limited, we are unable to offer installment payments for fiscal year 1998.

5. Accordingly, *It is ordered* that the dates for collection of fiscal year 1998 regulatory fees are as provided in paragraphs 2 and 3. This action is taken under delegated authority pursuant to § 0.231(a) and § 1.1157(b)(1) of the Commission's rules. 47 U.S.C. 0.231(a) and 1.1157(b)(1).

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–21259 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[Gen. Docket 86–285, FCC 98–87]

Schedule of Application Fees

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its Schedule of Application Fees to adjust the fees for processing applications and other filings. The Commission is required to adjust its application fees every two years after October 1, 1991, to reflect the net change in the Consumer Price Index for all Urban Consumers (CPI–U). The increased fees reflect the net change in the CPI–U of 28 percent, calculated from December 1989 to September 1997.

EFFECTIVE DATE: September 14, 1998.

FOR FURTHER INFORMATION CONTACT: Regina W. Dorsey or Claudette E. Pride, Billings & Collections Branch, Office of the Managing Director at (202) 418–1995.

SUPPLEMENTARY INFORMATION:

Adopted: May 8, 1998.
Released: May 15, 1998.

1. By this action, the Commission amends it Schedule of Application Fees, 47 CFR 1.1102 through 1.1107 to adjust the fees for processing applications and other filings. Section 8(b) of the Communications Act, as amended, requires that the Commission review and adjust its application fees every two years after October 1, 1991 (47 U.S.C. 158(b)). The adjusted or increased fees reflect the net change in the Consumer Price Index for all Urban Consumers (CPU–U of 28 percent, calculated from December 1989 to September 1997. The adjustments made to the fee schedule comport with the statutory formula set forth in section 8(b). Consistent with section 8(b), the commission transmitted to Congress a 90-day advance notification of the fee adjustments on May 28, 1998. If Congress interposes no objection to the proposed increases within the 90-day period, the new fees will become effective September 14, 1998.

2. Accordingly, it is ordered, that the Schedule of Application Fees, 47 CFR 1.1102 through 1.1107 is amended effective on September 14, 1998.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

47 CFR Part 1 is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. 154, 303, 503(b)(5); 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for applications and other filings in the wireless telecommunications services. Those services designated with an asterisk in the payment type code column have associated regulatory fees that must be paid at the same time the application fee is paid. Please refer to Section 1.1152 for the appropriate regulatory fee that must be paid for this service.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Land Transportation:				
a. New, Renewal, Reinstatement	600 & 159	45	PALR*	Federal Communications Commission, Land Transportation, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, Land Transportation, P.O. Box 358130, Pittsburgh, PA 15251–5130.
2. Industrial/Business Pool:				

Action	FCC Form No.	Fee amount	Payment type code	Address
a. New, Renewal, Reinstatement	600 & 159	45	PALR*	Federal Communications Commission, Industrial/Business Pool, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, Land Transportation, P.O. Box 358130, Pittsburgh, PA 15251–5130.
3. Other Industrial:				
a. New, Renewal, Reinstatement	600 & 159	45	PALR*	Federal Communications Commission, Other Industrial, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, Other Industrial, P.O. Box 358130, Pittsburgh, PA 15251–5130.
4. GMRS:				
a. New, Renewal, Reinstatement	574 & 159	45	PALR*	Federal Communications Commission, GMRS, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification	574 & 159	45	PALM	Federal Communications Commission, GMRS, P.O. Box 358130, Pittsburgh, PA 15251–5130.
5. 800 MHz:				
a. New, Renewal, Reinstatement	600 & 159	45	PALS*	Federal Communications Commission, 800 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, 800 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
6. 900 MHz:				
a. New, Renewal, Reinstatement	600 & 159	45	PALS*	Federal Communications Commission, 900 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, 900 MHz, P.O. Box 358130, Pittsburgh, PA 15251–5130.
7. BUS, OI,LT, 470–512, 800, 900, 220, 220 NAT Renewal Non-profit, CMRS.	574R & 159, 405A & 159.	45	PALM	Federal Communications Commission, 574R/405A Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245.
8. For Profit, Special Emergency & Public Safety.	574R & 159, 405A & 159.	45	PALM	Federal Communications Commission, 574R/405A Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245.
9. BUS, OI, LT, GMRS Renewal	574R & 159, 405A & 159.	45	PALR*	Federal Communications Commission, 574R/405A Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245.
10. 470–512,800,900,220 Renewal	574R & 159, 405A & 159.	45	PALS*	Federal Communications Commission, 574R/405A Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245.
11. 220 Nationwide Renewal	574R & 159, 405A & 159.	45	PALT*	Federal Communications Commission, 574R/405A Renewal, P.O. Box 358245, Pittsburgh, PA 15251–5245.
12. Rule Waiver	Corres. & 159	135	PDWM	Federal Communications Commission, Microwave, P.O. Box 358130, Pittsburgh, PA 15251–5130.
13. Microwave:				
a. New, Renewal	415 & 159	200	PEOR*	Federal Communications Commission, Microwave, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit	415 & 159	200	PEOM	Federal Communications Commission, Microwave, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Microwave Renewal	402R & 159	200	PEOR*	Federal Communications Commission, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
d. Microwave Renewal Non-profit	402R & 159	200	PEOM	Federal Communications Commission, Microwave, P.O. Box 358255, Pittsburgh, PA 15251–5255.
14. Ground:				
a. New	406 & 159	90	PBVR*	Federal Communications Commission, Ground, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit	406 & 159	90	PBVM	Federal Communications Commission, Ground, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
c. Ground Renewal Non-profit	452R & 159	90	PBVM	Federal Communications Commission, Ground (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Ground Renewal	452R & 159	90	PBVR*	Federal Communications Commission, Ground (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
15. Coast:				
a. New, Renewal	503 & 159	90	PBMR*	Federal Communications Commission, Coast, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	503 & 159	90	PBMM	Federal Communications Commission, Coast, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Coast Renewal Non-profit, CMRS	452R & 159	90	PBMM	Federal Communications Commission, Coast (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
d. Coast Renewal	452R & 159	90	PBMR*	Federal Communications Commission, Coast (Renewal), P.O. Box 358270, Pittsburgh, PA 15251–5270.
16. Ship:				
a. New, Renewal	506 & 159	45	PASR*	Federal Communications Commission, Ship, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-profit	506 & 159	45	PASM	Federal Communications Commission, Ship, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Ship Renewal Non-profit	405B & 159	45	PASM	Federal Communications Commission, Ship (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
d. Ship Renewal	405B & 159	45	PASR*	Federal Communications Commission, Ship (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
17. Aircraft:				
a. New, Renewal	404 & 159	45	PAAR*	Federal Communications Commission, Aircraft, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-profit	404 & 159	45	PAAM	Federal Communications Commission, Aircraft, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Aircraft Renewal Non-profit	405B & 159	45	PAAM	Federal Communications Commission, Aircraft (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
d. Aircraft Renewal	405B & 159	45	PAAR*	Federal Communications Commission, Aircraft (Renewal), P.O. Box 358290, Pittsburgh, PA 15251–5290.
18. Public Safety Pool:				
a. New, Renewal, Reinstatement, Modification, Assignment.	600 & 159	45	PALM	Federal Communications Commission, Public Safety, P.O. Box 358130, Pittsburgh, PA 15251–5130.
19. Restricted Permit	753 & 159, 755 & 159	45	PARR	Federal Communications Commission, Restricted Permit, P.O. Box 358130, Pittsburgh, PA 15251–5130.
20. Exemption from Ship Station Radio Requirements.	280 & 159	135	PDWM	Federal Communications Commission, Waivers, P.O. Box 358130, Pittsburgh, PA 15251–5130.
21. Correspondence Finders Preference	Corres & 159	135	PDXM	Federal Communications Commission, Finders Preference, P.O. Box 358130, Pittsburgh, PA 15251–5130.
22. STA (Common Carrier) Domestic Public Fixed Pt. to Pt & Local TV Trans.	Corres & 159	90	CEPM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
23. STA (Common Carrier) Domestic Public Fixed Digital Electronic Message.	Corres & 159	90	CELM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
24. STA (BAPS)	Corres & 159	130	MGA	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
25. STA (IVDS)	Corres & 159	45	PAIM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
26. STA (Coast)	Corres & 159	130	PCMM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
27. STA (Ground)	Corres & 159	130	PCVM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
28. STA (Microwave)	Corres & 159	45	PAOM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
29. STA (LM, GMRS)	Corres & 159	45	PALM	Federal Communications Commission, STA, P.O. Box 358130, Pittsburgh, PA 15251–5130.
30. Duplicate	Corres & 159, 753 & 159, 755 & 159, 756 & 159.	45	PADM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
31. Hearing	Corres & 159	8,640	PFHM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
32. Blanket Renewal (Land Mobile) Non-profit, CMRS.	Corres & 159	45	PALM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
33. Blanket Renewal (IVDS) Non-profit	Corres & 159	45	PAIM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
34. Blanket Renewal (Microwave) Non-profit	Corres & 159	200	PEOM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
35. Blanket Renewal (Ground) Non-profit	Corres & 159	90	PBVM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
36. Blanket Renewal (Coast) Non-profit, CMRS.	Corres & 159	90	PBMM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
37. Blanket Renewal (Aircraft) Non-profit	Corres & 159	45	PAAM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
38. Blanket Renewal (Ship) Non-profit	Corres & 159	45	PASM	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
39. Blanket Renewal (BUS, OI, LT, GMRS)	Corres & 159	45	PALR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
40. Blanket Renewal (470–512, 800, 900, 220).	Corres & 159	45	PALS*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
41. Blanket Renewal (220 Nationwide)	Corres & 159	45	PALT*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
42. Blanket Renewal (Microwave)	Corres & 159	200	PEOR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
43. Blanket Renewal (Ground)	Corres & 159	90	PBVR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
44. Blanket Renewal (Coast)	Corres & 159	90	PBMR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
45. Blanket Renewal (Aircraft)	Corres & 159	45	PAAR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
46. Blanket Renewal (Ship)	Corres & 159	45	PASR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
47. Blanket Renewal (Common Carrier) Domestic Public Fixed Pt to Pt & Local TV Trans.	Corres & 159	200	CJPR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
48. Blanket Renewal (Common Carrier) Domestic public Fixed Digital Electronic Message.	Corres & 159	200	CJLR*	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
49. Blanket Renewal Broadcast Auxiliary	Corres & 159	45	MAA	Federal Communications Commission, Blanket Renewal, P.O. Box 358130, Pittsburgh, PA 15251–5130.
50. Transfer of Control	703 & 159, 415 & 159, 490 & 159.	45	PATM	Federal Communications Commission, Transfer of Control, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
51. Billing	Invoice	Various	Various	Federal Communications Commission, Billings,, P.O. Box 358325, Pittsburgh, PA 15251–5325.
52. 220 Local:				
a. New, Renewal, Reinstatement	600 & 159	45	PALS*	Federal Communications Commission, 220 Local, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, 220 Local, P.O. Box 358130, Pittsburgh, PA 15251–5130.
53. IVDS:				
a. New	574 & 159	45	PAIR	Federal Communications Commission, IVDS, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Non-Profit	574 & 159	45	PAIM	Federal Communications Commission, IVDS, P.O. Box 358130, Pittsburgh, PA 15251–5130.
54. Common Carrier Point-To-Point and Local TV Trans.:				
a. New	415 & 159	200	CJPR*	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification	415 & 159	200	CJPM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Renewal	405 & 159, 415 & 159	200	CJPR*	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Ext. Construction	701 & 159	75	CCPM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment	702 & 159	75	CCPM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Transfer of Control	704 & 159	75	CCPM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Additional Stations	702 & 159	45	CAPM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Additional Stations	704 & 159	45	CAPM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
55. Common Carrier Digital Electronic Message:				
a. New	415 & 159	200	CJLR*	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification	415 & 159	200	CJLM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Renewal	405 & 159, 415 & 159	200	CJLR*	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Ext. Construction	701 & 159	75	CCLM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
. Aircraft:				
e. Assignment	702 & 159	75	CCLM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Transfer of Control	704 & 159	75	CCLM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Additional Stations	702 & 159	45	CALM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Additional Stations	704 & 159	45	CALM	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
56. Mass Media: Broadcast Auxiliary:				

Action	FCC Form No.	Fee amount	Payment type code	Address
a. New, Modification	313 & 159, 415 & 159	110	MEA	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Renewal	313R & 159, 415 & 159.	45	MAA	Federal Communications Commission, Common Carrier, P.O. Box 358130, Pittsburgh, PA 15251–5130.
57. Commercial Renewal	756 & 159	45	PACS	Federal Communications Commission, P.O. Box 358130, Pittsburgh, PA 15251–5130.
58. 470–512:				
a. New, Renewal, Reinstatement	600 & 159	45	PALS*	Federal Communications Commission, 470–512, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, 470–512, P.O. Box 358130, Pittsburgh, PA 15251–5130.
59. 220 Nationwide:				
a. New, Renewal, Reinstatement	600 & 159	45	PALT*	Federal Communications Commission, 220 Nationwide, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Modification, Assignment, Non-Profit, CMRS.	600 & 159, 490 & 159	45	PALM	Federal Communications Commission, 220 Nationwide, P.O. Box 358130, Pittsburgh, PA 15251–5130.
60. Paging & Radiotelephone (Part 22):				
a. New or Additional Facility (per transmitter).	600 & 159	295	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modifications (per transmitter)	600 & 159	295	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill in Transmitters (per transmitter)	600 & 159, 489 & 159	295	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to a Pending Application (per transmitter).	600 & 159	295	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign on Application	490 & 159	295	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Partial Assignment (per call sign)	600 & 159, 490 & 159, 489 & 159.	295	CMD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal (per call sign)	405 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Minor Modification (per transmitter)	489 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Special Temporary Authority (per frequency/per location).	Corres. & 159	260	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Extension of Time to Construct (per application).	600 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Notice of Completion of Construction (per application).	489 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter)	600 & 159	260	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
m. Subsidiary Communications Service (per request).	600 & 159	130	CFD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
n. Combining Call Signs (per call sign)	600 & 159	260	CLD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
o. 900 MHZ Nationwide Paging:				
(i) Renewal—Network Organizer	405 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
(ii) Renewal—Network Operator (per operator/per city).	405 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
p. Air-Ground Individual License (per station):				
(i) Initial License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Renewal of License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Modification of License	409 & 159	45	CAD	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
61. Cellular Systems:				
a. New or Additional Facility	600 & 159	295	CMC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modification	600 & 159	295	CMC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Minor Modification	600 & 159, 489 & 159	80	CDC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Assignment or Transfer	490 & 159	295	CMC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Partial Assignment	489 & 159, 490 & 159, 600 & 159.	295	CMC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Renewal	405 & 159	45	CAC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Extension of Time to Complete Construction.	600 & 159	45	CAC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Special Temporary Authority	600 & 159, Corres. & 159.	260	CLC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Combining Cellular Geographic Service Area.	600 & 159	65	CBC	Federal Communications Commission, Cellular, P.O. Box 358130, Pittsburgh, PA 15251–5130.
62. Rural Radio (includes Central Office, interoffice, or Relay Facilities):				
a. New or Additional Facility	600 & 159	135	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
b. Major Modification (per transmitter)	600 & 159	135	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Major Amendment to Pending Application (per transmitter).	600 & 159	135	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Minor Modification (per transmitter)	489 & 159, 600 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Assignment or Transfer:				
(i) First Call Sign	490 & 159	135	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(ii) Each Additional Call Sign	490 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Assignment or Transfer:.				
(1) Partial Assignment	490 & 159, 489 & 159, 600 & 159.	135	CGR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal	405 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Extention of Time to Construct (per application).	600 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.

Action	FCC Form No.	Fee amount	Payment type code	Address
i. Notice of Completion of Construction (per application).	489 & 159	45	CAR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Special Temporary Authority (per transmitter).	Corres. & 159	260	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Combining Call Signs (per call sign)	600 & 159	260	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
1. Auxiliary Test Station (per transmitter)	600 & 159	260	CLR	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
63. Offshore Radio Service (Mobile, Subscriber, and Central Stations)	600 & 159	135	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
a. New or Additional Facility (per transmitter).				
b. Major Modification (per transmitter)	600 & 159	135	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
c. Fill In Transmitters (per transmitter)	600 & 159, 489 & 159	135	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
d. Major Amendment to a Pending Application (per transmitter).	600 & 159	135	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
e. Minor Modification (per transmitter)	600 & 159, 489 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
f. Assignment or Transfer:	490 & 159	135	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(i) First Call Sign. (ii) Each Additional Call Sign	490 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
(iii) Partial Assignment (per Call Sign).	490 & 159, 489 &159, 600 & 159.	135	CGF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
g. Renewal (per Call Sign)	405 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
h. Extension of Time to Construct (per application).	600 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
i. Notice of Completion of Construction (per application).	489 & 159	45	CAF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
j. Special Temporary Authority (per transmitter).	Corres. & 159	260	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
k. Combining Call Signs (per Call Sign)	600 & 159	260	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
l. Auxiliary Test Station (per transmitter)	600 & 159	260	CLF	Federal Communications Commission, Common Carrier Land Mobile, P.O. Box 358130, Pittsburgh, PA 15251–5130.
64. Electronic Filings: BUS,OI,LT	ELT 159 Only	45	PALR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
a. New, Renewal, Reinstatement.				
b. Land Mobile Modification, Assignment, Non-Profit, CMRS.	ELT 159 Only	45	PALM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
c. 470–512/800/900 MHz & 220 Local New, Renewal, Reinstatement.	ELT 159 Only	45	PALS*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
d. IVDS Modification, Non-Profit	ELT 159 Only	45	PAIM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
e. Ground Non-Profit Renewal	ELT 159 Only	90	PBVM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.

Action	FCC Form No.	Fee amount	Payment type code	Address
f. Coast Non-Profit Renewal, CMRS	ELT 159 Only	90	PBMM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
g. Microwave Non-Profit Renewal	ELT 159 Only	200	PEOM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
h. Ship Non-Profit Renewal	ELT 159 Only	45	PASM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
i. Aircraft Non-Profit Renewal	ELT 159 Only	45	PAAM	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
j. Broadcast Auxiliary Renewal	ELT 159 Only	45	MAA	Federal Communications Conmmission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
k. 220 Nationwide New, Renewal, Reinstatement.	ELT 159 Only	45	PALT*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
l. IVDS New	ELT 159 Only	45	PAIR	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
m. Ground Renewal	ELT 159 Only	90	PBVR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
n. Coast Renewal	ELT 159 Only	90	PBMR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
o. Microwave Renewal	ELT 159 Only	200	PEOR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
p. Ship Renewal	ELT 159 Only	45	PASR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
q. Aircraft Renewal	ELT 159 Only	45	PAAR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
r. Common Carrier Point to Point & Local TV Trans. Renewal.	ELT 159 Only	200	CJPR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.
s. Common Carrier Digital Electronic Message Renewal.	ELT 159 Only	200	CJLR*	Federal Communications Commission, ELT, P.O. Box 358994, Pittsburgh, PA 15251–5994.

*This service is subject to a regulatory fee in addition to the amount at the time of application filing. Please consult Section 1.1152 for the appropriate regulatory fee that must be paid for this service.

3. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment authorization, experimental radio services, and international telecommunications settlements.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Certification:				
a. Receivers (except TV and FM)	731 & 159	365	EEC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
b. Devices Under Parts 11, 15, & 18 (except TV and FM).	731 & 159	940	EGC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
c. All Other Devices	731 & 159	475	EFT	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
d. Modifications and Class II Permissive Changes.	731 & 159	45	EAC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
e. Request for Confidentiality	731 & 159	135	EBC	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
2. Advance Approval of Subscription TV Systems.	Corres. & 159	2,885	EIS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.

Action	FCC Form No.	Fee amount	Payment type code	Address
a. Request for Confidentiality	Corres. & 159	135	EBS	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
3. Assignment of Applicant Code:				
a. New Applicants for all Application Types, except Subscription TV.	Corres. & 159	45	EAG	Federal Communications Commission, Equipment Approval Services, P.O. Box 358315, Pittsburgh, PA 15251–5315.
4. Experimental Radio Service:				
a. New Station Authorization	442	45	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
b. Modification of Authorization	442	45	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
c. Renewal of Station Authorization	405	45	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
d. Assignment of Transfer of Control	702 & 159 or 703 & 159.	45	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
e. Special Temporary Authority	Corres. & 159	45	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
f. Additional fee required for any of the above applications that request withholding from public inspection.	Corres. & 159	45	EAE	Federal Communications Commission, Equipment Radio Services, P.O. Box 358320, Pittsburgh, PA 15251–5320.
5. International Telecommunications Settlements Administrative Fee for Collections (per line item).	99 & 159	2	IAT	Licensees will be billed.

4. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for applications and other filings for the mass media services.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. Commercial TV Stations:				
a. New and Major Change Construction Permits (per application).	301 & 159	3,245	MVT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
b. Minor Change (per application)	301 & 159	725	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
c. Main Studio Request	Corres. & 159	690	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
c. New License (per application)	302–TV & 159	220	MJT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
d. License Renewal (per application)	303–S & 159	130	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
e. License Assignment:				
(i) Long Form	314 & 159	725	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form	316 & 159	105	MDT	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
f. Transfer of Control:				
(i) Long Form	315 & 159	725	MPT	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form	316 & 159	105	MDT	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
g. Hearing (New and Major/Minor Change, Comparative Construction Permit).	Corres. & 159	8,640	MWT	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170.
h. Call Sign	Corres. & 159	75	MBT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.

Action	FCC Form No.	Fee amount	Payment type code	Address
i. Extension of Time to Construct or Replacement of Construction Permit.	307 & 159	260	MKT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
j. Special Temporary Authority	Corres. & 159	130	MGT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
k. Petition for Rulemaking for New Community of License.	301 & 159 or 302–TV & 159.	2,005	MRT	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
l. Ownership Report	323 & 159 Corres. & 159.	45	MAT	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
2. Commercial AM Radio Stations:				
a. New or Major Change Construction Permit.	301 & 159	2,885	MUR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
b. Minor Change	301 & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
c. Main Studio Request	Corres. & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
d. New License	302–AM & 159	475	MMR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
e. AM Directional Antenna	302–AM &159	545	MOR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
f. AM Remote Control	301–A & 159 or 301 & 159.	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
g. License Renewal	303–S & 159	130	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
h. License Assignment				
(i) Long Form	314 & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form	316 & 159	105	MDR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
i. Transfer of Control				
(i) Long Form	315 & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form	316 & 159	105	MDR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
j. Hearing (New Or Major/Minor Change, Comparative Construction Permit.	Corres. & 159	8,640	MWR	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170.
k. Call Sign	Corres. & 159	75	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
l. Extension of Time to Construct or Replacement of Construction Permit.	307 & 159	260	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
m. Special Temporary Authority	Corres. & 159	130	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
n. Ownership Report	323 & 159 or Corres. & 159.	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
3. Commercial FM Radio Stations:				
a. New or Major Change Construction Permit.	301 & 159	2,600	MTR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
b. Minor Change	301 &159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
c. Main Studio Request	Corres. & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.

Action	FCC Form No.	Fee amount	Payment type code	Address
d. New License	302–FM & 159	150	MHR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
e. FM Directional Antenna	302–FM & 159	455	MLR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
f. License Renewal	303–S & 159	130	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
g. License Assignment				
(i) Long Form	314 & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form	316 & 159	105	MDR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
h. Transfer of Control				
(i) Long Form	315 & 159	725	MPR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
(ii) Short Form	316 & 159	105	MDR	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
i. Hearing (New or Major/Minor Change, Comparative Construction Permit).	Corres. & 159	8,640	MWR	Federal Communications Commission, Mass Media Services, P.O. Box 358170, Pittsburgh, PA 15251–5170.
j. Call Sign	Corres. & 159	75	MBR	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
k. Extension of Time to Construct or Replacement of Construction Permit.	307 & 159	260	MKR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
l. Special Temporary Authority	Corres. & 159	130	MGR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
m. Petition for rulemaking for New Community of License or Higher Class Channel.	301 & 159 or 302–FM & 159.	2,005	MRR	Federal Communications Commission, Mass Media Services, P.O. Box 358195, Pittsburgh, PA 15251–5195.
n. Ownership Report	323 & 159 or Corres. & 159.	45	MAR	Federal Communications Commission, Mass Media Services, P.O. Box 358180, Pittsburgh, PA 15251–5180.
4. FM Translators:				
a. New or Major Change Construction Permit.	349 & 159	545	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. New License	350 & 159	110	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. License Renewal	303–S & 159	45	MAF	Federal Communications Commission, Mass Media Services, P.O. Box 358190, Pittsburgh, PA 15251–5190.
d. Special Temporary Authority	Corres. & 159	130	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
e. License Assignment	345 & 159 or 314 & 159 or 316 & 159.	105	MDF	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
f. Transfer of Control	345 & 159 or 315 & 159 or 316 & 159.	105	MDF	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350.
5. TV Translators and LPTV Stations:				
a. New or Major Change Construction Permit.	346 & 159	545	MOL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
b. New License	347 & 159	110	MEL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
c. License Renewal	303–S & 159	45	MAL	Federal Communications Commission, Mass Media Services, P.O. Box 358165, Pittsburgh, PA 15251–5165.
d. Special Temporary Authority	Corres. & 159	130	MGL	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185

Action	FCC Form No.	Fee amount	Payment type code	Address
e. License Assignment	345 & 159 or 314 & 159 or 316 & 159.	105	MDL	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350
f. Transfer of Control	345 & 159 or 315 & 159 or 316 & 159.	105	MDL	Federal Communications Commission, Mass Media Services, P.O. Box 358350, Pittsburgh, PA 15251–5350
6. FM Booster Stations:				
a. New or Major Change Construction Permit.	349 & 159	545	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
b. New License	350 & 159	110	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200.
c. Special Temporary Authority	Corres. & 159	130	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358200, Pittsburgh, PA 15251–5200
d. New or Major Change Construction Permit.	346 & 159	545	MOF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185
e. New License	347 & 159	110	MEF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
f. Special Temporary Authority	Corres. & 159	130	MGF	Federal Communications Commission, Mass Media Services, P.O. Box 358185, Pittsburgh, PA 15251–5185.
7. Multipoint Distribution Service (Including Multichannel MDS):				
a. Conditional License	304 & 159	200	CJM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
b. Major Modification of Conditional Licenses or License Authorization.	304 & 159	200	CJM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
c. Certificate of Completion of Construction.	304–A & 159	585	CPM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
d. License Renewal	405 & 159	200	CJM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
e. Assignment or Transfer.				
(i) First Station on Application	702 & 159 or 704 & 159.	75	CCM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Each Additional Station	702 & 159 or 704 & 159.	45	CAM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
f. Extension of Contruction	701 & 159	170	CHM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
g. Special Temporary or Request for Waiver of Prior Construction Authorization.	Corres. & 159	90	CEM	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
h. Signal Booster				
(i) Application	304 & 159	65	CSB	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.
(ii) Certification of Completion of Construction.	304A & 159	65	CCB	Federal Communications Commission, Mass Media Services, P.O. Box 358155, Pittsburgh, PA 15251–5155.

5. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for applications and other filings in the common carrier services.

Action	FCC Form No.	Fee amount	Payment type code	Address
I. All Common Carrier Services:				
a. Hearing (Comparative New or Modifications).	Corres. & 159	8,640	BHZ	Federal Communications Commission, Common Carrier, P.O. Box 358120, Pittsburgh, PA 15251–5120.

Action	FCC Form No.	Fee amount	Payment type code	Address
b. Developmental Authority (Same charge as regular authority in service unless otherwise indicated).	.....	.....		
c. Formal Complaints	Corres. & 159	155	CIZ	Federal Communications Commission, Common Carrier, P.O. Box 358120, Pittsburgh, PA 15251–5120.
2. Domestic 214 Applications:				
a. Domestic Cable Constructions	Corres. & 159	780	CUT	Federal Communications Commission, Common Carrier, Domestic Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
b. Other Written	Corres. & 159	780	CUT	Federal Communications Commission, Common Carrier, Network Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
3. Telephone Equipment Registration	730 & 159	200	CJQ	Federal Communications Commission, Common Carrier Network Services, P.O. Box 358145, Pittsburgh, PA 15251–5145.
4. Tariff Filings:				
a. Filing Fees	Corres. & 159	630	CQK	Federal Communications Commission, Tariff Filing, P.O. Box 358150, Pittsburgh, PA 15251–5150.
b. Special Permission Filing (per filing) (waiver of any rule in Part 61 of the Commission's Rules).	Corres. & 159	630	CQK	Federal Communications Commission, Tariff Filing, P.O. Box 358150, Pittsburgh, PA 15251–5150.
c. Waiver of Part 69 Tariff Rules	Corres. & 159	630	CQK	Federal Communications Commission, Tariff Filing, P.O. Box 358150, Pittsburgh, PA 15251–5150.
5. Accounting and Audits:				
a. Filed Audit	Corres. & 159	79,610	BMA	Federal Communications Commission, Accounting and Audits, P.O. Box 358340, Pittsburgh, PA 15251–5340.
b. Review of Attest Audit	Corres. & 159	43,455	BLA	Federal Communications Commission, Accounting and Audits, P.O. Box 358340, Pittsburgh, PA 15251–5340.
c. Review of Depreciation Update Study.				
(i) Single State	Corres. & 159	26,440	BKA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5340.
(ii) Each Additional State. ...	Corres. & 159	870	CVA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
d. Interpretation of Accoung Rules (per request).	Corres. & 159	3,690	BCA	Federal Communications Commission, Accounting and Audits, P.O. Box 358140, Pittsburgh, PA 15251–5140.
e. Petition for Waiver (per petition) Waiver of Part 69 Tariff Rules & Part 32 Accounting Rules, Part 36 Separation Rules, Part 43 Reporting Requirments Part 64 Allocation of Costs Rules, Part 65 Rate of Return & Rate Base Rules.	Corres. & 159	5,960	BEA	Federal Communication Commission, Accounting and Audits, Common Carrier, P.O. Box 358140, Pittsburgh, PA 15251–5140.

6. Section 1.1106 is revised to read as follows:

§ 1.1106 Schedule of charges for applications and other filings in the cable services.

Action	FCC Form No.	Fee amount	Payment type code	Address
Cable Television Services:				
a. CARS Construction Permit	327 & 159	200	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
b. CARS Modification	327 & 159	200	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
c. CARS License Renewal	327 & 159	200	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
d. CARS License Agreement	327 & 159	200	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.

Action	FCC Form No.	Fee amount	Payment type code	Address
e. CARS Transfer of Control	327 & 159	200	TIC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
f. Special Temporary Authorization	Corres. & 159	130	TGC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
g. Cable Special Relief Petition	Corres. & 159	1,010	TQC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
h. 76.12 Registration Statement 19	Corres. & 159	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
i. Aeronautical Frequency Usage Notification 20.	Corres. & 159	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
j. Aeronautical Frequency Usage Waiver	Corres. & 159	45	TAC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.
k. Pole Attachment Complaint	Corres. & 159	195	TPC	Federal Communications Commission, Cable Services Bureau, P.O. Box 358205, Pittsburgh, PA 15251–5205.

7. Section 1.1107 is revised to read as follows:

§ 1.1107 Schedule of charges for applications and other filings in the international services.

Action	FCC Form No.	Fee amount	Payment type code	Address
1. International Fixed Public Radio (Public & Control Stations):				
a. Initial Construction Permit (per station)	407 & 159	655	CSN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Assignment or Transfer (per application).	702 & 159 or 704 & 159.	655	CSN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Renewal (per license)	405 & 159	475	CON	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Modification (per station)	403 & 159	475	CON	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Extension of Construction Authorization (per station).	701 & 159	240	CKN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Request for Waiver (per request).	Corres. & 159	240	CKN	Federal Communications Commission, International Bureau—Fixed Public Radio, P.O. Box 358160, Pittsburgh, PA 15251–5160.
2. Section 214 Applications:				
a. Overseas Cable Construction	Corrs. & 159	1,665	BIT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
b. Cable Landing License:				
(i) Common Carrier	Corres. & 159	1,310	CXT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
(ii) Non-Common Carrier	Corres. & 159	12,975	BJT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
c. All other International 214 Applications	Corres. & 159	780	CUT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
d. Special Temporary Authority (all services).	Corres. & 159	780	CUT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.

Action	FCC Form No.	Fee amount	Payment type code	Address
e. Assignments or Transfers (all services)	Corres. & 159	780	CUT	Federal Communications Commission, International Bureau—Telecommunications, P.O. Box 358115, Pittsburgh, PA 15251–5115.
3. Fixed Satellite Transmit/Receive Earth Stations:				
a. Initial Application (per station)	312 & Schedule B & 159.	1,950	BAX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License (per station)	312 & Schedule B & 159.	135	CGX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer:				
(i) First Station	312 & Schedule A & 159.	385	CNX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(ii) Each Additional Station	Schedule A & 159	130	CFX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Renewal of License (per station)	405 & 159	135	CEX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres. & 159	135	CEX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Amendment of Pending Application (per station).	312 & Schedule B & 159.	135	CGX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Extension of Construction Permit (per station).	701 & 159	135	CGX	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
4. Fixed Satellite Transmit/Receive Earth Stations (2 meters or less operating in the 4/6GHz frequency band):				
a. Lead Application	312 & Schedule B & 159.	4,320	BDS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Routine Application (per station)	312 & Schedule B & 159.	45	CAS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per station)	312 & Schedule B & 159.	135	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment or Transfer	312 & Schedule A &159.	135	CNS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
(i) First Station.				
(ii) Each Additional Station	Attachment to 312 & Schedule A.	45	CAS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per station)	405 & 159	135	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres. & 159	135	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Pending Application (per station).	312 & Schedule B & 159.	135	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit	701 & 159	135	CGS	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
5. Receive Only Earth Stations:				
a. Initial Application for Registration for Regulation or License (per station).	312 & Schedule B &159.	295	CMO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Modification of License or Registration (per station).	312 & Schedule B & 159.	135	CGO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer:				
(i) First Station	312 & Schedule A & 159.	135	CNO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160

Action	FCC Form No.	Fee amount	Payment type code	Address
(ii) Each Additional Station	Attachment to 312 & Schedule A.	130	CFO	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Renewal of License (per station)	405 & 159	135	CGO	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Amendment of Pending Application (per station).	312 & Schedule B & 159.	135	CGO	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Extension of Construction Permit (per station).	701 & 159	135	CGO	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Waivers (per request)	Corres. & 159	135	CGO	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
6. Fixed Satellite Very Small Aperture Terminal (VSAT) Systems.				
a. Initial Application (per system)	312 & Schedule B & 159.	7,200	BGV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Modification of License (per system)	312 & Schedule B & 159.	135	CGV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Assignment or Transfer of System	312 & Schedule A & 159.	1,925	CZV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Renewal of License (per system)	405 & 159	135	CGV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres. & 159	135	CGV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Amendment of Pending Application (per system).	312 & Schedule B & 159.	135	CGV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Extension of Construction Permit (per system).	701 & 159	135	CGV	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
7. Mobile Satellite Earth stations,:				
a. Initial Application of Blanket Authorization.	312 & Schedule B & 159.	7,200	BGB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	312 & Schedule B & 159.	1,730	CYB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	312 & Schedule B & 159.	135	CGB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
d. Assignment of Transfer (per system)	312 & Schedule A & 159.	1,925	CZB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per system)	405 & 159	135	CGB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority of Waiver of Prior Construction Authorization (per request).	Corres. & 159	135	CGB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Pending Application (per system).	312 & Schedule B & 159.	135	CGB	Federal Communications Commission, International Bureau—Earth stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701 & 159	135	CGB	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
8. Radio Determination Satellite Earth Station:				
a. Initial Application of Blanket Authorization.	312 & Schedule B & 159.	7,200	BGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
b. Initial Application for Individual Earth Station.	312 & Schedule B & 159.	1,730	CYH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
c. Modification of License (per system)	312 & Schedule B & 159.	135	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.

Action	FCC Form No.	Fee amount	Payment type code	Address
d. Assignments or Transfer (per system)	312 & Schedule A & 159.	1,925	CZH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
e. Renewal of License (per system)	405 & 159	135	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
f. Special Temporary Authority or Waiver of Prior Construction Authorization (per request).	Corres. & 159	135	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
g. Amendment of Pending Application (per system).	312 & Schedule B & 159.	135	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
h. Extension of Construction Permit (per system).	701 & 159	135	CGH	Federal Communications Commission, International Bureau—Earth Stations, P.O. Box 358160, Pittsburgh, PA 15251–5160.
9. Space Stations (Geostationary):				
a. Application for Authority to Launch & Operate				
(i) Initial Application	312 & 159	89,460	BNY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
(ii) Replacement Satellite	312 & 159	89,460	BNY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Assignment or Transfer (per satellite) ..	312 & Schedule A & 159.	6,390	BFY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
c. Modification	312 & 159	6,390	BFY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
d. Special Temporary Authority (per request).	Corres. & 159	640	CRY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
e. Amendment of Pending Application (per request).	312 & Schedule B & 159.	1,280	CWY	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
10. Space Stations (Low-Earth Orbit Satellite Systems):				
a. Application for Authority to Launch and Operate (per system of technically identical satellites).	312 & 159	308,105	CLW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Assignment or Transfer (per request) ..	312 & 159	8,810	CZW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
c. Modification (per request)	312 & 159	22,010	CGW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
d. Special Temporary Authority (per request).	Corres. & 159	2,205	CXW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
e. Amendment of Pending Application (per request).	312 & 159	4,405	CAW	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
11. Direct Broadcast Satellites:				
a. Authorization to Construct or Major Modification (per request).	Corres. & 159	2,600	MTD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
b. Construction Permit and Launch Authority (per request).	Corres. & 159	25,190	MXD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
c. License to Operate (per request)	Corres. & 159	725	MPD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
d. Special Temporary Authority (per request).	Corres. & 159	130	MGD	Federal Communications Commission, International Bureau—Satellites, P.O. Box 358210, Pittsburgh, PA 15251–5210.
e. Hearing (New and Major/Minor change, comparative construction permit hearings; comparative license renewal hearings (per request).	Corres. & 159	8,640	MWD	Federal Communications Commission, International Bureau, P.O. Box 358170, Pittsburgh, PA 15251–5170.
12. International Broadcast Stations:				

Action	FCC Form No.	Fee amount	Payment type code	Address
a. New Station & Facilities Change Construction Permit (per applications).	309 & 159	2,180	MSN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
b. New License (per application)	310 & 159	495	MNN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
c. License Renewal (per application)	311 & 159	125	MFN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
d. License Assignment or Transfer of Control (per station license).	314 & 159 or 315 & 159 or 316 & 159.	80	MCN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
e. Frequency Assignment & Coordination (per frequency hour).	Corres. & 159	45	MAN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
f. Special Temporary Authorization (per application).	Corres. & 159	130	MGN	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
13. Permit to Deliver Programs to Foreign Broadcast Stations (per application):				
a. Commercial Television Stations	308 & 159	75	MBT	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
b. Commercial AM or FM Radio Stations	308 & 159	75	MBR	Federal Communications Commission, International Bureau, P.O. Box 358175, Pittsburgh, PA 15251–5175.
14. Recognized Private Operating Status (per application).	Corres. & 159	780	CUG	Federal Communications Commission, International Bureau, P.O. Box 358115, Pittsburgh, PA 15251–5115.

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BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 36, 54 and 69

[CC Docket Nos. 96–45, 97–160, DA 98–1490]

Universal Service Order; Protective Order for Non-Rural Local Exchange Carriers

AGENCY: Federal Communications Commission.

ACTION: Policy statement.

SUMMARY: This protective order for non-rural local exchange carriers (LECs) is intended to facilitate and expedite review of documents containing trade secrets and commercial or financial information submitted by a person or entity that are either privileged or confidential. It reflects the manner in which ''Confidential Information,'' as that term is defined herein, is to be treated in the universal service proceeding to select a mechanism to determine high cost support. The Order is not intended to constitute a resolution of the merits concerning whether any Confidential Information would be released publicly by the Commission upon a proper request.

DATES: The procedures established in this Protective Order are effective as of July 27, 1998.

ADDRESSES: Interested parties may file comments with the Office of Secretary, Federal Communications Commission, Room 222, 1919 M Street N.W., Washington, D.C. 20554. Comments should reference CC Docket Nos. 96–45, 97–160 and DA 98–1490. Parties are also asked to provide copies of comments to Sheryl Todd, Accounting Policy Division, 2100 M Street, N.W., Room 8611, Washington, D.C. 20554. Parties should also send one copy of their comments to the Commission's copy contractor, International Transcription Service, 1231 20th Street, N.W., Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Chuck Keller or Richard D. Smith, Accounting Policy Division, Common Carrier Bureau, at (202) 418–7400.

SUPPLEMENTARY INFORMATION: This is a summary of the Protective Order released by the Commission on July 27, 1998. The full text of the Protective Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., Washington, DC.

1. In the *Universal Service Order,* 62 FR 32862 (June 17, 1997), the Commission established, as one criterion in developing a forward-looking economic cost model to determine universal service support, that ''all underlying data, formulae, computations, and software associated with the model should be available to all interested parties for review and comment.'' In an effort to use the best possible data and increase the accuracy of the models, both HAI and BCPM have increasingly relied upon software and databases that are confidential. This Protective Order has been adopted to expedite the availability for review of the underlying confidential information in the above-referenced proceedings and to establish the parameters for the use and treatment of such information, as follows in paragraphs 2 through 21:

2. *Definitions.*

a. *Authorized Representative.* An ''Authorized Representative'' is limited to:

(1) Counsel for the Reviewing Parties to this proceeding, including in-house counsel actively engaged in the conduct of this proceeding and their associated attorneys, paralegals, clerical staff, and other employees, to the extent reasonably necessary to render professional services in this proceeding.

(2) Specified persons, including employees of the Reviewing Parties, requested by counsel to furnish technical or other expert advice or service or otherwise engaged to prepare material for the express purpose of formulating filings in this proceeding, except that disclosure to persons in a position to use this information for

competitive commercial or business purposes shall be prohibited.

(3) Any person designated by the Commission in the public interest, upon such terms as the Commission may deem proper.

b. *Commission.* ''Commission'' means the Federal Communications Commission or any employee, consultant, or agent of the Commission acting pursuant to and within the scope of their official responsibilities to the Commission.

c. *Confidential Information.* ''Confidential Information'' means (i) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith constitutes trade secrets and commercial or financial information which is privileged or confidential within the meaning of Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4) and (ii) information submitted to the Commission by the Submitting Party that has been so designated by the Submitting Party and which the Submitting Party has determined in good faith falls within the terms of Commission orders designating the items for treatment as Confidential Information. Confidential Information includes additional copies of notes and information derived from Confidential Information.

d. *Declaration.* ''Declaration'' means the Attachment to this Protective Order.

e. *Reviewing Party.* ''Reviewing Party'' means a person or entity participating in this proceeding or considering in good faith filing a document in this proceeding.

f. *Submitting Party. ''Submitting Party''* means a person or entity that submits information for which it seeks treatment as Confidential Information pursuant to this Protective Order.

3. *Claim of Confidentiality.* The Submitting Party may designate information as ''Confidential Information'' consistent with the definition of that term as defined in this Protective Order. The Commission may, sua sponte or upon petition, pursuant to 47 CFR 0.459, 0.461, determine that all or part of the information claimed as ''Confidential Information'' is not entitled to such treatment. Each page or relevant portion of any document or information furnished subject to the terms of this Protective Order shall be clearly identified as ''Confidential'' by the Submitting Party.

4. *Procedures for Claiming Information is Confidential.* Confidential Information submitted to the Commission shall be filed under seal and shall bear on the front page in bold print, ''CONTAINS PRIVILEGED AND CONFIDENTIAL INFORMATION—DO NOT RELEASE.'' Confidential Information shall be segregated by the Submitting Party from all non-confidential information submitted to the Commission. To the extent a document contains both Confidential Information and non-confidential information, the Submitting Party shall designate the specific portions of the document claimed to contain Confidential Information and shall, where feasible, also submit a redacted version not containing Confidential Information.

5. *Storage of Confidential Information at the Commission.* The Secretary of the Commission or other Commission staff to whom Confidential Information is submitted shall place the Confidential Information in a non-public file. Confidential Information shall be segregated in the files of the Commission, and shall be withheld from inspection by any person not bound by the terms of this Protective Order, unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or pursuant to the order of the Commission or a court having jurisdiction. Notwithstanding the foregoing, inspection of Confidential Information by parties other than Commission staff shall occur pursuant to the provisions of this Order and not on the premises of the Commission's offices.

6. *Access to Confidential Information.* Confidential Information shall only be made available to the Commission and to Authorized Representatives of the Reviewing Parties. Before any Authorized Representative of a Reviewing Party may obtain access to Confidential Information, such Authorized Representative must execute the attached Declaration. The Reviewing Party shall not be deemed, by reason of this Protective Order, to have waived the opportunity to argue before the Commission or any other appropriate body that any Confidential Information is not confidential or privileged in nature. Consultants or agents of the Commission may obtain access to Confidential Information only if they have signed a non-disclosure agreement or if they execute the attached Declaration.

7. An Authorized Representative of a Reviewing Party may disclose Confidential Information to other Authorized Representatives, as defined in this Order, only after advising such Authorized Representatives of the terms and obligations or the Order. In addition, before Authorized Representatives may obtain access to Confidential Information, each Authorized Representative must execute the attached Declaration.

8. *Inspection of Confidential Information.* Confidential Information shall be maintained by the Submitting Party for inspection at a location designated by the Submitting Party. An Authorized Representative shall give the Submitting Party reasonable notice of its intent to review Confidential Information. The Reviewing Party shall not remove Confidential Information or copies thereof from the premises of the Submitting Party without the Submitting Party's permission, and shall comply with any reasonable terms that the Submitting Party places upon the removal of Confidential Information.

9. *Copies of Confidential Information.* The Reviewing Party must obtain the permission and comply with the terms of the Submitting Party in obtaining copies of Confidential Information. The Submitting Party may charge a reasonable copying fee not to exceed twenty-five cents per page. Authorized Representatives may, upon obtaining the permission of the Submitting Party, make additional copies of Confidential Information but only to the extent required and solely for the preparation and use in this proceeding. Subject to any additional conditions imposed by the Submitting Party, Authorized Representatives must maintain a written record of any additional copies made and provide this record to the Submitting Party upon reasonable request. The original copy and all other copies of the Confidential Information shall remain in the care and control of Authorized Representatives at all times. Authorized Representatives having custody of any Confidential Information shall keep the documents properly secured at all times. At the conclusion of these proceedings, the Reviewing Party shall return the Confidential Information (and any copies thereof) to the Submitting Party, or shall destroy such materials and notify the Submitting Party in writing that it has destroyed such materials in accordance with this Order.

10. *Filing of Declaration.* Counsel for Reviewing Parties shall provide to the Submitting Party and the Commission a copy of the attached Declaration for each Authorized Representative within five (5) business days after the attached Declaration is executed, or by any other deadline that may be prescribed by the Commission.

11. *Use of Confidential Information.* Reviewing Parties shall use the Confidential Information only in the

above-referenced proceeding for the purpose of reviewing the underlying information and analyzing the reliability of the forward-looking cost models submitted in this proceeding. Confidential Information shall not be used by any person granted access under this Order for any purpose other than for use in this proceeding (including any subsequent administrative or judicial review), shall not be used for competitive business purposes, and shall not be used or disclosed except in accordance with this Order. This shall not preclude the use of any material or information that is in the public domain or has been developed independently by any other person who has not had access to the Confidential Information nor otherwise learned of its contents.

12. No patent, copyright, trademark or other intellectual property rights are licensed, granted, or otherwise transferred by this Order or any disclosure hereunder, except for the right to use information in accordance with this Order. Confidential Information shall at all times remain the property of the Submitting Party. Confidential Information that is properly obtained by the Reviewing Party, however, may be used to conduct its own analyses using the Confidential Information. Moreover, any such calculations or other analyses performed by Reviewing Party using Confidential Information, the outcomes of which do not reveal protected information, shall not be considered part of the Confidential Information nor shall said calculations and analyses be the property of the Submitting Party.

13. *Pleadings Using Confidential Information.* Submitting Parties and Reviewing Parties may, in any pleadings that they file in this proceeding, reference Confidential Information, but only if they comply with the following procedures:

a. Any portions of the pleadings, that contain or disclose Confidential Information must be physically segregated from the remainder of the pleadings and filed under seal;

b. The portions containing or disclosing Confidential Information must be covered by a separate letter referencing this Protective Order;

c. Each page or portion of any Party's filing that contains or discloses Confidential Information subject to this Order must be clearly marked: ''Confidential Information included pursuant to Protective Order, CC Docket Nos. 96–45; 97–160;'' and

d. The confidential portion(s) of the pleading, to the extent they are required to be served, shall be served upon the Secretary of the Commission, the Submitting Party, and those Reviewing Parties that have signed the attached Declaration. Such confidential portions shall be served under seal, and shall not be placed in the Commission's Public File unless the Commission directs otherwise (with notice to the Submitting Party and an opportunity to comment on such proposed disclosure). A Submitting Party or a Reviewing Party filing a pleading containing Confidential Information shall also file a redacted copy of the pleading containing no Confidential Information, which copy shall be placed in the Commission's public files. A Submitting Party or a Reviewing Party may provide courtesy copies of pleadings containing Confidential Information to Commission staff so long as the notation required by subsection c of this paragraph is not removed.

14. *Disclosure.* In the event that the reviewing Party desires to disclose Confidential Information to any person to whom disclosure is not authorized by this Order or wishes to include, use or disclose the substance of Confidential Information in testimony or exhibits, examination or cross-examination on the public record of this proceeding, or wishes to object to the designation of certain information or materials as Confidential Information, Reviewing Party will notify for Submitting Party, in writing no less than four (4) working days prior to making any disclosure or objection, and identify with particularity the Confidential Information it wishes to use or disclose.

15. If the Submitting Party objects to such proposed reclassification or disclosure, Submitting Party shall notify Reviewing Party, in writing, of its position and the reasons therefor no more than four (4) working days subsequent to receipt of the notice described above. Thereafter, Submitting Party may request a determination from the Commission regarding the manner in which the Commission should allow Reviewing Party to use such Confidential Information.

16. *Dispute Resolution.* The Submitting Party and Reviewing Party agree that they will undertake good-faith negotiations concerning the disclosure of Confidential Information if any party finds that the terms of this Order impede the balance between the need to protect the commercial interest in the Confidential Information and the requirements of the Commission. After undertaking such negotiations, and upon failing to reach a mutually satisfactory resolution, Submitting Party and Reviewing Party agree to seek the assistance of Commission's staff in resolving the dispute. If there is no mutually agreeable resolution after negotiations and conferring with the staff, any party may take the issue to the Commission for resolution.

17. *Violations of Protective Order.* Should a Reviewing Party that has properly obtained access to Confidential Information under this Protective Order violate any of its terms, it shall immediately convey that fact to the Commission and to the Submitting Party. Further, should such violation consist of improper disclosure or use of Confidential Information, the violating party shall take all necessary steps to remedy the improper disclosure or use. The Violating Party shall also immediately notify the Commission and the Submitting Party, in writing, of the identity of each party known or reasonably suspected to have obtained the Confidential Information through any such disclosure. The Commission retains its full authority to fashion appropriate sanctions for violations of this Protective Order, including but not limited to suspension or disbarment of attorneys from practice before the Commission, forfeitures, cease and desist orders, and denial of further access to Confidential Information in this or any other Commission proceeding. Nothing in this Protective Order shall limit any other rights and remedies available to the Submitting Party at law or equity against any party using Confidential Information in a manner not authorized by this Protective Order.

18. *Termination of Proceeding.* Within two weeks after final resolution of this proceeding (which includes any administrative or judicial appeals), Authorized Representatives of Reviewing Parties shall destroy or return to the Submitting Party all Confidential Information as well as all copies and derivative materials made, and shall certify in writing served on the Commission and the Submitting Party that no material whatsoever derived from such Confidential Information has been retained by any person having access thereto, except that counsel to a Reviewing Party may retain two copies of pleadings submitted on behalf of the Reviewing Party. Any Confidential Information contained in any copies of pleadings retained by counsel to a Reviewing Party or in materials that have been destroyed pursuant to this paragraph shall be protected from disclosure or use indefinitely in accordance with this Protective Order unless such Confidential Information is released from the restrictions of this Order either through agreement of the parties, or

pursuant to the order of the Commission or a court having jurisdiction.

19. *No Waiver of Confidentiality.* Disclosure of Confidential Information as provided herein shall not be deemed a waiver by the Submitting Party of any privilege or entitlement to confidential treatment of such Confidential Information. Reviewing Parties, by viewing these materials: (a) agree not to assert any such waiver; (b) agree not to use information derived from any confidential materials to seek disclosure in any other proceeding; and (c) agree that accidental disclosure of Confidential Information shall not be deemed a waiver of the privilege.

20. *Additional Rights Preserved.* The entry of this Protective Order is without prejudice to the rights of the Submitting Party to apply for additional or different protection where it is deemed necessary or to the rights of Reviewing Parties to request further or renewed disclosure of Confidential Information.

21. *Effect of Protective Order.* This Protective Order constitutes an Order of the Commission and an agreement between the Reviewing Party, executing the attached Declaration, and the Submitting Party.

Authority: This Protective Order is issued pursuant to sections 4(i) and 4(j) of the Communications Act as amended, 47 U.S.C. 154(i), (j) and 47 CFR 0.457(d).

List of Subjects

47 CFR 54

Universal Service.

47 CFR 69

Communications common carriers.

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Common Carrier Bureau.

Attachment

DECLARATION

In the Matter of Federal-State Joint Board on Universal Service, Forward-Looking Mechanism for High Cost Support for Non-Rural LECs (CC Docket Nos. 96–45, 97–160). I,_____, hereby declare under penalty of perjury that I have read the Protective Order that has been entered by the Common Carrier Bureau in this proceeding, and that I agree to be bound by its terms pertaining to the treatment of Confidential Information submitted by parties to this proceeding. I understand that the Confidential Information shall not be disclosed to anyone except in accordance with the terms of the Protective Order and shall be used only for purposes of the proceedings in this matter. I acknowledge that a violation of the Protective Order is a violation of an order of the Common Carrier Bureau. I acknowledge that this Protective Order is also a binding agreement with the Submitting Party.

(signed) _____

(printed name) _____

(representing) _____

(title) _____

(employer) _____

(address) _____

(phone) _____

(date) _____

[FR Doc. 98–21260 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1853

Revision to the NASA FAR Supplement on Contractor Performance Information

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Interim rule adopted as final with changes.

SUMMARY: This is a final rule amending the NASA FAR Supplement (NFS) to implement FAR requirement to evaluate contractor performance.

DATES: This rule is effective August 11, 1998.

ADDRESSES: Paul Brundage, Code HK, NASA Headquarters, 300 E Street, SW, Washington, DC 20456–0001.

FOR FURTHER INFORMATION CONTACT: Paul Brundage, (202) 358–0481.

SUPPLEMENTARY INFORMATION:

Background

FAR 42.15 requires that Federal agencies evaluate contract performance for each contract in excess of $100,000. NASA received public comments on the interim rule published in the **Federal Register** on May 21, 1998 (63 FR 27859–27860). As a result, NASA has made the final evaluations cumulative.

Impact

NASA certifies that this regulation will not have a significant economic impact on a substantial number of small business entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This final rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

Lists of Subjects in 48 CFR Parts 1842 and 1853

Government procurement.

Deidre Lee,

Associate Administrator for Procurement.

Accordingly, the interim rule published May 21, 1998 (63 FR 27859) amending 48 CFR parts 1842 and 1853 is adopted as final with the following changes.

1. The authority citation for 48 CFR Parts 1842 and 1853 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1842—CONTRACT ADMINISTRATION

Subpart 1842.15 [Revised]

2. Subpart 1842.15 is revised to read as follows:

Subpart 1842.15—Contractor Performance Information

§ 1842.1501 General.

Communications with contractors are vital to improved performance and this is NASA's primary objective in evaluating past performance. Other objectives include providing data for both future source selections and for reports under NASA's Contractor Performance Assessment Program (CPAP). While the evaluations must reflect both shortcomings and achievements during performance, they should also elicit from the contractors their views on impediments to improved performance emanating from the Government or other sources.

§ 1842.1502 Policy (NASA Supplement paragraph (a)).

(a) Within 60 days of every anniversary of the award of a contract having a term exceeding one year, contracting officers shall conduct interim evaluations of performance on contracts subject to FAR subpart 42.15 and this subpart. On such contracts, both an interim evaluation covering the last period of performance and a final evaluation summarizing all performance shall be conducted.

§ 1842.1503 Procedures (NASA Supplement paragraphs (a) and (b)).

(a) The contracting officer shall determine who (e.g., the technical office or end users of the products or services) evaluates appropriate portions of the contractor's performance. The evaluations are subjective in nature. Nonetheless, the contracting officer, who has responsibility for the evaluations, shall ensure that they are reasonable.

(b) NASA Form 1680, entitled, ''Evaluation of Performance,'' shall be used to document evaluations. This provides for a five-tiered rating (using the definitions for award fee evaluation scoring found in 1816.405–275) covering the following attributes: quality, timeliness, price or control of costs (not required for firm-fixed-price contracts or firm-fixed-price contracts with economic price adjustment), and other considerations. Evaluations used in determining award fee payments satisfy the requirements of this subpart and do not require completion of NASA Form 1680. In addition, hybrid contracts containing both award fee and non-award fee portions do not require completion of NASA Form 1680. Contracting Officers shall ensure that the Government discusses all evaluations with contractors and shall record the date and the participants on the evaluation form. Contracting officers shall sign and date the evaluation after considering any comments received from the contractor within 30 days of the contractor's receipt of the evaluation. If a contractor in its timely comments disagrees with an evaluation and requests a review at a level above the contracting officer, it shall be provided within 30 days. While the FAR forbids use of the evaluations for source selections more than three years after contract completion, they shall nevertheless be retained in the contract file as provided in FAR 4.8, Government Contract Files.

[FR Doc. 98–21503 Filed 8–10–98; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1080–AF01

Endangered and Threatened Wildlife and Plants: Emergency Listing of the Jarbidge River Population Segment of Bull Trout as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Emergency rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) exercises its emergency authority to determine the Jarbidge River population segment of bull trout (*Salvelinus confluentus*) from the Jarbidge River basin in southern Idaho and northern Nevada to be endangered pursuant to the Endangered Species Act of 1973, as amended (Act). The Jarbidge River population segment, composed of a single subpopulation, is threatened by habitat degradation from past and ongoing land management activities such as mining, road construction and maintenance, and grazing. Recently initiated river channel alteration associated with unauthorized road construction on the West Fork of the Jarbidge River is believed to imminently threaten the survival of the Jarbidge River bull trout population. Because of the need to make the protective measures afforded by the Act immediately available to the Jarbidge River population of bull trout and its habitat, the Service finds that an emergency rule action is justified. This emergency rule provides Federal protection pursuant to the Act for the Jarbidge River population of bull trout for a period of 240 days. A proposed rule to list the Jarbidge River population of bull trout as threatened, which requested data and comment from the public, was published in the **Federal Register** on June 10, 1998. The comment period on the proposed rule closes on October 8, 1998.

DATES: This emergency rule is effective on August 11, 1998, and expires on April 8, 1999.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U. S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, Nevada 89502.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Field Supervisor, Nevada Fish and Wildlife Office (see **ADDRESSES** section; telephone: 702/861–6300).

SUPPLEMENTARY INFORMATION:

Background

A complete discussion of this section is contained in the proposed rule published on June 10, 1998 (63 FR 31693).

Distinct Population Segments

The best available scientific and commercial information supports designating five distinct population segments (DPSs) of bull trout in the coterminous United States—(1) Klamath River, (2) Columbia River, (3) Coastal-Puget Sound, (4) Jarbidge River, and (5) St. Mary-Belly River. A final listing determination for the Klamath River and Columbia River DPSs was published in the **Federal Register** on June 10, 1998 (63 FR 31647), and includes a detailed description of the rationale behind the DPS delineation. A proposed rule to list the Coastal Puget Sound, Jarbidge River, and St. Mary-Belly River population segments as threatened was also published in the **Federal Register** on June 10, 1998 (63 FR 31693). The approach is consistent with the joint National Marine Fisheries Service (NMFS) and Service's policy for recognizing distinct vertebrate population segments under the Act (February 7, 1996; 61 FR 4722). This emergency rule addresses only the Jarbidge River bull trout DPS.

The Jarbidge River, located in southwest Idaho and northern Nevada, is a tributary in the Snake River basin and contains the southernmost habitat occupied by bull trout. This population segment is discrete because it is segregated from other bull trout in the Snake River basin by a large gap (greater than 240 kilometers (km) (150 miles (mi)) in suitable habitat and several impassable dams on the mainstem Snake River. The occurrence of a species at the extremities of its range is not necessarily sufficient evidence of significance to the species as a whole. However, because the Jarbidge River possesses bull trout habitat that is disjunct from other patches of suitable habitat, the population segment is considered significant because it occupies a unique or unusual ecological setting, and its loss would result in a substantial modification of the species' range.

Status and Distribution

To facilitate evaluation of current bull trout distribution and abundance for the Jarbidge River population segment, the Service analyzed data on a subpopulation basis within the segment because fragmentation and barriers have isolated bull trout. A subpopulation is considered a reproductively isolated bull trout group that spawns within a particular area(s) of a river system.

The Jarbidge River DPS consists of one bull trout subpopulation occurring primarily in Nevada (Service 1998b). Resident fish inhabit the headwaters of the East Fork and West Fork of the Jarbidge River and several tributary streams, and low numbers of migratory (fluvial) fish are present (Zoellick et al. 1996; L. McLelland, Nevada Division of Wildlife (NDOW), *in litt.* 1998; K. Ramsey, Humboldt National Forest (HNF), *in litt.* 1997). Bull trout were not observed during surveys in the Idaho portion of the Jarbidge River basin in 1992 and 1995 (Warren and Partridge 1993; Allen et al. 1997), however, a single, small bull trout was captured when traps were operated on the lower East Fork and West Fork Jarbidge River during August through October 1997 (F. Partridge, Idaho Department of Fish and

Game (IDFG), pers. comm. 1998). A loss of range likely has occurred for migratory bull trout (fluvial) in the lower Jarbidge and Bruneau rivers and perhaps downstream to the Snake River (Johnson and Weller 1994; Zoellick et al. 1996). Low numbers of migratory (fluvial) bull trout have been documented in the West Fork Jarbidge River from the 1970's through the mid-1980's (Johnson and Weller 1994).

The distribution of bull trout in Nevada includes at least six headwater streams above 2,200 meters (m) (7,200 feet (ft)), primarily in wilderness areas—East Fork and West Fork Jarbidge River and Slide, Dave, Pine, and Jack creeks (Johnson and Weller 1994). Zoellick et al. (1996) compiled data from 1954 through 1993 and estimated bull trout population size in the middle and upper headwater areas of the West Fork and East Fork of the Jarbidge River. In each stream, sampled areas were located at elevations above 1,792 m (5,880 ft), and population estimates were less than 150 fish/km (240 fish/mi) (Zoellick et al. 1996).

In general, bull trout represent a minor proportion of the fish fauna downstream of the headwater reaches; native redband trout are the most abundant salmonid and sculpin the most abundant fish (Johnson and Weller 1994). Although accounts of bull trout distribution in the Jarbidge River basin date to the 1930's, historic abundance is not well documented. In 1934, bull trout were collected in the East Fork Jarbidge River drainage downstream of the Idaho-Nevada border (Miller and Morton 1952). In 1985, 292 bull trout ranging from 73 to 266 millimeters (mm) (2.9 to 10.5 inches (in)) in total length, were estimated to reside in the West Fork Jarbidge River (Johnson and Weller 1994). In 1992, the abundance of bull trout in the East Fork Jarbidge River was estimated to be 314 fish ranging from 115 to 165 mm (4.5 to 6.5 in) in total length (Johnson and Weller 1994). In 1993, bull trout numbers in Slide and Dave creeks were estimated at 361 and 251 fish, respectively (Johnson and Weller 1994). During snorkel surveys conducted in October 1997, no bull trout were observed in 40 pools of the West Fork Jarbidge River or in four 30-m (100-ft) transects in Jack Creek (G. Johnson, NDOW, pers. comm. 1998). Only one bull trout had been observed at the four transects in 1992 (Johnson, pers. comm. 1998). However, it is premature to consider bull trout extirpated in Jack Creek (Service 1998b). There is no information on whether bull trout have been extirpated from other Jarbidge River headwater tributaries.

It is estimated that between 50 and 125 bull trout spawn throughout the Jarbidge River basin annually (Johnson, pers. comm. 1998). However, exact spawning sites and timing are uncertain (Johnson, pers. comm. 1998) and only two redds have been observed in the basin (Ramsey, *in litt.* 1997; Ramsey, pers. comm. 1998a). Presumed spawning streams have been identified by records of one or more small bull trout (about 76 mm (3 in)).

Population trend information for bull trout in the Jarbidge River subpopulation is not available, although the current characteristics of bull trout in the basin (i.e., low numbers and disjunct distribution) have been described as similar to that observed in the 1950's (Johnson and Weller 1994). Based on recent surveys, the subpopulation is considered ''depressed'' (less than 5,000 individuals or 500 spawners likely occur in the subpopulation, abundance appears to be declining, or a life-history form historically present has been lost). Past and present activities within the basin are likely restricting bull trout migration in the Jarbidge River, thus reducing opportunities for bull trout reestablishment in areas where the fish are no longer found (Service 1998b).

Previous Federal Action

A complete discussion of this section is contained in the proposed rule published on June 10, 1998 (63 FR 31693).

Summary of Factors Affecting The Species

Procedures found in section 4 of the Act and regulations (50 CFR part 424) promulgated to implement 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 the Jarbidge River population segment of bull trout (*Salvelinus confluentus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Land and water management activities that degrade and continue to threaten all of the bull trout distinct population segments, including the Jarbidge River population segment, in the coterminous United States include dams, forest management practices, livestock grazing, agriculture and agricultural diversions, roads, and mining (Beschta et al. 1987; Chamberlain et al. 1991; Furniss et al. 1991; Meehan 1991; Nehlsen et al. 1991; Sedell and Everest 1991; Craig and Wissmar 1993; Frissell 1993; Henjum et al. 1994; McIntosh et al. 1994; Wissmar et al. 1994; U.S. Department of Agriculture (USDA) and U.S. Department of the Interior (USDI) 1995, 1996, 1997; Light et al. 1996; MBTSG 1995a–e, 1996a–h).

Although timber was historically removed from the Jarbidge River basin, forest management is not thought to be a major factor currently affecting bull trout habitat. The steep terrain of the Jarbidge River basin has been a deterrent to grazing (J. Frederick, HNF, *in litt.* 1998a); and grazing does not occur in approximately 60 percent of the watershed. Although much of the remaining 40 percent of public and private lands are grazed, the effects are localized and considered of relatively minor importance to bull trout habitat in the Jarbidge River basin. For example, livestock grazing is affecting about 3.2 km (2 mi) of the East Fork Jarbidge River and portions of Dave Creek and Jack Creek (Frederick, pers. comm. 1998; Johnson, pers. comm. 1998).

Ongoing threats affecting bull trout habitat have created degraded conditions in the West Fork Jarbidge River (McNeill et al. 1997; Frederick, pers. comm. 1998; Ramsey, pers. comm. 1998a). At least 11.2 km (7 mi) of the West Fork Jarbidge River has been affected by over a century of human activities such as road development and maintenance, historic mining and mine (adit) drainage, channelization and removal of large woody debris, residential development, road and campground development on U.S. Forest Service lands (McNeill et al. 1997). As a result of these activities, the riparian canopy and much of the upland forest has been removed, recruitment of large woody debris reduced, and channel stability has decreased (McNeill et al. 1997; Ramsey, *in litt.* 1997; Frederick, *in litt.* 1998a). These activities reduce habitat complexity and likely elevate water temperatures seasonally. For example, water temperatures recorded near Bluster Bridge were 15 to 17°C (59 to 63° F) for 24 days in 1997.

Culverts installed at road crossings may act as barriers to bull trout movement in the Jarbidge River basin. For example, an Elko County road culvert had prevented upstream movement of bull trout in Jack Creek, a West Fork Jarbidge River tributary, for approximately 17 years. Private and public funding was used to replace the culvert with a bridge in the fall of 1997 (Frederick, *in litt.* 1998b); however, a rock structure approximately 300 m

(1,000 ft) upstream the bridge in Jack Creek may still impede bull trout movement, at least seasonally during low flows.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Declines in bull trout have prompted states to institute restrictive fishing regulations and eliminate the harvest of bull trout in most waters in Idaho and Nevada. Overutilization by angling was a concern in the past for the Jarbidge River DPS of bull trout. Although Idaho prohibited harvest of bull trout beginning in 1995, Nevada, until recently, allowed harvest of up to 10 trout per day, including bull trout, in the Jarbidge River basin. An estimated 100 to 400 bull trout were harvested annually in the Jarbidge River basin (Johnson 1990; P. Coffin, Service, pers. comm. 1994; Coffin, *in litt.* 1995). Nevada State regulations were recently amended to allow only catch-and-release of bull trout starting March 1, 1998 (G. Weller, NDOW, *in litt.* 1997; Johnson, pers. comm. 1998). The Service anticipates that this change in the regulations will have a positive effect on conservation of bull trout, however, the effects of the new harvest regulations may require five years to evaluate (Johnson, pers. comm. 1998).

C. Disease and Predation

Diseases affecting salmonids are present or likely present in the Jarbidge DPS, but are not thought to be a factor for listing bull trout. However, interspecific interactions, including predation, likely negatively affect bull trout where non-native salmonids have been introduced (J. Palmisano and V. Kaczynski, Northwest Forestry Resources Council (NFRC), *in litt.* 1997).

D. The Inadequacy of Existing Regulatory Mechanisms

Although efforts are underway to assist in conserving bull trout throughout the coterminous U.S. (e.g., Batt 1996; R. Joslin, USFS, *in litt.* 1997; A. Thomas, BLM, *in litt.* 1997), the implementation and enforcement of existing Federal and State laws designed to conserve fishery resources, maintain water quality, and protect aquatic habitat have not been sufficient to prevent past and ongoing habitat degradation leading to bull trout declines and isolation. Regulatory mechanisms, including the National Forest Management Act, the Federal Land Policy and Management Act, the Public Rangelands Improvement Act, the Clean Water Act, the National Environmental Policy Act, Federal Power Act, State Endangered Species Acts and numerous State laws and regulations oversee an array of land and water management activities that affect bull trout and their habitat.

Regulatory mechanisms addressing alterations to stream channels, riparian areas, and floodplains from road construction and maintenance, and the effects associated with roads and past mining on water quality, have been inadequate to protect bull trout habitat in the Jarbidge River basin. For example, the Jarbidge Canyon Road parallels the West Fork Jarbidge River for much of its length and includes at least seven undersized bridges for the stream and floodplain. Maintenance of the road and bridges require frequent channel and floodplain modifications that affect bull trout habitat, such as channelization; removal of riparian trees and beaver dams; and placement of rock, sediment, and concrete (McNeill et al. 1997; Frederick, pers. comm. 1998; Frederick, *in litt.* 1998a). In 1995, debris torrents washed out a portion of the upper Jarbidge Canyon Road above Pine Creek. The Service has recommended that this road segment be closed to vehicular traffic and that a trail be maintained to reduce the effects of the road and its maintenance on the river (R. Williams, Service, *in litt.* 1998). Periodic channelization in the Jarbidge River by unknown parties has occurred without the oversight provided by the Corps of Engineers Clean Water Act section 404 regulatory program (M. Elpers, Service, pers. comm. 1998), and the HNF has been unable to control trespass (unauthorized road openings) on Federal lands. Several old mines (adits) are releasing small quantities of warm water and other contaminants into the West Fork Jarbidge River.

The Nevada water temperature standards throughout the Jarbidge River are 21°C (67°F) for May through October, and 7°C (45°F) for November through April, with less than 1°C (2°F) change for beneficial uses (Nevada Department of Environmental Protection (NDEP), *in litt.* 1998). Water temperature standards for May through October exceed temperatures conducive to bull trout spawning, incubation, and rearing (Rieman and McIntyre 1993; Buchanan and Gregory 1997).

In 1994, a local Bull Trout Task Force was formed to gather and share information on bull trout in the Jarbidge River. The task force is open to any representative from Elko and Owyhee counties, the towns of Jarbidge (Nevada) and Murphy Hot Springs (Idaho), road districts, private landowners, NDOW, IDFG, the Boise District of Bureau of Land Management, HNF, and the Service. The task force was successful in 1997 in obtaining nearly $150,000 for replacing the Jack Creek culvert with a concrete bridge to facilitate bull trout passage into Jack Creek. However, the task force has not yet developed a comprehensive conservation plan addressing all threats to bull trout in the Jarbidge River basin.

In 1995, the Humboldt National Forest plan was amended to include the Inland Native Fish Strategy. This fish and wildlife habitat policy sets a no net loss objective and is currently guiding Forest Service planning of possible reconstruction of a portion of the Jarbidge Canyon Road (Ramsey 1997). In June 1998, HNF issued the Jarbidge River Environmental Assessment for Access and Restoration between Pine Creek Campground and the Jarbidge Wilderness (HNF 1998).

E. Other Natural or Manmade Factors Affecting its Continued Existence

Natural and manmade factors affecting the continued existence of bull trout include—previous introductions of non-native species that compete, hybridize, and prey on bull trout; fragmentation and isolation of bull trout subpopulations from habitat changes caused by human activities; and subpopulation extirpations due to naturally occurring events such as droughts, floods and other environmental events.

Previous introductions of non-native species by the Federal government, State fish and game departments and unauthorized private parties, across the range of bull trout has resulted in declines in abundance, local extirpations, and hybridization of bull trout (Bond 1992; Howell and Buchanan 1992; Leary et al. 1993; Donald and Alger 1993; Pratt and Huston 1993; MBTSG 1995b,d, 1996g; Platts et al. 1995; Palmisano and Kaczynski, *in litt.* 1997). Non-native species may exacerbate stresses on bull trout from habitat degradation, fragmentation, isolation, and species interactions (Rieman and McIntyre 1993). In some lakes and rivers, introduced species, such as rainbow trout or kokanee, may benefit large adult bull trout by providing supplemental forage (Faler and Bair 1991; Pratt 1992; ODFW, *in litt.* 1993; MBTSG 1996a). However, the same introductions of game fish can negatively affect bull trout due to increased angling and subsequent incidental catch, illegal harvest of bull trout, and competition for space (Rode 1990; Bond 1992; WDW 1992; MBTSG 1995d).

''The smaller and more isolated parts of the range [such as the bull trout

remaining in the Owyhee Uplands ecological reporting units or Jarbidge River basin] likely face a higher risk'' of naturally occurring extirpation relative to other bull trout populations (Rieman et al. 1997). One such risk is fire. In 1992, a 4,900 hectare (ha) (12,000 acre (ac)) fire (Coffeepot Fire) occurred at lower elevations, up to 2,286 m (7,500 ft), in areas adjacent to the Bruneau River basin and a small portion of the Jarbidge River basin. Although the Coffeepot Fire did not affect areas currently occupied by bull trout, similar conditions likely exist in nearby areas where bull trout occur. Adverse effects of fire on bull trout habitat may include loss of riparian canopy, increased water temperature and sediment, loss of pools, mass wasting of soils, altered hydrologic regime and debris torrents. Fires large enough to eliminate one or two suspected spawning streams are more likely at higher elevations where bull trout are usually found in the Jarbidge River basin (Frederick, *in litt.* 1998a; Ramsey, pers. comm. 1998b).

Hybridization with introduced brook trout is also a potential threat. In the West Fork Jarbidge River, approximately one percent of the harvest from the 1960's through the 1980's was brook trout (Johnson 1990). Some brook trout may spill out of Emerald Lake into the East Fork Jarbidge River during peak runoff events, but the lake lacks a defined outlet so that the event appears unlikely (Johnson, pers. comm. 1994). Although low numbers of brook trout persist in the Jarbidge River basin, conditions are apparently not conducive to the expansion of a brook trout population.

Other naturally occurring risks have been recently documented. The Jarbidge River Watershed Analysis (McNeill et al. 1997) indicates that 65 percent of the upper West Fork Jarbidge River basin has a 45 percent or greater slope. Debris from high spring runoff flows in the various high gradient side drainages such as Snowslide, Gorge, and Bonanza gulches provide the West Fork Jarbidge River with large volumes of angular rock material. This material has moved down the gulches at regular intervals, altering the river channel and damaging the Jarbidge River Canyon road, culverts, and bridge crossings. Most of the river flows are derived from winter snowpack in the high mountain watershed, with peak flows corresponding with spring snowmelt, typically in May and June (McNeill et al. 1997). Rain on snow events earlier in the year (January and February) can cause extensive flooding problems and has the potential for mass-wasting, debris torrents, and earth slumps, which could threaten the existence of bull trout in the upper Jarbidge River and tributary streams. In June, 1995, a rain on snow event triggered debris torrents from three of the high gradient tributaries to the Jarbidge River in the upper watershed (McNeill et al. 1997). The relationship between these catastrophic events and the history of intensive livestock grazing, burning to promote livestock forage, timber harvest and recent fire control in the Jarbidge River basin is unclear. However, debris torrents may potentially affect the long-term viability of the Jarbidge River bull trout subpopulation.

The Jarbidge River population segment is composed of a single subpopulation, characterized by low numbers of resident fish. Activities such as road construction and maintenance, mining and grazing threaten bull trout in the Jarbidge River basin. Although some of these activities have been modified or discontinued in recent years, the lingering effects continue to alter water quality, contribute to channel and bank instability, and inhibit habitat recovery. Ongoing threats include channel and bank alterations associated with road construction and maintenance, a proposed stream rechannelization project, recreational fishing (intentional and unintentional harvest), and competition with brook trout.

Based on the above factors, the Service determined that it was appropriate to propose listing the Jarbidge River population of bull trout as threatened, and did so on June 10, 1998. Developments subsequent to publication of that proposed rule have led the Service to conclude that it is appropriate to use the Act's emergency provision to list the Jarbidge River bull trout population as endangered. This population is endangered by habitat destruction and degradation resulting from channel alteration associated with recently-initiated, unauthorized road construction along the West Fork Jarbidge River, and a substantial risk that this construction will continue. After carefully assessing the best scientific and commercial information available regarding the past, present, and future threats faced by the Jarbidge River population segment of bull trout, and based on the reasoning discussed below, the Service has concluded that this population is in imminent danger of extinction throughout all or a significant portion of its range within the distinct population segment. The Jarbidge River population segment is, therefore, endangered as defined in the Act.

Reasons for Emergency Determination

Under section 4(b)(7) of the Act and 50 CFR 424.20, the Secretary may determine a species to be endangered or threatened by emergency rule that shall cease 240 days following publication in the **Federal Register**. The reasons for this rule are discussed below. If at any time after this rule has been published, the Secretary determines that substantial evidence does not exist to warrant such a rule, it shall be withdrawn.

An emergency posing a significant risk to the well-being and continued survival of the Jarbidge River bull trout population exists as a result of channel alteration associated with unauthorized road construction, and the substantial risk that such construction will continue. On July 22, 1998, the Elko County Road Department was actively working in and along the Jarbidge River to repair the Jarbidge Canyon Road (also referred to as South Canyon Road and Forest Development Road #064), as directed in a resolution passed by the Elko County Board of Commissioners on July 15, 1998. On July 22, 1998, a Forest Service employee reported a 5.6 km (3.5 mi) plume of sediment downstream from the construction site. Fish and Wildlife Service and Forest Service staff visited the area on July 23, 1998. They observed approximately 275 m (300 yards (yd)) of new road where the river had previously flowed. To create the road, sections of river were roughly filled with material from adjacent hillsides and debris left by the 1995 flood. The construction activity had completely destroyed all aquatic habitat in this area. The entire river flow was diverted into a newly created straight channel lacking pools and cover. All riparian vegetation, including mature trees, adjacent to the new channel had been removed. Impacts of resultant sedimentation in areas of the river downstream are being evaluated. The NDOW and HNF are currently evaluating the total extent of impacts from the construction. Water temperatures recorded on July 22, 1998, suggest that this portion of the river would have supported bull trout prior to the construction activity.

Elko County stopped the road work at all locations on July 24, 1998, after receiving cease and desist orders from the State of Nevada and the Corps of Engineers. At present, the Service is concerned that Elko County will resume the unauthorized road work. Continued unauthorized reconstruction of the 2.4 km (1.5 mi) of the Jarbidge Canyon Road damaged by the 1995 flood would result in the direct loss of 27 percent of the

known occupied bull trout habitat in the West Fork Jarbidge River (8.8 km (5.5 mi); Johnson and Weller 1994), which has among the highest reported densities of bull trout within the Jarbidge River DPS (85 fish/km; 53 fish/mi; Johnson and Weller 1994). The road construction would also indirectly impact an additional 21 km (13 mi) of bull trout habitat downstream of the construction site in the West Fork Jarbidge River, and potentially 45 km (28 mi) in the mainstem Jarbidge River. This construction activity has deposited additional sediment into the West Fork Jarbidge River; this sediment has been carried downstream causing further damage to bull trout habitat. Indirect impacts include alteration of stream flow and water temperature, increased sediment transport, decreased invertebrate production, disruption of migration and spawning during August through September caused by stream turbidity and sedimentation, and decreased survival of eggs and juveniles from deposition of fine sediment. The combination of direct and indirect impacts resulting from the unauthorized road construction, and the substantial risk that the construction will continue, constitutes an emergency posing a significant risk to the well-being and continued survival of the already depressed Jarbidge River bull trout population.

Critical Habitat

A complete discussion of this section is contained in the proposed rule published on June 10, 1998 (63 FR 31693).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species 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, groups, and individuals. The Act provides for possible land acquisition and cooperation with the State and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm 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 with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities that they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed 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.

The Jarbidge bull trout population segment occurs on lands administered by the USFS, various State-owned properties, and private lands. Federal agency actions that may require conference or consultation as described in the preceding paragraph include COE involvement in projects such as the construction of roads and bridges, and the permitting of wetland filling and dredging projects subject to section 404 of the Clean Water Act (33 U.S.C. 1344 et seq.); USFS timber, recreational, mining, and grazing management activities; Environmental Protection Agency authorized discharges under the National Pollutant Discharge System of the Clean Water Act; and U.S. Housing and Urban Development projects.

The Act and its implementing regulations, found at 50 CFR 17.21 and 17.31, set forth a series of general trade prohibitions and exceptions that apply to all threatened and endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered and threatened wildlife under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

It is the policy of the Service, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. The Service believes the following would not be likely to result in a violation of section 9:

(1) Actions that may affect bull trout in the Jarbidge River population segment and are authorized, funded or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by the Service pursuant to section 7 of the Act.

The following actions likely would be considered a violation of section 9:

(1) Take of bull trout without a permit, which includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possession, sale, delivery, carriage, transportation, or shipment of illegally taken bull trout;

(3) Interstate and foreign commerce (commerce across state and international boundaries) and import/export of bull trout (as discussed earlier in this section);

(4) Introduction of non-native fish species that compete or hybridize with, or prey on bull trout;

(5) Destruction or alteration of bull trout habitat by dredging, channelization, diversion, in-stream vehicle operation or rock removal, or other activities that result in the destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors used by the species for foraging, cover, migration, and spawning;

(6) Discharges or dumping of toxic chemicals, silt, or other pollutants into waters supporting bull trout that result in death or injury of the species; and

(7) Destruction or alteration of riparian and adjoining uplands of waters supporting bull trout by recreational activities, timber harvest, grazing, mining, hydropower development, or other developmental activities that result in destruction or significant degradation of cover, channel stability, substrate composition, temperature, and migratory corridors

used by the species for foraging, cover, migration, and spawning.

Questions regarding whether specific activities may constitute a violation of section 9 should be directed to the Field Supervisor of the Service's Nevada Fish and Wildlife Office (see ADDRESSES section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

National Environmental Policy Act

The Fish and Wildlife Service has determined that Environmental Assessments and Environmental Impact Statements, 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. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning permit and associated requirements for endangered species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Author: The primary authors of this emergency rule include —Jeffery Chan, Western Washington Fishery Resource Office, Olympia, WA; Timothy Cummings, Columbia River Fisheries Program Office, Vancouver, WA; Stephen Duke, Snake River Basin Office, Boise, ID; Robert Hallock, Upper Columbia River Basin Office, Spokane, WA; Samuel Lohr, Snake River Basin Office, Boise, ID; Leslie Propp, Western Washington State Office, Olympia, WA; Selena Werdon, Nevada Fish and Wildlife Office .

List of Subjects in 50 CFR Part 17

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

Regulation Promulgation

Accordingly, the Service amends part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

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

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

2. Amend § 17.11(h) by adding the following, in alphabetical order under Fishes, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific Name						
*	*	*	*	*	*	*	
FISHES							
*	*	*	*	*	*	*	
Trout, bull	Salvelinus confluentus.	U.S.A. (Pacific NW) Canada (NW Territories).	Jarbidge R. Basin (U.S.A.—ID, NV).	E	639E	NA	NA
*	*	*	*	*	*	*	

Dated: August 6, 1998.

John G. Rogers,

Acting Director, Fish and Wildlife Service.

[FR Doc. 98–21550 Filed 8–7–98; 10:09 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

Docket No. 971229312–7312–01; I.D. 072798A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Whiting Closure for the Catcher/Processor Sector

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

ACTION: Fishing restrictions; requests for comments.

SUMMARY: NMFS announces closure of the 1998 catcher/processor fishery for whiting at 3 p.m. local time (l.t.) August 7, 1998, because the allocation for the catcher/processor sector will be reached by that time. This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. This action is intended to keep the harvest of whiting within the allocations NMFS announced on January 6, 1998.

DATES: Effective from 3 p.m. l.t. August 7, 1998, until the start of the 1999 primary season for the catcher/processor sector, unless modified, superseded or rescinded, which will be published in the **Federal Register**. Comments will be accepted through August 26, 1998.

ADDRESSES: Submit comment to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Regional Administrator, Southwest Region, 1 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King at 206–526–6140 or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION: On January 6, 1998 (63 FR 419), NMFS published regulations announcing the annual management measures for Pacific Coast whiting. The regulations at 50 CFR 660.323(a) (4) (62 FR 27519, May 20, 1997) established separate

allocations for the catcher/processor, mothership, and shore-based sectors of the whiting fishery. Each allocation is a harvest guideline, which, when reached, results in the end of the primary season for that sector. The regulations at 50 CFR 600.323(a)(3)(i) describe the primary season for catcher/processors as the period(s) when at-sea processing is allowed and the fishery is open for the catcher/processor sector. The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The allocations, which are based on the 1998 commercial harvest guideline for whiting of 207,000 metric tons (mt), are 70,400 mt (34 percent) for the catcher/processor sector, 49,700 mt (24 percent) for the mothership sector, and 86,900 mt (42 percent) for the shoreside sector. The mothership fishery reached its allocation and was closed on May 31, 1998 (63 FR 30147, June 3, 1998). The shore-based sector allocation has not yet been attained.

The best available information on August 5, 1998, indicated that the 70,400–mt catcher/processor allocation would be reached by 3 p.m. l.t. August 7, 1998.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(A), NMFS herein announces:

Effective 3 p.m. l.t August 7, 1998, (1) further taking and retaining, receiving, or at-sea processing of whiting by a catcher/processor are prohibited. No additional unprocessed whiting may be brought on board after at-sea processing is prohibited, but a catcher/processor may continue to process whiting that was on board before at-sea processing was prohibited.

Classification

This action is authorized by the regulations implementing the FMP. The determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator Northwest Region (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(A) and is exempt from review under E.O. 12866.

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

Dated: August 6, 1998.

Gary C. Matlock,

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

[FR Doc. 98–21495 Filed 8–6–98; 3:07 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 154
Tuesday, August 11, 1998

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV98–905–4 PR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Limiting the Volume of Small Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on limiting the volume of small red seedless grapefruit entering the fresh market under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida. The marketing order is administered locally by the Citrus Administrative Committee (committee). This rule would limit the volume of size 48 and/or size 56 red seedless grapefruit handlers could ship during the first 11 weeks of the 1998–1999 season beginning in September. This rule would establish the base percentage for these small sizes at 25 percent for the 11 week period. This proposal would provide a sufficient supply of small sized red seedless grapefruit to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns.

DATES: Comments must be received by August 31, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 205–6632. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: William G. Pimental, Southeast Marketing Field Office, F&V, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; telephone: (941) 299–4770, Fax: (941) 299–5169; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 690–3919, Fax: (202) 205–6632. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This proposal is issued under Marketing Agreement No. 84 and Marketing Order No. 905, both as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the ''order.'' The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

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

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

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

The order provides for the establishment of grade and size requirements for Florida citrus, with the concurrence of the Secretary. These grade and size requirements are designed to provide fresh markets with citrus fruit of acceptable quality and size. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of growers, handlers, and consumers, and is designed to increase returns to Florida citrus growers. The current minimum grade standard for red seedless grapefruit is U.S. No. 1, and the minimum size requirement is size 56 (at least $3^{15}/_{16}$ inches in diameter).

Section 905.52 of the order provides authority to limit shipments of any grade or size, or both, of any variety of Florida citrus. Such limitations may restrict the shipment of a portion of a specified grade or size of a variety. Under such a limitation, the quantity of such grade or size that may be shipped by a handler during a particular week would be established as a percentage of the total shipments of such variety by such handler in a prior period, established by the committee and approved by the Secretary, in which the handler shipped such variety.

Section 905.153 of the regulations provides procedures for limiting the volume of small red seedless grapefruit entering the fresh market. The procedures specify that the committee may recommend that only a certain percentage of sizes 48 and/or 56 red seedless grapefruit be made available for shipment into fresh market channels for any week or weeks during the regulatory period. The regulation period is 11 weeks long and begins the third Monday in September. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week is calculated using the recommended percentage. By taking the recommended weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the

volume of sizes 48 and/or 56 they may ship in a regulated week.

This proposed rule would limit the volume of small red seedless grapefruit entering the fresh market for each week of the 11 week period beginning the week of September 21. This rule would limit the volume of sizes 48 and/or 56 red seedless grapefruit entering the fresh market for each of the 11 weeks at 25 percent. This would allow the committee to start the season at the most restrictive level allowed under § 905.153, and if conditions warrant, to release greater quantities of size 48 and/or size 56 small red grapefruit as more information becomes available. This action was recommended by the committee at its meeting on May 22, 1998, by a vote of 14 in favor to 2 opposed.

For the seasons 1994–95, 1995–96, and 1996–97, returns on red seedless grapefruit had been declining, often not returning the cost of production. On tree prices for red seedless grapefruit had fallen steadily from $9.60 per carton (⅗ bushel) during the 1989–90 season, to $3.45 per carton during the 1994–95 season, to a low of $1.41 per carton during the 1996–97 season.

The committee determined that one problem contributing to the market's condition was the excessive number of small sized grapefruit shipped early in the marketing season. In the 1994–95, 1995–96, and 1996–97 seasons, sizes 48 and 56 accounted for 34 percent of total shipments during the 11 week regulatory period, with the average weekly percentage exceeding 40 percent of shipments. This contrasts with sizes 48 and 56 representing only 26 percent of total shipments for the remainder of the season. While there is a market for early grapefruit, the shipment of large quantities of small red seedless grapefruit in a short period oversupplies the fresh market for these sizes and negatively impacts the market for all sizes.

For the majority of the season, larger sizes return higher prices than smaller sizes. However, there is a push early in the season to get fruit into the market to take advantage of the high prices available at the beginning of the season. The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit on the market, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. for large sizes dropped to within two dollars of the f.o.b. for small sizes.

In the three seasons prior to 1997–98, prices of red seedless grapefruit fell from a weighted average f.o.b. of $7.80 per carton to an average f.o.b. of $5.50 per carton during the period covered by this rule. Even though later in the season the crop sized to naturally limit the amount of smaller sizes available for shipment, the price structure in the market had already been negatively affected. During the three seasons, the market did not recover, and the f.o.b. for all sizes fell to around $5.00 to $6.00 per carton for most of the rest of the season.

The committee believes that the over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 in 1991–92 to around $1.50 for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50. The study also indicated that increasing minimum size restrictions could help raise returns.

To address this issue, the committee voted to utilize the provisions of § 905.153, and establish weekly percentage of size regulation during the first 11 weeks of the 1997–98 season. The initial recommendation from the committee was to set the weekly percentage at 25 percent for each of the 11 weeks. As more information on the crop became available, and as the season progressed, the committee met several times and adjusted its recommendations for the weekly percentages. The committee considered information from past seasons, crop estimates, fruit size, and other information to make their recommendations. Actual weekly percentages established during the 11 week period during the 1997–98 season were 50 percent for the first three weeks, and 35 percent for the other eight weeks.

In making this recommendation, the committee reviewed its experiences from the past season, and those of prior seasons. The committee believes establishing weekly percentages last season was successful. The committee examined shipment data covering the 11 week regulatory period for the last season and the four prior seasons. The information contained the amounts and percentages of sizes 48 and 56 shipped during each week and weekly f.o.b. figures. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced.

In comparison with f.o.b. prices from the 1996–97 season, for weeks when pricing information was available (weeks 6 through 11), last season's numbers were higher in five of the six weeks. The average f.o.b. for these weeks was $6.28 for the 1996–97 season and $6.55 for the 1997–98 season. Last season, sizes 48 and 56 represented only 31 percent of total shipments during the 11 week regulatory period as compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count for the 11 weeks.

Other information also indicates the regulation was successful. In past seasons, the on tree price had been dropping steadily. However, on tree prices for the month following the 11 weeks of regulation indicate that in December 1997 the on tree price for grapefruit was $2.26 compared to $1.55 for the previous season.

The committee was concerned that the glut of smaller, lower priced fruit on the early market was driving down the price for all sizes. There was a steep decline in prices for larger sizes in previous seasons. During the six weeks for mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season. Prices for the same sizes during the same period fell only 5, 5, 2, and 7 percent, respectively, last season with regulation. In fact, prices for all sizes were firmer during this period for last season when compared to the previous year, with the weighted average price dropping only 9 percent during this period as compared to 22 percent for the previous season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study stated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. It said that prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, with larger sized grapefruit registering modest improvements. The rule shifted the size distribution toward the higher priced, larger sized grapefruit which helped raise weekly average f.o.b. prices. It further stated that sizes 48 and 56

grapefruit accounted for around 27 percent of domestic shipments during the same 11 weeks during the 1996–97 season. Comparatively, sizes 48 and 56 accounted for only 17 percent of domestic shipments during the same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

A subcommittee had been formed to examine how weekly percentage of size regulation could best be used. The subcommittee recommended to the full committee that the weekly percentage of size regulation should be set at 25 percent for the 11 week period. Members believe that the problems associated with an uncontrolled volume of small sizes entering the market early in the season will continue. The subcommittee thought that to provide the committee with the most flexibility, the weekly percentage should be set at 25 percent for each of the 11 weeks in the regulated period. The subcommittee believed it was best to set regulation at the most restrictive level, and then relax the percentage as warranted by conditions later in the season. The subcommittee also recommended that the committee meet on a regular basis early in the season to consider adjustments in the weekly percentage rates as was done in the previous season.

The recommendations of the subcommittee were reviewed by the committee. In its discussion, the committee recognized the need for and the benefits of the weekly percentage regulation. The committee agreed with the findings of the subcommittee, and recommended establishing the base percentage at 25 percent for each of the regulation weeks. This is as restrictive as § 905.153 will allow.

In making this recommendation, the committee considered that by establishing regulation at 25 percent, they could meet again in August and the months following and use the best information available to help the industry and the committee make the most informed decisions as to whether the established percentage is appropriate.

Based on this information and the experiences from last season, the committee agreed to establish the weekly percentage at the most restrictive level. They can then meet in late August, and in September and October as needed when additional information is available and determine whether the set percentage level is appropriate. They said this is essentially what was done the prior year, and it had been very successful. The committee had met in May 1997, and recommended a weekly percentage be established at 25 percent for each of the eleven weeks. In August, the committee met again, and recommended that the weekly percentage be relaxed. They met again in October, and recommended further relaxations. Any changes to the weekly percentage proposed by this rule would require additional rulemaking and the approval of the Secretary.

The committee noted that more information helpful in determining the appropriate weekly percentages will be available after August. At the time of the May meeting, grapefruit had not yet begun to size, giving little indication as to the distribution of sizes. Only the most preliminary of crop estimates was available, with the official estimate not to be issued until October.

While information concerning the coming season is limited prior to September, there are indications that setting the weekly percentage at 25 percent is the appropriate level. During deliberations last season as to weekly percentages, the committee considered how past shipments had affected the market. Based on this statistical information, the committee members believed there was an indication that once shipments of sizes 48 and 56 reached levels above 250,000 cartons a week, prices declined on those and most other sizes of red seedless grapefruit. The committee believed that if shipments of small sizes could be maintained at around 250,000 cartons a week, prices should stabilize and demand for larger, more profitable sizes should increase.

As is the case for this season, they wanted to recommend a weekly percentage that would provide a sufficient volume of small sizes without adversely impacting the markets for larger sizes. They also originally recommended that the percentage for each of the 11 weeks be established at the 25 percent level. This percentage, when combined with the average weekly shipments for the total industry, provided a total industry allotment of approximately 244,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. The total shipments of small red seedless grapefruit would approach the 250,000 carton mark during regulated weeks without exceeding it.

While the committee did eventually vote last season to increase the weekly percentages, shipments of sizes 48 and 56 during the 11 weeks regulated during the 1997–98 season remained close to the 250,000 carton mark. In only 3 of the 11 weeks did the volume of sizes 48 and 56 exceed 250,000 cartons, and even then, by not more than 35,000 cartons. This may have contributed to the success of the regulation.

Based on the shipments from last year, a weekly percentage of 25 percent would not have been that much more restrictive on shipments than the percentages established, reducing in most cases just the excess available allotment. In setting the weekly percentage for each week at 25 percent this season, the total available allotment would closely approximate the 250,000 carton level.

In addition, the production area suffered through a period of insufficient rainfall during the spring. While the actual effects are not currently known, it is possible that this may affect the sizing of the crop as well as maturity. This could mean a larger volume of small sized red seedless grapefruit, further exacerbating the problem with small sizes early in the season.

The situation is also complicated by the ongoing economic problems affecting the Asian markets. In past seasons, the Asian markets have shown a strong demand for the smaller sized red seedless grapefruit. The reduction in shipments to that area experienced during the later season last year is expected to continue during the coming season. This reduction in demand could result in a greater amount of small sizes for the existing markets to absorb. These factors increase the need for restrictions to prevent the volume of small sizes from overwhelming all markets. Therefore, based on the information currently available, setting the weekly percentages at 25 percent may be the most appropriate level.

Therefore, this rule would establish the weekly percentage at 25 percent for each of the 11 weeks. The committee plans to meet in late August, and as needed during the remainder of the 11 week period to work to ensure that the set weekly percentages are at the appropriate levels.

Under § 905.153, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a regulated week would be calculated using the recommended percentage of 25 percent. By taking the weekly percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, handlers can calculate the volume of sizes 48 and/or 56 they may ship in a regulated week.

An average week has been calculated by the committee for each handler using the following formula. The total red seedless grapefruit shipments by a handler during the 33 week period beginning the third Monday in September and ending the first Sunday

in May during the previous five seasons are added and divided by five to establish an average season. This average season is then divided by the 33 weeks to derive the average week. This average week would be the base for each handler for each of the 11 weeks of the regulatory period. The weekly percentage, in this case 25 percent, is multiplied by a handler's average week. The product is that handler's allotment of sizes 48 and/or 56 red seedless grapefruit for the given week.

Under this proposed rule, the calculated allotment is the amount of small sized red seedless grapefruit a handler could ship. If the minimum size established under § 905.52 remains at size 56, handlers could fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established limits. If the minimum size under the order is 48, handlers could fill their allotment with size 48 fruit such that the total of these shipments are within the established limits. The committee staff would perform the specified calculations and provide them to each handler on or before August 15 each year.

To illustrate, suppose Handler A shipped a total of 50,000 cartons, 64,600 cartons, 45,000 cartons, 79,500 cartons, and 24,900 cartons of red seedless grapefruit in the last five seasons, respectively. Adding these season totals and dividing by five yields an average season of 52,800 cartons. The average season would then be divided by 33 weeks to yield an average week, in this case, 1,600 cartons. This would be Handler A's base. The weekly percentage of 25 percent would then be applied to this amount. This would provide this handler with a weekly allotment of 400 cartons (1,600×.25) of size 48 and/or 56.

The average week for handlers with less than five previous seasons of shipments would be calculated by the committee by averaging the total shipments for the seasons they did ship red seedless grapefruit during the immediately preceding five years and dividing that average by 33. New handlers with no record of shipments would have no prior period on which to base their average week. Therefore, under this proposal, a new handler could ship small sizes equal to 25 percent of their total volume of shipments during their first shipping week. Once a new handler has established shipments, their average week will be calculated as an average of the weeks they have shipped during the current season.

This proposed rule would establish a weekly percentage of 25 percent for each of the 11 weeks to be regulated. The regulatory period begins the third Monday in September. Each regulation week would begin Monday at 12:00 a.m. and end at 11:59 p.m. the following Sunday, since most handlers keep records based on Monday being the beginning of the work week. If necessary, the committee could meet and recommend a percentage above 25 percent to the Secretary at any time during the regulatory period.

The rules and regulations contain a variety of provisions designed to provide handlers with some marketing flexibility. When regulation is established by the Secretary for a given week, the committee calculates the quantity of small red seedless grapefruit which may be handled by each handler. Section 905.153(d) provides allowances for overshipments, loans, and transfers of allotment. These allowances should allow handlers the opportunity to supply their markets while limiting the impact of small sizes on a weekly basis.

During any week for which the Secretary has fixed the percentage of sizes 48 and/or 56 red seedless grapefruit, any handler could handle an amount of sizes 48 and/or 56 red seedless grapefruit not to exceed 110 percent of their allotment for that week. The quantity of overshipments (the amount shipped in excess of a handler's weekly allotment) would be deducted from the handler's allotment for the following week. Overshipments would not be allowed during week 11 because there would be no allotments the following week from which to deduct the overshipments.

If handlers fail to use their entire allotments in a given week, the amounts undershipped would not be carried forward to the following week. However, a handler to whom an allotment has been issued could lend or transfer all or part of such allotment (excluding the overshipment allowance) to another handler. In the event of a loan, each party would, prior to the completion of the loan agreement, notify the committee of the proposed loan and date of repayment. If a transfer of allotment is desired, each party would promptly notify the committee so that proper adjustments of the records could be made. In each case, the committee would confirm in writing all such transactions prior to the following week. The committee could also act on behalf of handlers wanting to arrange allotment loans or participate in the transfer of allotment. Repayment of an allotment loan would be at the discretion of the handlers party to the loan.

The committee would compute each handler's allotment by multiplying the handler's average week by the percentage established by regulation for that week. The committee would notify each handler prior to that particular week of the quantity of sizes 48 and 56 red seedless grapefruit such handler could handle during a particular week, making the necessary adjustments for overshipments and loan repayments.

During committee deliberations, several concerns were raised regarding this proposed regulation. One area of concern was the way allotment base is calculated. Two members commented that the rule was not fair to those handlers that shipped the majority of their grapefruit shipments during the 11 week period. They said that using a 33 week season as the basis for allotment was not reflective of their shipments during the regulated period, and that their allotment was not enough to cover their customer base.

The committee chose to use the past five seasons to provide the most accurate picture of an average season. When recommending procedures for establishing weekly percentage of size regulation for red seedless grapefruit, the committee discussed several methods of measuring a handler's volume to determine this base. It was decided that shipments for the five previous years and for the 33 weeks beginning the third Monday in September to the first Sunday the following May should be used for calculation purposes.

This bases allotment on a 33 week period of shipments, not just a handler's early shipments. This was done specifically to accommodate small shippers or light volume shippers, who may not have shipped much grapefruit in the early season. The use of an average week based on 33 weeks also helps adjust for variations in growing conditions that may affect when fruit matures in different seasons and growing areas. After considering different ways to calculate the average week, the committee settled on this method as the definition of prior period that would provide each handler with an equitable base from which to establish shipments.

In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that this method was the best option considered thus far. Another member

commented that this option also provides a larger industry base than an 11 week calculation, supplying a greater amount of available base overall.

In regards to whether their allotment would be enough to cover their customer base, the procedures under which this rule is recommended provide flexibility through several different options. Handlers can transfer, borrow or loan allotment based on their needs in a given week. Handlers also have the option of over shipping their allotment by 10 percent in a week, as long as the overshipment is deducted from the following week's shipments. Statistics show that in none of the regulated weeks was the total available allotment used. The closest it came was 83 percent of available base used. However, this still left an available allotment for loan or transfer of over 57,000 cartons. Approximately 190 loans and transfers were utilized last season. To facilitate this process, the committee staff provides a list of handler names and telephone numbers to help handlers find possible sources of allotment if needed for loan or trade. Also, this regulation only restricts shipments of small sized red grapefruit. There are no volume restrictions on larger sizes.

Another concern expressed was that the rule only covers red seedless grapefruit. One member wanted the committee to consider adding white grapefruit to the regulation. The member also asked that the committee continue to consider other possibilities on which to base regulation. The committee agreed that the provisions by which this regulation is recommended should be reviewed on a continuous base. It was also stated that should the committee want to change § 905.153, the section outlining the procedures for setting weekly percentage of size regulation, they could consider it as part of the current meeting. No motions for change were received.

Another concern expressed was that the committee was considering meeting too often during the regulatory period to consider changing the weekly percentages. The member said that marketing plans are made further in advance than two to three weeks. The committee responded that information that is valuable in considering the appropriate percentage levels are not available until the regulatory period begins. Members agreed that it was important to meet and adjust percentages as necessary as seasonal information becomes available.

After considering the concerns expressed, and the available information, the committee determined that this rule is needed to regulate shipments of small sized red seedless grapefruit.

This rule does not affect the provision that handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day exempt from regulatory requirements. Fruit shipped in gift packages that are individually addressed and not for resale, and fruit shipped for animal feed are also exempt from handling requirements under specific conditions. Also, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements under the order.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for certain commodities under a domestic marketing order, including grapefruit, imports of that commodity must meet the same or comparable requirements. This rule does not change the minimum grade and size requirements under the order, only the percentages of sizes 48 and/or 56 red grapefruit that may be handled. Therefore, no change is necessary in the grapefruit import regulations as a result of this action.

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

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

There are approximately 80 grapefruit handlers subject to regulation under the order and approximately 11,000 growers of citrus in the regulated area. Small agricultural service firms, which includes handlers, have been defined by the Small Business Administration (SBA) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000 (13 CFR 121.601).

Based on the industry and committee data for the 1997–98 season, the average annual f.o.b. price for fresh Florida red grapefruit during the 1997–98 season was around $6.30 per 4⁄5 bushel cartons, and total fresh shipments for the 1997–98 season are estimated at 15.5 million cartons of red grapefruit. Approximately 20 percent of all handlers handled 60 percent of Florida grapefruit shipments. In addition, many of these handlers ship other citrus fruit and products which are not included in committee data but would contribute further to handler receipts. Using the average f.o.b. price, about 80 percent of grapefruit handlers could be considered small businesses under SBA's definition and about 20 percent of the handlers could be considered large businesses. The majority of Florida grapefruit handlers, and growers may be classified as small entities.

Under the authority of § 905.52 of the order, this proposed rule would limit the volume of small red seedless grapefruit entering the fresh market during the 11 weeks beginning the third Monday in September for the 1998–99 season. This rule utilizes the provisions of § 905.153. The proposal would limit the volume of sizes 48 and/or 56 red seedless grapefruit by setting the weekly percentage for each of the 11 weeks at 25 percent. Under such a limitation, the quantity of sizes 48 and/or 56 red seedless grapefruit that may be shipped by a handler during a particular week is calculated using the recommended percentage.

By taking the recommended percentage times the average weekly volume of red grapefruit handled by such handler in the previous five seasons, the committee would calculate a handler's weekly allotment of small sizes. The rule would set the weekly percentage at 25 percent for the 11 week period. This proposal would provide a supply of small sized red seedless grapefruit sufficient to meet market demand, without saturating all markets with these small sizes. This rule would help stabilize the market and improve grower returns during the early part of the season.

The weekly percentage of 25 percent, when combined with the average weekly shipments for the total industry, would provide a total industry allotment of nearly 250,000 cartons of sizes 48 and/or 56 red seedless grapefruit per regulated week. Based on shipments from seasons 1993–97, a total available weekly allotment of 250,000 cartons would exceed actual shipments for each of the first three weeks that would be regulated under this rule. In addition, if a 25 percent restriction on small sizes had been applied during the 11 week period in the three seasons prior to the 1996–97 season, an average of 4.2 percent of overall shipments during that period would have been affected. A large percentage of this volume most likely could have been replaced by larger sizes. Under this

proposal a sufficient volume of small sized red grapefruit would still be allowed into all channels of trade, and allowances would be in place to help handlers address any market shortfall. Therefore, the overall impact on total seasonal shipments and on industry cost should be minimal.

The early season crop tends to have a greater percentage of small sizes. This creates a glut of smaller, lower priced fruit, driving down the price for all sizes. Early in the season, larger sized fruit commands a premium price. In some cases, the f.o.b. is $4 to $6 a carton more than for the smaller sizes. In early October, the f.o.b. for a size 27 averages around $10.00 per carton. This compares to an average f.o.b. of $5.50 per carton for size 56. By the end of the 11 week period covered in this rule, the f.o.b. for large sizes has dropped to within two dollars of the f.o.b. for small sizes.

The over shipment of smaller sized red seedless grapefruit early in the season has contributed to below production cost returns for growers and lower on tree values. An economic study done by the University of Florida—Institute of Food and Agricultural Sciences (UF–IFAS) in May 1997, found that on tree prices had fallen from a high near $7.00 in 1991–92 to around $1.50 for the 1996–97 season. The study projected that if the industry elected to make no changes, the on tree price would remain around $1.50. The study also indicated that increasing minimum size restrictions could help raise returns.

This regulation would have a positive impact on affected entities. The purpose of this rule would be to help stabilize the market and improve grower returns by limiting the volume of small sizes marketed early in the season. There are no volume restrictions on larger sizes. Therefore, larger sizes could be substituted for smaller sizes with a minimum effect on overall shipments. While this rule may necessitate spot picking, which may entail slightly higher harvesting costs, many in the industry are already using the practice, and because this regulation is only in effect for part of the season, the overall effect on costs is minimal. This rule is not expected to appreciably increase costs to producers.

This rule would help limit the effects of an over supply of small sizes early in the season. A similar rule was enacted successfully last season. During the 11 week period, the regulation was successful at helping maintain prices at a higher level than the prior season, and sizes 48 and 56 by count and as a percentage of total shipments were reduced. Therefore, this action should have a positive impact on grower returns.

For the weeks when pricing information was available, last season's prices were higher in five of the six weeks when compared with f.o.b. prices from the 1996–97 season. The average f.o.b. for these weeks was $6.28 for the 1996–97 season and $6.55 for the 1997–98 season. It also reduced sizes 48 and 56 as a percentage of the crop. Last season sizes 48 and 56 represented 31 percent of shipments during the 11 week regulatory period, compared to 38 percent during the previous season. There was also a 15 percent reduction in shipments of sizes 48 and 56 by count. Numbers from the month following the 11 weeks of regulation also indicate that in December 1997 the on tree price for grapefruit was $2.26 compared to $1.55 for the previous season.

The rule was also successful in reducing the steep drop in prices for larger sizes that had occurred in previous seasons. During the six weeks from mid-October through November, prices for sizes 23, 27, 32, and 36 fell by 28, 27, 21, and 20 percent, respectively, during the 1996–97 season. Prices for the same sizes during the same period last season only fell by 5, 5, 2, and 7 percent, respectively, under regulation. Prices for all sizes were firmer during this period last season when compared to the previous year, with the weighted average price dropping only 9 percent during this period last season as compared to 22 percent for the previous season.

An economic study done by Florida Citrus Mutual (Lakeland, Florida) in April 1998, found that the weekly percentage regulation had been effective. The study indicated that part of the strength in early season pricing appeared to be due to the use of the weekly percentage rule to limit the volume of sizes 48 and 56. Prices were generally higher across the size spectrum with sizes 48 and 56 having the largest gains, with larger sized grapefruit registering modest improvements. It also stated that sizes 48 and 56 grapefruit accounted for around 27 percent of domestic shipments during the 11 weeks during the 1996–97 season, compared to only 17 percent during the same period last season, as small sizes were used to supply export customers with preferences for small sized grapefruit.

Even with restrictions in place, total shipments during the 11 week period last season were higher than the previous season. There was also no noticeable drop in exports. Therefore, shipments remained strong and prices were stabilized during the regulated period.

Over 50 percent of red seedless grapefruit is shipped to the fresh market. Because of reduced demand and an oversupply, the processing outlet is not currently profitable. Consequently, it is essential that the market for fresh red grapefruit be fostered and maintained. Any costs associated with this action would only be for the 11 week regulatory period. However, benefits from this action could stretch throughout the entire 33 week season.

This rule is intended to stabilize the market during the early season and increase grower returns. Information available from last season suggests the regulation could do both. A stabilized price that returns a fair market value would be beneficial to both small and large growers and handlers. The opportunities and benefits of this rule are expected to be available to all red seedless grapefruit handlers and growers regardless of their size of operation.

One alternative to the actions approved was considered by the committee prior to making the recommendations. The alternative discussed was whether to amend § 905.153 in conjunction with setting a weekly percentage. Two members suggested that the calculation used to determine a handler's allotment base should be changed from 33 weeks to a calculation that used the 11 weeks regulated by the rule. In its discussion, the committee recognized that there were concerns regarding the way base is calculated. However, committee members also stated that this type of regulation is intended to be somewhat restrictive, and providing a system that satisfies everyone is difficult, if not impossible, to achieve. There was general agreement that though this method had its concerns, it was the best option considered thus far. Therefore, the committee rejected this alternative, concluding the recommendations previously discussed were appropriate for the industry.

Handlers utilizing the flexibility of the loan and transfer aspects of this action would be required to submit a form to the committee. The rule would increase the reporting burden on approximately 80 handlers of red seedless grapefruit who would be taking about 0.03 hour to complete each report regarding allotment loans or transfers. The information collection requirements contained in this section have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995

(Pub. L. 104–13) and assigned OMB number 0581–0094. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. However, red seedless grapefruit must meet the requirements as specified in the U.S. Standards for Grades of Florida Grapefruit (7 CFR 51.760 through 51.784) issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 through 1627).

The committee's meeting was widely publicized throughout the citrus industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the May 22, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A 20-day comment period is provided to allow interested persons to respond to this proposal. Twenty days is deemed appropriate because this rule would need to be in place as soon as possible since handlers will begin shipping grapefruit in September. In addition, because of the nature of this rule, handlers need time to consider their allotment and how best to service their customers. Also, the industry has been discussing this issue for some time, and the committee has kept the industry well informed. It has also been widely discussed at various industry and association meetings. Interested persons have had time to determine and express their positions. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is proposed to be amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 905.350 is added to read as follows:

§ 905.350 Red seedless grapefruit regulation.

This section establishes the weekly percentages to be used to calculate each handler's weekly allotment of small sizes. If the minimum size in effect under § 905.306 for red seedless grapefruit is size 56, handlers can fill their allotment with size 56, size 48, or a combination of the two sizes such that the total of these shipments are within the established weekly limits. If the minimum size in effect under § 905.306 for red seedless grapefruit is 48, handlers can fill their allotment with size 48 red seedless grapefruit such that the total of these shipments are within the established weekly limits. The weekly percentages for sizes 48 and/or 56 red seedless grapefruit grown in Florida, which may be handled during the specified weeks are as follows:

Week	Weekly percentage
(a) 9/21/98 through 9/27/98	25
(b) 9/28/98 through 10/4/98	25
(c) 10/5/98 through 10/11/98	25
(d) 10/12/98 through 10/18/98 ..	25
(e) 10/19/98 through 10/25/98 ..	25
(f) 10/26/98 through 11/1/98	25
(g) 11/2/98 through 11/8/98	25
(h) 11/9/98 through 11/15/98	25
(i) 11/16/98 through 11/22/98 ...	25
(j) 11/23/98 through 11/29/98 ...	25
(k) 11/30/98 through 12/6/98	25

Dated: August 5, 1998.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 98–21481 Filed 8–10–98; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–28–AD]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Jetstream Models 3101 and 3201 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); Reopening of the comment period.

SUMMARY: This document proposes to revise an earlier proposed airworthiness directive (AD) that would have required removing the ground inhibit time delay and the ground test relay from the stall warning and protection system on certain British Aerospace Jetstream Models 3101 and 3201 airplanes that are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B). This proposed AD would have also required rewiring part of the stall warning and protection system to assure that system reliance is maintained after relay removal. The proposed AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom. Since issuing the NPRM, British Aerospace has revised the service information referenced in the previous proposal to correct a certain portion of the procedures. The Federal Aviation Administration (FAA) has determined that these corrected procedures in the revised service information should be incorporated into the NPRM, and that the comment period for the proposal should be reopened and the public should have additional time to comment. The actions specified by the proposed AD are intended to prevent failure of the ground inhibit relay while it is in the energized position caused by the current design, which could result in failure of the stall warning system and possible loss of control of the airplane in certain situations if the crew was not aware that the system had failed.

DATES: Comments must be received on or before September 9, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. S.M. Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 98–CE–28–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–28–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain British Aerospace Jetstream Models 3101 and 3201 airplanes that are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B) was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on April 30, 1998 (63 FR 23686). The NPRM proposed to require removing the ground inhibit time delay and the ground test relay from the stall warning and protection system. This proposed AD also requires rewiring part of the stall warning and protection system to assure that system reliance is maintained after relay removal. Accomplishment of the proposed action as specified in the NPRM would be in accordance with British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the United Kingdom.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

Events Since Issuance of the NPRM

Since issuance of the NPRM, British Aerospace has revised Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997, to the Revision 1 level, dated April 27, 1998. This revision corrects the functional test procedures of the original service bulletin.

The FAA's Determination

After examining all information related to the subject described in this document, the FAA has determined that:

—the revised service bulletin should be incorporated into the proposed AD; and

—AD action should be taken to incorporate this change to prevent failure of the ground inhibit relay while it is in the energized position caused by the current design, which could result in failure of the stall warning system and possible loss of control of the airplane in certain situations if the crew was not aware that the system had failed.

The Supplemental NPRM

Since the service bulletin revision includes procedures that go beyond the scope of what was already proposed, the FAA is reopening the comment period to allow the public additional time to comment on this proposed action.

Cost Impact

The FAA estimates that 301 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $60 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $108,360, or $360 per airplane.

Regulatory Impact

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

British Aerospace: Docket No. 98–CE–28–AD.

Applicability: Jetstream Models 3101 and 3201 airplanes, all serial numbers, certificated in any category, that are equipped with the ground inhibit function (Modification JM7813A (SB 27–JM7813A) or JM7813B).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the

owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished.

To prevent failure of the ground inhibit relay while it is in the energized position caused by the current design, which could result in failure of the stall warning system and possible loss of control of the airplane in certain situations if the crew was not aware that the system had failed, accomplish the following:

(a) Remove the ground inhibit time delay and the ground test relay from the stall warning and protection system, and rewire part of the stall warning and protection system to assure that system reliance is maintained after relay removal. Accomplish these actions in accordance with the ACCOMPLISHMENT INSTRUCTIONS section of British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, Revision 1, dated April 27, 1998.

(b) If the actions of this AD were accomplished in accordance with British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997, the affected airplane still needs to be re-tested in accordance with British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, Revision 1, dated April 27, 1998.

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

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Small Airplane Directorate, Aircraft Certification Service, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

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

(e) Questions or technical information related to British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, Revision 1, dated April 27, 1998, should be directed to British Aerospace Regional Aircraft, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland; telephone: (01292) 479888; facsimile: (01292) 479703. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Note 3: The subject of this AD is addressed in British Aerospace Jetstream Alert Service Bulletin 27–A–JM7847, dated December 24, 1997. This service bulletin is classified as mandatory by the United Kingdom Civil Aviation Authority (CAA).

Issued in Kansas City, Missouri, on August 4, 1998.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–21494 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AGL–48]

Proposed Modification of Class E Airspace; Grand Rapids, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Grand Rapids, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 16, and a VHF Omnidirectional Range (VOR) or GPS SIAP to Rwy 34, Amendment (Amdt) 10, have been developed for Grand Rapids/Itasca County, Gordon Newstrom Field Airport. Controlled airspace extending upward from the surface and controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approaches. This action proposes to modify the existing surface area by adding an extension, and increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before September 30, 1998.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 98–AGL–48, 2300 East Devon Avenue, Des Plaines, Illinois 60018.The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

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 decision on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Airspace Docket No. 98–AGL–48.'' The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, 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 Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. 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 14 CFR part 71 to modify

Class E airspace at Grand Rapids, MN, to accommodate aircraft executing the proposed GPS Rwy 16 SIAP and the VOR or GPS Rwy 34 SIAP, Amdt 10, at Grand Rapids/Itasca County, Gordon Newstrom Field Airport by modifying the existing controlled airspace. Controlled airspace extending upward from the surface, and controlled airspace extending upward from 700 to 1200 feet AGL, is needed to contain aircraft executing the approaches. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9E dated September 10, 1997, and effective September 16, 1997, 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. Therefore this, proposed regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule 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

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9E, Airspace Designations and Reporting Points, dated September 10, 1997, and effective September 16, 1997, is amended as follows:

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

* * * * *

AGL MN E2 Grand Rapids, MN [Revised]

Grand Rapids/Itasca County, Gordon Newstrom Field Airport, MN
(Lat. 47°12′40″N., long. 93°30′35′W.)
Grand Rapids VOR/DME
(Lat. 47°09″49″N., long. 93°29′19″W.)

Within a 4.4-mile radius of Grand Rapids/Itasca County, Gordon Newstrom Field Airport, and that airspace extending from the surface within 2.4 miles each side of the Grand Rapids VOR 160° radial, extending from the 4.4-mile radius to 7.0 miles southeast of the VOR/DME. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airman. 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.

* * * * *

AGL MN E5 Grand Rapids, MN [Revised]

Grand Rapids/Itasca County, Gordon Newstrom Field Airport, MN
(Lat. 47°12′40″N., long. 93°30′35″W.)
Grand Rapids VOR/DME
(Lat. 47°09′49″N., long. 93°29′19″W.)

That airspace extending upward from 700 feet above the surface within a 6.8-mile radius of the Grand Rapids/Itasca County, Gordon Newstrom Field Airport, and 4.4 miles each side of the Grand Rapids VOR 161° radial, extending from the 6.8-mile radius to 7.0 miles southeast of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on July 29, 1998.

Richard K. Petersen,

Acting Assistant Manager, Air Traffic Division.

[FR Doc. 98–21471 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 3, 5, 10, 20, 207, 310, 312, 316, 600, 601, 607, 610, 640, and 660

[Docket No. 98N–0144]

RIN 0910–AB29

Biological Products Regulated Under Section 351 of the Public Health Service Act; Implementation of Biologics License; Elimination of Establishment License and Product License; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; notice of workshop.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop to present issues related to the agency's proposed rule entitled ''Biological Products Regulated Under Section 351 of the Public Health Service Act; Implementation of Biologics License; Elimination of Establishment License and Product License'' issued recently in the **Federal Register**. The purpose of the public workshop is to provide interested persons an opportunity to more clearly understand the proposed rule and its effect on industry and the public.

DATES: The public workshop will be held on Wednesday, September 2, 1998, 9 a.m. to 3 p.m. Submit written comments by October 14, 1998. Fax registration information to the contact person by August 21, 1998.

ADDRESSES: The public workshop will be held at the Hyatt Regency Hotel, One Bethesda Metro, Bethesda, MD 20814, 301–657–6406. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION: Kathy A. Eberhart, Center for Biologics Evaluation and Research (HFM–43), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–1317, FAX 301–827–3079, e-mail ''eberhart@cber.fda.gov''.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 31, 1998 (63 FR 40858), FDA published a proposed rule entitled ''Biological Products Regulated Under Section 351 of the Public Health Service Act; Implementation of Biologics License; Elimination of Establishment License and Product License'' proposing to revise the regulations regarding the procedures for

application for approval to market a biological product regulated under section 351 of the Public Health Service Act (42 U.S.C. 262 *et seq.*). Currently, most manufacturers must submit an establishment license application (ELA) and a product license application (PLA) when requesting approval to market a biological product in interstate commerce. Under the proposed regulations, a manufacturer would submit to FDA the appropriate establishment and product information in a single biologics license application (BLA) in lieu of filing a separate ELA and PLA. The BLA is intended to replace the many different ELA and PLA forms currently in use. Upon approval of the BLA, a manufacturer would receive a single biologics license to market the product in interstate commerce.

Interested persons may submit written comments on the proposed rule (63 FR 40858) to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with docket number found in brackets in the heading of this document and should be submitted by October 14, 1998. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Registration: Fax registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by Friday, August 21, 1998. There is no registration fee for the workshop. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Kathy A. Eberhart at least 7 days in advance.

Transcripts: Transcripts of the workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the workshop at a cost of 10 cents per page.

Dated: August 5, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–21406 Filed 8–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 902

[AK–007–FOR, Amendment No. VII]

Alaska Regulatory Program

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

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

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the Alaska regulatory program (hereinafter, the ''Alaska program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of revisions to rules pertaining to general permitting requirements, general permit application information requirements, environmental resource information requirements, reclamation and operation plan requirements, permitting for special categories of mining, coal exploration, self-bonding requirements, performance standards, and general provisions. The amendment is intended to revise the Alaska program to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.d.t., September 10, 1998. If requested, a public hearing on the proposed amendment will be held on September 8, 1998. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t., August 26, 1998.

ADDRESSES: Written comments should be mailed or hand delivered to James F. Fulton at the address listed below.

Copies of the Alaska program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Denver Field Division.

James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, Suite 3320, Denver, Colorado 80202–5733.

Robert Loeffler, Large Mine Project Manager, Alaska Division of Mining and Water Management, 3601 C Street, Suite 800, Anchorage, Alaska 99503–5935, Telephone: 907–269–8627.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Telephone: 303–844–1424; Internet address: JFULTON@OSMRE.GOV.

SUPPLEMENTARY INFORMATION:

I. Background on the Alaska Program

On March 23, 1983, the Secretary of the Interior conditionally approved the Alaska program. General background information on the Alaska program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Alaska program can be found in the March 23, 1983, **Federal Register** (48 FR 12274).

Subsequent actions concerning Alaska's program and program amendments can be found at 30 CFR 902.15 and 902.16.

II. Proposed Amendment

By letter dated July 30, 1998, Alaska submitted a proposed amendment (amendment number VII, administrative record No. AK–07–01) to its program pursuant to SMCRA, 30 U.S.C. 1201 *et seq.* Alaska submitted the proposed amendment at its own initiative. The provisions of the Alaska Surface Coal Mining Program Regulations that Alaska proposed to revise were: 11 Alaska Administrative Code (AAC) 90.002(a), (b), and (c), responsibilities, and 11 AAC 90.011[(a)] (1) and (2), permit fees, as provided in Article 2, General Permitting Requirements; 11 AAC 90.025(a)(2), (b), and (c), authority to enter and ownership information, as provided in Article 3, General Permit Application Information Requirements; 11 AAC 90.045(a)(1) and (2), geology description, and 11 AAC 90.049[(a)], [(a)](1), (2), and [(a)](2)(C) through (H) surface water information, as provided in Article 4, Environmental Resource Information Requirements; 11 AAC 90.083(b)(9) and (11), reclamation plan general requirements, and 11 AAC 90.097, transportation facilities, as provided in Article 5, Reclamation and Operation Plan; 11 AAC 90.149(d) and (d)(1), operations near alluvial valley floors, as provided in Article 7, Permitting for Special Categories of Mining; 11 AAC 90.163(a) and (d), exploration that substantially disturbs the natural land surface or occurs in an area designated unsuitable for surface coal mining, as provided in Article 8, Exploration; 11 AAC 90.207(f), self-bonding requirements, as provided in Article 10, Bonding; 11 AAC 90.337(f), impoundment inspection, 11 AAC 90.375(f), public notice of blasting, 11

AAC 90.391(h)(1) and (2) and (s), disposal of excess spoil and coal mine waste, 11 AAC 90.401(e), coal mine waste, refuse piles, 11 AAC 90.407(e), coal mine waste, dams and embankments, 11 AAC 90.423(b) and (h), protection of fish and wildlife, 11 AAC 90.443(d)(1), (k), and (k)(1) and (2), backfilling and grading, and 11 AAC 90.491(e), (f), and (f)(1) and (2), construction and maintenance of roads, transportation and support facilities, and utility installations, as provided in Article 11, Performance Standards; and 11 AAC 90.901(e), applicability, 11 AAC 90.907(c) and (j), public participation, and 11 AAC 90.911(92), definition of ''road,'' as provided in Article 17, General Provisions.

Alaska is proposing numerous editorial changes and recodifications for the purpose of clarity and in order to be consistent with the requirements of the State's ''Drafting Manual for Administrative Regulations'' (1995 edition). In addition, Alaska specifically proposes at 11 AAC 90.049[(a)](2)(G) to require that water quality data show acidity information if there is potential for acid drainage from the proposed mining operation, and at 11 AAC 90.207(f)(2) to apply certain provisions for self-bonding, including criteria that must be met by the self-bond guarantor.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Alaska program.

1. Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Denver Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

2. Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.d.t., August 26, 1998. Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT**. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

3. Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES**. A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

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

2. Executive Order 12988

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

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 192(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

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

5. Regulatory Flexibility Act

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

6. Unfunded Mandates

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

List of Subjects in 30 CFR Part 902

Intergovernmental relations, Surface mining, Underground mining.

Dated: August 4, 1998.

Russell F. Price,

Acting Regional Director,

Western Regional Coordinating Center.

[FR Doc. 98–21528 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–05–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1254

RIN 3095–AA69

Researcher Registration and Research Room Procedures

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule proposes to update NARA regulations relating to researcher registration, research room procedures, and private microfilming projects. Significant changes include lowering the age at which NARA will allow full research privileges from 16 years old to 14 years old; extending the valid period of researcher cards from 2 years to 3 years; revising the list of equipment permitted in research rooms; and revising the criteria and procedures for private microfilming projects to provide more specific criteria relative to the types of requests that will be approved and conditions on approval. This rule would affect individuals who wish to use NARA research rooms in the National Archives Building and College Park facility in the Washington, DC, area, regional records services facilities, and Presidential libraries and organizations that wish to prepare microfilm publications from NARA holdings.

DATES: Comments must be received by October 13, 1998.

ADDRESSES: Comments must be sent to Regulation Comments Desk (NPOL), Room 4100, Policy and Communications Staff, National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. They may be faxed to 301–713–7270.

Comments on the information collections contained in this proposed rule should also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NARA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for information or for copies of the supporting statement for the information collections should be directed to Nancy Allard at telephone number 301–713–7360, ext. 226, or fax number 301–713–7270.

SUPPLEMENTARY INFORMATION: Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes have been made to correct titles and mailing addresses or to provide clarification.

In §§ 1254.1 and 1254.26(a), NARA proposes to lower to 14 years the minimum age at which an individual may be granted full research privileges. Currently, students who are younger than 16 must obtain special permission for a researcher card and must be accompanied by an adult while performing research. In the Washington, DC, area, students must also present a letter of reference from a teacher. This rule would remove these conditions. NARA has routinely granted permission to 14-and 15-year old students who apply to use original records, and has found that these students are as responsible as 16-year olds. NARA is taking this action to eliminate some of the correspondence and/or meetings which have been required to obtain the special permission under the current regulation.

We are updating § 1254.6 to provide that researcher identification cards are valid for 3 years. We are also updating research room procedures to reflect the practice of registering in a research room by scanning bar-coded researcher identification cards that have been issued through the automated registration system at the College Park facility.

We are revising § 1254.20 to ban use of smokeless tobacco products in a research room to the current prohibitions on eating, drinking, and chewing gum. Because all NARA facilities are now smoke-free, we have removed references to designated smoking areas. Researchers and staff who wish to smoke must now do so outside the facility.

In that section we are also modifying the grounds on which a researcher identification card may be revoked to add verbal and physical harassment of other researchers, NARA employees, volunteers, or contractor employees. Harassment is far more prevalent and more serious than the current grounds of annoyance. We are also clarifying the description of unacceptable behavior to read ''actions or language.'' Finally, we are clarifying that the grounds for revoking privileges and for denying probationary reinstatement include danger to either documents or NARA property.

In § 1254.26, we have removed references to the Suitland Research Room, which closed for archival research on May 6, 1996, and changed the title of the section to specify archival research rooms. We have also updated the list of equipment that may be permitted in the research room to include scanners, to delete typewriters, to remove the requirement that cameras be hand-held, and to caution that equipment that could potentially damage records will not be approved. We have added a provision that time limits may be set on use of researcher-owned equipment if the demand for the space set aside for this use exceeds the space available.

Section 1254.71, which applies to self-service copying at NARA archival facilities in the Washington, DC, area, has been revised to remove references to the Washington National Records Center, which no longer has an archival research room with a self-service copier; to delete the restricted hours for reserved use of self-service copiers because the copiers are now available for use during all research room hours; to clarify procedures to be followed for inspection of records before and after self-service copying; to allow self-service copying of bound archival volumes where specialized copiers are provided; and to permit, under special circumstances, research teams to bring their own copier equipment into the College Park research room. The proposed new provision for bringing copiers into the College Park research room includes a new information collection subject to the Paperwork Reduction Act.

Section 1254.71(g) is revised to reflect NARA plans to stop issuing refunds for debit cards used in self-service copier operations in the Washington, DC, area. Currently researchers may turn in partially used debit cards for refunds at the Cashier's Office in the National Archives Building or Archives II. Refunds of amounts over $20.00 are made by Treasury check or, if purchased with a credit card, by recrediting the credit card. Other refunds are provided in cash. The U.S. Treasury Department has notified agencies that in accordance with the Debt Collection Improvement Act of 1996 (P.L. 104–134), Federal payments will be made by electronic funds transfer (EFT) beginning on January 1, 1999. Customer refunds are affected by this requirement and will be especially problematic to process as EFT payments. A review of debit card refunds made during a four-month period at the National Archives Building found that nearly 56 percent of the refunds were for $2 or less, and that 78 percent of the refunds were for $5 or less. At Archives II, the review showed a higher percentage of larger refunds, but almost 43 percent of the refunds were for $5 or less and 65 percent of the refunds were for no more than $10. NARA's customers are usually one time users of its available services; the dollar amounts for debit card refunds are small; and the administrative processing costs are relatively high. Therefore, it is

not cost effective to continue this practice. We note that the Library of Congress does not offer refunds on debit cards. To ensure that researchers are aware of the change in policy, NARA will post a notice at the Cashier's Office and at all debit card dispensers that there will be no refunds, and the debit cards will be reprinted with a statement that no refunds will be provided. In addition, NARA proposes to establish a maximum dollar amount of $21.00 to deter researchers from purchasing large dollar value debit cards before determining how many copies they may want to make. Since debit cards have no expiration date, researchers may reuse their debit cards at any time by simply adding dollar value. The debit card dispensers allow researchers to add value to the debit card in $1, $5, $10, and $20 increments, but the maximum dollar value will be imposed so that a researcher may not have more than $21.00 on a debit card at any given time. We specifically seek your comments on the need for a limit on the value of the debit card and, if needed, whether $21 is an appropriate limit.

NARA also proposes to amend Subpart F of Part 1254 concerning the use of privately-owned microfilm equipment to film archival records and donated historical materials in NARA custody. In addition to updating NARA organizational titles and addresses and other minor clarifications, we are providing more specific criteria relative to the types of requests that will be approved and conditions on approval. In § 1254.94, we have added three criteria for evaluating the extent to which a proposed project would further NARA's efforts to preserve and provide access to the historical records of the Government; a requirement that detailed roll lists be provided to NARA with the film; a requirement that any finding aids produced by the project be provided to NARA. The latter two requirements normally have been included in agreements that NARA has negotiated with private microfilmers; we are adding the requirements to the regulation to conform the regulation with practice. We are adding a procedure in § 1254.92(j) for handling multiple requests equitably when the facility cannot accommodate all requests at the same time. We are also adding two conditions on approval relating to availability of NARA staff to provide the necessary support services and reimbursement for NARA support services. In § 1294.100, Microfilming procedures, we are adding provisions to allow NARA to charge direct costs of training and monitoring services provided to an approved project.

Information Collections Subject to the Paperwork Reduction Act

The information collections in §§ 1254.71(e), and 1254.92 are subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The information collection in § 1254.92 has been approved by OMB with the control number 3095–0017. The changes that NARA is proposing for that section do not affect the information collection.

NARA invites the general public and other Federal agencies to comment on the proposed information collection in § 1254.71(e), request to bring a personal copier into the Archives II research room. The affected public are research teams that desire to bring their own copier equipment into the research room because of the large volume of copies to be made. We estimate that we will receive a maximum of 5 requests per year and that the respondent burden to provide the information will be 3 hours per request, for a total burden of 15 hours. The comments and suggestions should address one or more of the following points: (a) whether the proposed collection information is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. Comments should be sent to NARA and OMB (see **ADDRESSES**).

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; it has been submitted to the Office of Management and Budget for review of the information collections subject to the Paperwork Reduction Act. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on small entities.

List of Subjects in 36 CFR Part 1254

Archives and records, Confidential business information, Freedom of information, Micrographics, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, NARA proposes to amend part 1254 of title 36, Code of Federal Regulations, as follows:

PART 1254—AVAILABILITY OF RECORDS AND DONATED HISTORICAL MATERIALS

1. The authority citation for part 1254 continues to read:

Authority: 44 U.S.C. 2101—2118; 5 U.S.C. 552; and E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 1254.1 is amended by revising paragraph (d) to read:

§ 1254.1 General provisions.

* * * * *

(d) A Regional Administrator, a director of a Presidential Library, or a director of a Washington, DC, area research unit may require that researchers under the age of 14 years be accompanied by an adult researcher who agrees in writing to be present when the documents are used and to be responsible for compliance with the research room rules set forth in subpart B.

* * * * *

3. Section 1254.2 is amended by revising paragraph (a) to read:

§ 1254.2 Location of documents and hours of use.

(a) Researchers should identify the location of the documents needed. Information about the location of records may be obtained by writing to the National Archives and Records Administration (NWCCR1), Washington, DC 20408; by sending an e-mail message to INQUIRE@NARA.GOV; sending a fax request to (301) 713–6920; or calling (202) 501–5400 or (301) 713–6800.

* * * * *

4. Section 1254.6 is revised to read:

§ 1254.6 Researcher identification card.

An identification card is issued to each person whose application is approved to use records other than microfilm. Cards are valid for 3 years. Cards may be renewed upon application. Cards are valid at each facility. Cards are not transferable and must be presented if requested by a guard or research room attendant.

§ 1254.8 [Amended]

5. In paragraphs (b) and (c) of § 1254.8, remove the phrase ''the Director of the Legal Services Staff (NXL) or his designee'' and add in its place the phrase ''the General Counsel (NGC) or his/her designee''.

6. Section 1254.10 is revised to read:

§ 1254.10 Registration.

Researchers must register each day they enter a research facility, furnishing the information on the registration sheet or scanning a bar-coded researcher

identification card, and may be asked to provide additional personal identification.

7. Section 1254.12 is amended by revising paragraph (a) to read:

§ 1254.12 Researcher's responsibility for documents.

(a) The research room attendant may limit the quantity of documents delivered to a researcher at one time. The researcher must sign for the documents received and may be required to show his/her researcher identification card. The researcher is responsible for the proper handling of and prevention of damage to all documents delivered to him/her until he/she returns them. When the researcher is finished using the documents, the documents must be returned to the research room attendant. The reference service slip that accompanies the documents to the research room must not be removed. If asked to do so, the researcher must return documents as much as 15 minutes before closing time. Before leaving a research room, even for a short time, a researcher must notify the research room attendant and place all documents in their proper containers.

* * * * *

8. Section 1254.14 is amended by revising paragraph (b) to read:

§ 1254.14 Restrictions on using microfilm readers.

* * * * *

(b) The number of researchers in the microfilm research room in the National Archives Building may be limited, for fire safety reasons, to those researchers assigned a microfilm reader.

* * * * *

9. Section 1254.16 is amended by revising paragraphs (d) and (e) to read:

§ 1254.16 Prevention of damage to documents.

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(d) Documents must be identified for reproduction only with a paper tab provided by NARA. Documents may not be identified with paper clips, rubber bands, self-stick notes or similar devices.

(e) Microfilm must be carefully removed from and returned, rewound, to the proper microfilm boxes. Care must be taken loading and unloading microfilm from microfilm readers. Damaged microfilm must be reported to the research room attendant as soon as it is discovered.

* * * * *

10. Section 1254.20 is revised to read:

§ 1254.20 Conduct.

(a) *Regulations.* Researchers are subject to the provisions of part 1280 of this chapter and to all rules and regulations issued and posted or distributed by a facility director supplementing Subpart B of this part, including rules on the use of NARA equipment. Eating, drinking, chewing gum, or using smokeless tobacco products in a research room are prohibited. Smoking is prohibited in all NARA facilities. Loud talking and other activities likely to disturb other researchers are also prohibited. Persons desiring to use typewriters, computers, sound recording devices, or similar equipment must work in areas designated by the research room attendant, when so required.

(b) *Revocation of a researcher identification card.* If researchers who receive researcher identification cards refuse to comply with the rules and regulations of a NARA facility, or by their actions or language demonstrate that they present a danger to the documents or NARA property, or present a danger, verbally or physically harass, or annoy other researchers, NARA or contractor employees, or volunteers, they may have their identification cards revoked by the director. A researcher whose card is revoked is denied research privileges at all NARA facilities and must receive a written notice of the reasons for the revocation within 3 workdays. A researcher whose identification card is revoked has 30 calendar days after the revocation to appeal in writing to the Archivist of the United States, National Archives and Records Administration (N), 8601 Adelphi Rd., College Park, MD 20740–6001, for reinstatement of research privileges. On receiving an appeal, the Archivist of the United States has 30 days to decide whether or not to reinstate the research privileges. If the revocation is upheld or if no appeal is made, the researcher may not apply for another identification card for 6 months from the date of the revocation, and all NARA facilities will be so notified. At the end of 6 months, a researcher whose identification card was revoked may reapply for a new card. Upon application, a new identification card is issued for a probationary period of 2 months. However, if the probationary reinstatement of a researcher poses a serious threat to the safety of documents, persons or property, the director may deny probationary reinstatement and will so advise the applicant in writing within 3 workdays of receiving the application. At the end of the probationary period the researcher may apply for a new, unrestricted identification card. If the researcher's conduct in NARA facilities during the probationary period is proper, a regular identification card is issued. If the researcher's conduct during the probationary period is found unsatisfactory or if the director denies reinstatement, research privileges will again be denied for 6 months. A second and any later revocation of research privileges may be appealed to the Archivist of the United States under the procedures in this section.

(c) *Withdrawal of research privileges for researchers not required to have a researcher identification card.* If researchers who are not required to have researcher identification cards refuse to comply with the rules and regulations of a NARA facility or by their actions or language demonstrate that they present a danger to NARA property, or present a danger, verbally or physically harass, or annoy other researchers, NARA or contractor employees, or volunteers, NARA may withdraw all research privileges. A researcher whose research privileges are withdrawn under this paragraph will lose research privileges at all NARA research rooms, including those for which no researcher identification card is required. A researcher whose research privileges have been withdrawn may not apply for a researcher identification card, or for readmittance to research rooms not requiring a research card, until research privileges have been restored (see below). A researcher whose research privileges are withdrawn under this paragraph will be sent a written notice of the reasons for the withdrawal within 3 workdays. The researcher has 30 calendar days after the withdrawal to appeal in writing to the Archivist of the United States (address: National Archives and Records Administration (N), 8601 Adelphi Rd., College Park, MD 20740–6001) for reinstatement of research privileges. The Archivist of the United States has 30 calendar days from receipt of the appeal to decide whether or not to reinstate the research privileges. If the withdrawal is upheld or if no appeal is made, the researcher may request reinstatement of privileges no earlier than 180 calendar days from the date the privileges were revoked. If readmission to a NARA facility poses a threat to the safety of persons or property, NARA may continue to extend the withdrawal period for 180-day periods. The researcher will be notified in writing of all such extensions within 3 workdays of NARA receiving a request for reinstatement of research privileges.

The researcher may appeal any decision to extend the withdrawal of research privileges to the Archivist of the United States. All appeals must be made in writing to the Archivist of the United States within 30 calendar days of the decision being appealed.

11. Section 1254.24 is amended by adding new paragraph (d) to read:

§ 1254.24 Locker use policy.

* * * * *

(d) NARA may charge a replacement fee for lost locker keys.

12. Section 1254.26 is amended by revising paragraphs (a) through (d), the introductory text of paragraph (e), paragraphs (e)(2) and (e)(3), paragraph (g), the introductory text of paragraph (h), and paragraphs (h)(2)(i), (h)(2)(ii), (h)(5), and (h)(6) to read:

§ 1254.26 Additional rules for use of certain research rooms in NARA facilities in the Washington, DC, area.

(a) Admission to research rooms in the National Archives Building and the National Archives at College Park facility is limited to individuals examining and/or copying documents and other materials in the custody of the National Archives and Records Administration. Children under the age of 14 will not be admitted to these research rooms unless they have been granted research privileges or are granted an exception to this provision to view specific documents that a parent or other accompanying adult researcher is using. The exception will be granted by the Chief of the Archives I or Archives II Research Room Services Branch for a child who is able to read and who will be closely supervised by the adult researcher while in the research room. Normally, such a child will be admitted only for the short period required to view the documents. Unless otherwise permitted, persons without a researcher card may not actively participate in research activities, e.g., removing, copying, or refiling documents. Students under the age of 14 who wish to perform research on original documents must apply in person to the Chief of the Research Room Services Branch where the documents are located and present a letter of reference from a teacher. Such students may contact NARA by phone or letter in advance of their visit to discuss their eligibility for research privileges. Students under the age of 14 who have been granted research privileges will be required to be accompanied in the research room by an adult with similar privileges, unless the Chief of the Archives I or Archives II Research Room Services Branch specifically waives this requirement with respect to individual researchers.

(b) The procedures in paragraphs (d) through (g) of this section apply to all research rooms in the National Archives Building (except the Microfilm Research Room) and in the National Archives at College Park facility. These procedures are in addition to the procedures specified elsewhere in this part.

(c) Researchers bringing personal computers, tape recorders, cameras, and other equipment into the National Archives Building must complete the Equipment Log at the guard's desk. The log will evidence personal ownership and will be checked by the guard when such equipment is removed from the building.

(d) Researchers must present a valid researcher identification card to the guard or research room attendant on entering the research room. All researchers are required to register their attendance each day. Researchers will also register the time they leave the research area at the end of the visit for that day. Researchers are not required to sign in or out when leaving the area temporarily.

(e) Researchers may not bring into the research rooms overcoats, raincoats, hats, or similar apparel; personal paper-to-paper copiers, unless permitted in accordance with § 1254.71(e) of this part; briefcases, suitcases, day packs, purses, or similar containers of personal property; notebooks, notepaper, note cards, folders or other containers for paper. These items may be stored at no cost in lockers available for researchers. The following exceptions may be granted:

* * * * *

(2) Notes, references, lists of documents to be consulted, and other materials may be admitted if the chief of the branch administering the research room or the senior staff member on duty in the research room determines they are essential to a researcher's work requirements. Materials approved for admission will be stamped, initialed, and dated by a NARA or contractor employee, to indicate that they are the personal property of the researcher;

(3) Personal computers, tape recorders, scanners, cameras, and similar equipment may be admitted by the research room attendant provided such equipment meet the approved standards for preservation set by the NARA Preservation Programs unit. Use of researcher owned equipment may be limited to designated areas within the research rooms. If demand to use equipment exceeds the space available for equipment use, time limits may be imposed. Equipment that could potentially damage documents will not be approved. Scanners and other copying equipment must meet these minimum standards:

(i) Equipment platens or copy boards must be the same size or larger than the records. No part of a record may overhang the platen or copy board.

(ii) No part of the equipment may come in contact with records in a manner that causes friction, abrasion, or that otherwise crushes or damages records.

(iii) Drum scanners are prohibited.

(iv) Automatic feeder devices on flatbed scanners are prohibited. When using a slide scanner, slides must be checked after scanning to ensure that no damage occurs while the slide is inside the scanner.

(v) Light sources must not raise the surface temperature of the record being copied. Light sources that generate ultraviolet light must be filtered.

(vi) All equipment surfaces must be clean and dry before being used with records. Cleaning and equipment maintenance activities, such as replacing toner cartridges, may not take place when records are present. Aerosols or ammonia-containing cleaning solutions are not permitted. A 50% water and 50% isopropyl alcohol solution is permitted for cleaning. The chief of the branch administering the research room or the senior staff member on duty in the research room will review the determination made by the research room attendant if requested to do so by the researcher; and

* * * * *

(g) The personal property of all researchers, including notes, electrostatic copies, equipment cases, tape recorders, cameras, personal computers, and other property, will be inspected before removal from the research room. Guards and research room attendants may request that a member of the research room staff examine such personal items prior to their removal from the research room.

(h) In addition to the procedures in paragraphs (c) through (g) of this section, the following procedures apply to the Motion Picture, Sound, and Video Research Room (hereinafter, the ''research room'') in the College Park facility:

* * * * *

(2) * * *

(i) Personal recording equipment brought into the unrestricted viewing and copying area in the research room may be inspected and tagged by the research room attendant prior to admittance. All equipment and

accessory devices must be placed on the carts provided by NARA, except that a tripod holding a video camera may be placed on the floor in front of a film-viewing station. NARA is not responsible for damage to or loss of personal equipment and accessories.

(ii) Researchers shall remain in the research room while their personal equipment is in use at an audio or video viewing station. The film viewing stations must be attended at all times while in use. Researchers shall remove their personal equipment from the research room when they leave the room for the day.

* * * * *

(5) The NARA-furnished recorder or personal recording device and media may be used to make a copy of unrestricted archival materials in the research room.

(6) Each researcher will be provided a copy of the Motion Picture, Sound, and Video Research Room rules and a warning notice on potential copyright claims in unrestricted titles. The individual making and/or using the copy is responsible for obtaining any needed permission or release from a copyright owner for other than personal use of the copy.

* * * * *

13. Section 1254.27 is amended by revising the section heading, paragraphs (a) and (c)(3) to read:

§ 1254.27 Additional rules for use of certain research rooms in regional records services facilities and Presidential libraries.

(a) When directed by the appropriate Regional Administrator or library director, the following procedures shall be observed in regional records services facility and Presidential library archival research rooms where original documents are used. These procedures are in addition to the procedures specified elsewhere in this part.

* * * * *

(c) * * *

(3) Typewriters, personal computers, tape recorders, and hand-held cameras may be admitted by the guard or research room attendant provided that they are inspected, approved, and tagged prior to admittance. For a regional records services facility, the Regional Administrator, the Coordinator or other supervisor having responsibility for research room operations in a facility, or the senior attendant on duty will review the determination made by the guard or research room attendant if requested to do so by the researcher. In a Presidential library, the director, or the senior attendant on duty in the research room will review the determination made by the guard or research room attendant if requested to do so by the researcher. In facilities where personal paper-to-paper copiers and scanners are permitted, the researcher must obtain prior written approval from the facility director to bring in the copier or scanner. The request to bring a personal copier or scanner should state the space and power consumption requirements and the intended period of use; and

* * * * *

14. Section 1254.70 is amended by revising paragraph (a) to read:

§ 1254.70 NARA copying services.

(a) The copying of documents will be done by a contractor or NARA staff with equipment belonging to NARA. NARA reserves the right to make a duplicate, at NARA expense, of any material copied. Such duplicates may be used by NARA to make additional copies for others.

* * * * *

15. Section 1254.71 is amended by revising the section heading, paragraphs (a) through (c)(2), and (d)(1); redesignating paragraph (e) as paragraph (f); adding new paragraph (e), and revising paragraph (g) to read:

§ 1254.71 Researcher use of the self-service card-operated copiers in the National Archives Building and the National Archives at College Park.

(a) *General.* Self-service card-operated copiers are located in research rooms in the National Archives Building and the National Archives at College Park. Other copiers set aside for use by reservation are located in designated research areas. Procedures for use are outlined in paragraphs (b) through (h).

(b) *Limitations and hours of use.* (1) There is a 3-minute time limit on copiers in research rooms when others are waiting to use the copier. Researchers using microfilm reader-printers may be limited to three copies when others are waiting to use the machine. Researchers wishing to copy large quantities of documents should see a staff member in the research room to reserve a copier for an extended time period.

(2) If an appointment must be canceled due to copier failure, NARA will make every effort to schedule a new mutually agreed-upon time. However, NARA will not displace researchers whose appointments are not affected by the copier failure.

(c) *Copying procedures.* (1) Individual documents to be copied shall be tabbed in accordance with the procedures governing the tabbing of documents and; brought to the research room attendant for inspection in the file unit. The research room attendant will examine the documents to determine whether they can be copied on the self-service copier. The chief of the branch administering the research room will review the determination of suitability if asked to do so by the researcher. After reproduction is completed, documents removed from files for copying must be returned to their original position in the file container, any fasteners removed to facilitate copying must be refastened, and any tabs placed on the documents to identify items to be copied must be removed.

(2) Researchers using the reserved copier must submit the containers of documents to the attendant for review prior to the appointment. The review time required is specified in each research room. Research room attendants may inspect documents after copying.

* * * * *

(d) * * *

(1) Bound archival volumes (except when specialized copiers are provided);

* * * * *

(e) *Use of personal paper-to-paper copiers at the National Archives at College Park facility.* (1) NARA will approve a limited number of researchers to bring in and use personal paper-to-paper copying equipment in the Textual Research Room (Room 2000). Requests must be made in writing to the Chief, Archives II Research Room Services Branch (NWCCR2), National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740–6001. Requests must identify the records to be copied, the expected duration of the project, and the make and model of the equipment.

(2) NARA will evaluate requests using the following criteria:

(i) A minimum of 3,000 pages must be copied;

(ii) The project is expected to take at least 4 weeks, with the copier in use a minimum of 6 hours per day or 30 hours per week;

(iii) The copying equipment must meet the standards for preservation set by NARA's Preservation Programs unit (see § 1254.26(e)(3) of this part); and

(iv) Space is available for the personal copying project. NARA will allow no more than 3 personal copying projects in the research room at one time, with Federal agencies given priority over other users.

(3) Researchers must coordinate with research room management and oversee the installation and removal of copying equipment and are responsible for the cost and supervision of all service calls

and repairs. Copying equipment and supplies must be removed within two business days after the personal copying project is completed.

(4) NARA will not be responsible for any personal equipment or consumable supplies.

(5) Each operator must obtain a valid researcher identification card and be trained by NARA staff on the proper methods for handling and copying archival documents.

(7) Operators must abide by all regulations on copying stated in paragraphs (c), (d) and (f) of this section.

(8) NARA reserves the right to discontinue the privilege of using a personal copier at any time without notice. Conditions under which NARA would discontinue the privilege include: violation of one of the conditions in paragraphs (c), (d), (e), or (f) of this section; a need to provide space for a Federal agency; or a lack of NARA staff to supervise the area.

* * * * *

(g) *Purchasing debit cards for copiers.* Researchers may use cash to purchase a debit card from a vending machine during the hours that self-service copiers are in operation. Additionally, debit cards may be purchased with cash, check, money order, credit card, or funds from an active deposit account from the Cashier's Office located in room G–1 of the National Archives Building, and the researcher lobby of the College Park facility, during posted hours. The debit card will, when inserted into the copier, enable the user to make copies, for the appropriate fee, up to the value on the debit card. Researchers may add value to the debit card by using the vending machine. No refunds will be made. The fee for self-service copiers is found in § 1258.12 of this chapter.

16. Section 1254.90 is revised to read:

§ 1254.90 General.

(a) This Subpart establishes rules and procedures governing the use of privately owned microfilm equipment to film accessioned archival records and donated historical materials in the legal and physical custody of the National Archives and Records Administration (NARA) by foreign and domestic government agencies, private commercial firms, academic research groups, and other entities or individuals who request exemption from obtaining copies through the regular fee schedule reproduction ordering system of NARA.

(b) Persons or organizations wishing to microfilm Federal agency records in the physical custody of the Washington National Records Center (WNRC) contact the director, WNRC, about procedures for obtaining permission from the originating agency to film those records. For information about procedures for obtaining permission from the originating agency to film records in the physical custody of the National Personnel Records Center (NPRC) or in the records center operation of one of NARA's regional records services facilities, those wishing to film such records should contact the Regional Administrator of the region in which the records are located, or the director, NPRC, for records in NPRC.

(c) Federal agencies needing to microfilm archival records in support of the agency's mission must contact the appropriate office as specified in § 1254.92 of this part, as soon as possible after the need is identified, for information concerning standards and procedures for microfilming archival records.

17. Section 1254.92 is amended by revising paragraphs (a) and (b) and adding new paragraphs (d)(3) and (d)(4) to read as follows:

§ 1254.92 Requests to microfilm records and donated historical materials.

(a) Requests to microfilm archival records or donated historical materials (except donated historical materials under the control of the Office of Presidential Libraries) in the Washington, DC area must be made in writing to the Assistant Archivist for Records Services—Washington, DC (NW), 8601 Adelphi Rd., College Park, MD 20740–6001. Requests to microfilm archival records or donated historical materials held in a NARA regional records service facility must be made in writing to the Assistant Archivist for Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740–6001. Requests to microfilm records or donated historical materials in a Presidential library or donated historical materials in the Washington area under the control of the Office of Presidential Libraries must be made in writing to the Assistant Archivist for Presidential Libraries (NL), 8601 Adelphi Rd., College Park, MD 20740–6001. OMB control number 3095—0017 has been assigned to the information collection contained in this section.

(b) Requests to use privately owned microfilm equipment should be submitted six months in advance of the proposed starting date of the microfilming project. Requests submitted with less advance notice will be considered and may be approved if adequate NARA space and staff are available and if all training, records preparation and other NARA requirements can be completed in a shorter time frame. Only one microfilming project may be included in a request. NARA will not accept additional requests from an individual or organization to microfilm records in a NARA facility while NARA is evaluating an earlier request from that individual or organization to microfilm records at that facility. NARA will establish the number of camera spaces available to a single project based upon the total number of projects approved for filming at that time.

* * * * *

(d) * * *

(3) If the original documents are presidential or vice-presidential records as specified in 44 U.S.C. 2201, the requester must agree to include on the film this statement: ''The documents reproduced in this publication are presidential records in the custody of the (name of Presidential library or National Archives of the United States). NARA administers them in accordance with the requirements of Title 44, U.S.C. No copyright is claimed in these official presidential records.

(4) If the original documents are records of Congress, the requester must agree to include on the film this statement: ''The documents reproduced in this publication are among the records of the (House of Representatives/Senate) in the physical custody of National Archives and Records Administration (NARA). NARA administers them in accordance with the requirements of the (House/Senate).

* * * * *

18. Section 1254.94 is amended by adding paragraphs (a)(1) through (a)(3), (d)(3), (d)(4), (k), and (l), revising the introductory text of paragraph (d), paragraph (d)(1) and paragraph (i), to read as follows:

§ 1254.94 Criteria for granting the requests.

(a) * * *

(1) In considering multiple requests NARA will give priority to microfilming records that have research value for a variety of studies or that contain basic information for fields of research in which researchers have demonstrated substantial interest.

(2) The records to be filmed should be reasonably complete and not subject to future accessions, especially of appreciable volumes, within the original body of records.

(3) The records to be filmed should not have substantial numbers of documents withdrawn because of continuing security classification or privacy or other restriction.

* * * * *

(d) NARA will approve only requests which specify that NARA will receive a first generation silver halide duplicate negative containing no splices made from the original camera negative of the microform record created in accordance with part 1230 of this chapter and which specify that NARA will receive complete indexes or other finding aids to the microfilm. NARA may waive any of the requirements of this paragraph at its discretion.

(1) NARA may use this duplicate negative microform to make duplicate preservation and reference copies. The copies may be made available for NARA and public use in NARA facilities and programs immediately upon receipt.

* * * * *

(3) Detailed roll lists must be delivered to NARA with the film. The lists must give the full range of file titles and complete list of all file numbers on each roll of microfilm.

(4) If the microfilming organization or individual prepares subject indexes, name indexes or other finding aids to its version of the microfilm in hard copy or in electronic form, it must provide NARA with hard copy and electronic versions of these finding aids. The electronic version should be in a form that can run easily on NARA's internal and external computer network(s).

* * * * *

(i) NARA will not approve requests to microfilm records in NARA facilities in which there is insufficient space available for private microfilming. NARA also will not approve requests where the only space available for filming is in the facility's research room, and such work would disturb researchers. NARA will not move records from a facility lacking space for private microfilming to another NARA facility for that purpose. When a NARA facility does not have enough space to accommodate all the requests made, NARA may schedule separate projects by limiting the time allowed for each particular project or by requiring projects to alternate in the use of the space.

* * * * *

(k) NARA will not approve requests to microfilm records when there is not enough staff to provide the necessary support services, including document preparation, training of private microfilmers, and monitoring the filming.

(l) NARA will not approve requests to microfilm records until NARA and the requester have agreed upon the amount and schedule of reimbursement by the requester for NARA support services.

19. Section 1254.96 is amended by revising paragraph (a)(3) and adding paragraph (a)(6) to read:

§ 1254.96 Microfilm preparation.

(a) * * *

(3) Declassifying security classified documents and restoring recently declassified records to the files;

* * * * *

(6) Reviewing for accuracy by supervisors or senior staff to make certain the preparation work has been done correctly.

* * * * *

20. Section 1254.98 is amended by revising paragraph (a) to read:

§ 1254.98 Equipment standards.

(a) Equipment must be designed for the microfilming of documents in roll form or standard fiche form and be operable from a table top. Only planetary type camera equipment may be used. Automatic feed devices may not be used. Book cradles or other specialized equipment designed for use with bound volumes, oversized documents, or other formats will be approved by NARA on a case-by-case basis.

* * * * *

21. Section 1254.100 is amended by revising paragraphs (b), (c) and (g) and adding paragraph (l) to read:

§ 1254.100 Microfilming standards.

* * * * *

(b) Documents must be handled in accordance with the training and instructions provided by NARA personnel so that documents are not damaged during copying and so that their original order is maintained. Only persons who have attended NARA training will be permitted to handle the documents or supervise microfilming operations. Training will be offered only in Washington, DC. NARA may charge the requester fees for training services and these fees will be based on direct salary costs (including benefits) and any related supply costs.

(c) Documents from only one file unit may be microfilmed at a time. After reproduction is completed, documents removed from files for microfilming must be returned to their original position in the file container, any fasteners removed to facilitate copying must be refastened, and any tabs placed on the documents to identify items to be copied must be removed.

* * * * *

(g) Microfilm equipment may be operated only in the presence of the research room attendant or a designated NARA employee. NARA may charge the requester fees for these monitoring services and these fees will be based on direct salary costs (including benefits). When more than one project share the same space, monitoring costs will be divided equally among the projects.

* * * * *

(l) NARA will provide the requester specific information on the fees for training, monitoring and any other substantial NARA services in the letter of approval. Payment of fees will be made in accordance with § 1258.14 of this chapter.

22. Section 1254.102 is amended by adding paragraph (e) to read:

§ 1254.102 Rescinding permission.

* * * * *

(e) If the person or organization fails to pay NARA fees in the agreed to amount or on the agreed to payment schedule.

Dated: August 4, 1998.

John W. Carlin,

Archivist of the United States.

[FR Doc. 98–21358 Filed 8–10–98; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 191–0088b; FRL–6138–7]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concern the control of oxides of nitrogen and sulfur compounds.

The intended effect of proposing approval of this rule is to regulate emissions of oxides of nitrogen and sulfur compounds in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). 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 rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to

this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect 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. Any parties interested in commenting should do so at this time.

DATES: Comments on must be received in writing by September 10, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Monterey Bay Unified Air Pollution Control District, Rule Development, 24850 Silver Cloud Ct., Monterey, CA 93940-6536.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

FOR FURTHER INFORMATION CONTACT: Stanley Tong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1191.

SUPPLEMENTARY INFORMATION: This document concerns Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 404, Sulfur Compounds and Nitrogen Oxides, submitted to EPA on March 3, 1997 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 28, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 98–21354 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 022–0087b; FRL–6138–3]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of oxides of nitrogen (NO_X) from electric power generating systems within the South Coast Air Quality Management District. The intended effect of proposing approval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the 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 action and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received in response to the direct final rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect 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 should do so at this time.

DATES: Comments must be received in writing by September 10, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

U.S. Environmental Protection Agency, Air Docket (6102), 401 ''M'' Street, SW, Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District (SCAQMD) Rule 1135, Emissions of Oxides of Nitrogen from Electric Power Generating Systems. SCAQMD Rule 1135 was submitted to EPA on January 28, 1992 by the California Air Resources Board. For further information, please see the information provided in the direct final action which is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 28, 1998.

Sally Seymour,

Acting Regional Administrator, Region IX.

[FR Doc. 98–21352 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 184–0086b; FRL–6138–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, San Diego Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the California State Implementation Plan (SIP) which concerns the control of volatile organic compound (VOC) emissions from organic solvents.

The intended effect of proposing approval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). 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 rationale for this approval is set forth in the direct final rule. If no relevant adverse

comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect 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 should do so at this time.

DATES: Comments must be received in writing by September 10, 1998.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of this rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

San Diego Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION: This document concerns San Diego Air Pollution Control District Rule 66, Organic Solvents, submitted to EPA on October 18, 1996 by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 30, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–21350 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME014–01–6994b; A–1–FRL–6136–2]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Source Surveillance Regulation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maine on June 30, 1994. This revision consists of a continuous emissions monitoring regulation. 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 amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this document, no further activity is contemplated in relation to this proposed rule. If EPA receives relevant 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.

DATES: Comments must be received on or before September 10, 1998.

ADDRESSES: Comments may be mailed to Susan Studlien, Deputy Director, Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, Region I, One Congress Street, 11th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule which is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 24, 1998.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 98–21348 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA162–0089; FRL–6141–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP) concerning the control of volatile organic compound (VOC) emissions from sources coating metal parts and products in the Santa Barbara County Air Pollution Control District. The intended effect of proposing a limited approval and limited disapproval of this rule is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because this revision, while strengthening the SIP, also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before September 10, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office,

[AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for approval into the California SIP is Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 330—Surface Coating of Metal Parts and Products. This rule was submitted by the California Air Resource Board to EPA on October 13, 1995.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the 1977 Clean Air Act (1977 CAA or pre-amended Act) that included Santa Barbara County (see 43 FR 8964; 40 CFR 81.305.) Santa Barbara County did not attain the ozone standard by the approved attainment date. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the Santa Barbara County portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP–Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress adopted statutorily the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP–Call used that guidance to indicate the necessary corrections for specific nonattainment areas. Initially, Santa Barbara County was classified as moderate;[2] therefore, this area is subject to the RACT fix-up requirement and the May 15, 1991 deadline. Santa Barbara County has since been reclassified as a serious ozone nonattainment area.

The State of California submitted many revised RACT rules to EPA for incorporation into its SIP on October 13, 1995, including the rule being acted on in this document. This document addresses EPA's proposed action for SBCAPCD Rule 330—Surface Coating of Metal Parts and Products. SBCAPCD revised and adopted Rule 330 on April 21, 1995. EPA found this rule complete on November 28, 1995 pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V.[3] EPA is proposing limited approval and limited disapproval of this version of Rule 330.

Rule 330 controls the emission of volatile organic compounds (VOCs) from industrial sites coating a variety of metal parts and products. VOCs contribute to the production of ground level ozone and smog. SBCAPCD—Rule 330 was adopted originally as part of SBCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and has been revised in response to EPA's SIP–Call and the section 182(a)(2)(A) CAA requirement. EPA's evaluation and proposed action for SBCAPCD—Rule 330 follow below.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA 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 today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents which specify the minimum requirements that a rule must contain in order to be approved into the SIP. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to SBCAPCD—Rule 330, Surface Coating of Metal Parts and Products is entitled, ''Surface Coating (Volume VI—Surface Coating of Miscellaneous Metal Parts and Products),'' EPA document # EPA–450/2–78–015. Further interpretations of EPA policy are found in the Blue Book. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On May 5, 1982, EPA approved into the SIP a version of Rule 330—Surface Coating of Metal Parts and Products that has been adopted by SBCAPCD on June 11, 1979. The October 15, 1995 submitted Rule 330 includes the following significant changes from the current SIP version of the rule:

—new and added definitions;
—new emission limits for baked coatings at new facilities;
—capture and control efficiency requirements;
—application equipment requirements;
—closed container requirements;
—labeling requirements;
—record keeping requirements; and,
—test method requirements.

EPA has evaluated SBCAPCD's submitted Rule 330 for consistency with the CAA, EPA regulations, and EPA policy and has found that the revisions address and correct many deficiencies previously identified by EPA. These corrected deficiencies have resulted in a clearer, more enforceable rule.

Although SBCAPCD's submitted Rule 330 will strengthen the SIP, the rule still contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA. Rule 330 contains the following deficiencies:

—the rule allows the use of up to 200 gallons per year of non-compliant coating exceeding USEPA's 55 gallon per year limit; and,
—the rule does not require a metal parts and products coating operation to record its daily use of non-compliant coatings.

[1] 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).

[2] In 1990, Santa Barbara County retained its designation and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). In 1997, Santa Barbara County was reclassified as a serious ozone nonattainment area. See 62 FR 65025, (December 17, 1997).

[3] EPA adopted completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

A detailed discussion of rule deficiencies can be found in the Technical Support Document for Rule 330, (7/98) which is available from the U.S. EPA, Region 9 office. Given these deficiencies, the Rule 330 is not approvable pursuant to the section 182(a)(2)(A) of the CAA because it is inconsistent with the interpretation of section 172 of the 1977 CAA as found in the Blue Book and may lead to rule enforceability problems.

Because of the above deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. To strengthen the SIP, EPA is proposing a limited approval of Santa Barbara County Air Pollution Control District's Rule 330—Surface Coating of Metal Parts and Products under sections 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18-month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this NPR has been adopted by the SBCAPCD is in effect in the Santa Barbara County Air Pollution Control District. EPA's final limited disapproval action will not prevent the Santa Barbara County Air Pollution Control District, the state of California, or EPA from enforcing this rule.

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 will be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Orders 12866 and 13045

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

The proposed rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under E.O. 12866.

B. Regulatory Flexibility Act

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 sections 110 and 301, 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 flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its action 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).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401–7671q.

Dated: July 31, 1998.

Felicia Marcus,

Regional Administrator, Region 9.

[FR Doc. 98–21519 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–198–0058; FRL–6142–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; South Coast Air Quality Management District, San Diego County Air Pollution Control District, and Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which primarily concern the control of particulate matter (PM) emissions. The

intended effect of these proposed SIP revisions is principally to regulate PM emissions in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final approval of these revisions will incorporate them into the federally approved SIP for the South Coast Air Quality Management District (SCAQMD), San Diego County Air Pollution Control District (SDCAPCD), and the Kern County Air Pollution Control District (KCAPCD). EPA has evaluated each of the revisions and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas. EPA is also proposing a limited approval and limited disapproval of SCAQMD Rule 403. EPA is proposing simultaneous limited approval and limited disapproval of this revision because, while it strengthens the SIP, it also does not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Written comments must be received on or before September 10, 1998.

ADDRESSES: Comments should be addressed to Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of the rules are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 ''L'' Street, Sacramento, CA

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA

Kern County Air Pollution Control District, 2700 ''M'' Street, Suite 302, Bakersfield, CA

FOR FURTHER INFORMATION CONTACT: Dave Jesson, (415) 744–1288.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the California SIP are: SCAQMD Rule 403, *Fugitive Dust* (as amended on February 14, 1997); SCAQMD Rule 403.1, *Wind Entrainment of Fugitive Dust* (adopted on January 15, 1993); SCAQMD Rule 1186, *PM_{10} Emissions from Paved and Unpaved Roads, and Livestock Operations* (adopted on February 14, 1997); San Diego Rule 52, *Particulate Matter* (as amended on January 22, 1997); San Diego Rule 53, *Specific Air Contaminants* (as amended on January 22, 1997); San Diego Rule 54, *Dust and Fumes* (as amended on January 22, 1997); and KCAPCD Rule 405, *Particulate Matter—Emission Rate* (as amended on May 1, 1997). These new and amended rules were submitted to EPA as SIP revisions by the California Air Resources Board (CARB) on August 1, 1997, with the exception of SCAQMD Rule 403.1, which was submitted on November 18, 1993. EPA is also proposing to approve local ordinances for 9 Coachella Valley cities and the County of Riverside for the control of fugitive dust in the Coachella Valley Planning Area.[1] The ordinances were adopted on various dates and submitted as SIP revisions on February 16, 1995.

II. Background

In response to section 110(a) and Part D of the Act, local California air pollution control districts have adopted and the State of California has submitted many PM rules for incorporation into the California SIP, including the rules and ordinances being acted on in this document. This document addresses EPA's proposed approval of SCAQMD Rules 403, 403.1, and 1186; SDCAPCD Rules 52, 53, and 54; and KCAPCD Rule 405, as identified above. These submitted rules were found to be complete on September 30, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[2], with the exception of SCAQMD Rule 403.1, which was found complete on December 27, 1993, and the Coachella Valley ordinance submittal, which became complete by operation of law on August 16, 1995.

SCAQMD Rule 403, *Fugitive Dust*, consists of reasonably available control measures (RACMs) and best available control measures (BACMs) to reduce fugitive dust emissions associated with agricultural operations, ''active operations'' (construction and demolition activities, earth-moving activities, or vehicular movement), track-out of bulk material onto public paved roadways, and open storage piles or disturbed surface areas. SCAQMD Rule 403.1, Wind *Entrainment of Fugitive Dust*, consists of additional fugitive dust measures for agriculture, abandoned disturbed surface areas, and bulk material deposits entrained by high winds within the Coachella Valley. SCAQMD Rule 1186, PM_{10} *Emissions from Paved and Unpaved Roads, and Livestock Operations*, establishes BACM requirements for reducing PM entrained as a result of vehicular traffic on paved and unpaved roads, and at livestock operations. The Coachella Valley ordinances, together with the applicable SCAQMD rules, constitute RACM and BACM for the Coachella Valley PM-10 nonattainment area, applying additional fugitive dust controls on construction projects and on paved and unpaved roads and surfaces.

SDCAPCD Rule 52, *Particulate Matter*, prohibits any source from discharging into the atmosphere PM in excess of 0.10 grain per dry standard cubic foot of gas. SDCAPCD Rule 53, *Specific Air Contaminants*, limits by volume, emissions of combustion PM and sulfur compounds, calculated as sulfur dioxide (SO2). SDCAPCD Rule 54, *Dust and Fumes*, restricts PM emissions from process operations. KCAPCD Rule 405 *Particulate Matter—Emission Rate*, also restricts PM emissions from process operations.

The rules and ordinances that are the subject of this action were originally adopted as part of each district's efforts to prevent violations of the National Ambient Air Quality Standard (NAAQS) for Total Suspended Particulates (TSP), EPA's original ambient standard for particulates, or for PM–10, EPA's ambient standard for PM adopted on July 1, 1987.[3] The SCAQMD revised its

[1] The Coachella Valley Planning Area is classified as a serious PM–10 nonattainment area, and is located within the jurisdiction of the SCAQMD, which also has responsibility for the South Coast Air Basin serious PM–10 nonattainment area.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] EPA's revision to the NAAQS for particulate matter on July 1, 1987 (52 FR 24672) replaced standards for total suspended particulates (TSP) with new standards applying only to particulate matter up to 10 microns in diameter (PM–10). At that time, EPA established two PM–10 standards. The annual PM–10 standard is attained when the expected annual arithmetic average of the 24-hour samples for a period of one year does not exceed 50 micrograms per cubic meter (ug/m^3). The 24-hour PM–10 standard of 150 ug/m^3 is attained if samples taken for 24-hour periods have no more than one expected exceedance per year, averaged over 3 years.

On July 18, 1997, EPA reaffirmed the annual PM–10 standard and slightly revised the 24-hour standard (62 FR 38651). The revised 24-hour PM–10 standard is attained if the 99th percentile of the distribution of the 24-hour results over 3 years does not exceed 150 ug/m^3 at each monitor within an area. In the same rulemaking, EPA also established two new standards for PM, both applying only to particulate matter up to 2.5 microns in diameter (PM–2.5). EPA has not yet established specific plan

Continued

Rule 403 and adopted new Rule 1186 to meet CAA Part D requirements for RACM and BACM for fugitive sources of PM–10. The Coachella Valley ordinances were adopted by local jurisdictions to provide important additional RACM and BACM controls as supplements to the SCAQMD rules.

III. EPA Evaluation and Proposed Action

A. Evaluation of Rules and Ordinances

In determining the approvability of a PM rule or ordinance, EPA must evaluate the measure for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that measures are enforceable, and strengthen or maintain the SIP's control strategy.

For PM–10 nonattainment areas classified as moderate, Part D of the CAA requires that SIPs must include enforceable measures reflecting reasonably available control technology (RACT) for large stationary sources and RACM technology for other sources. The Act requires that SIPs for areas classified as serious must include measures applying best available control technology (BACT) to stationary sources and BACM technology to other sources.

The statutory provisions relating to RACT, RACM, BACT, and BACM are discussed in EPA's ''General Preamble,'' which gives the Agency's preliminary views on how EPA intends to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992), 57 FR 18070 (April 28, 1992), and 59 FR 41998 (August 16, 1994). In this proposed rulemaking action, EPA is applying these policies to this submittal, taking into consideration the specific factual issues presented.

Both KCAPCD and SCAQMD contain areas designated under section 107 of the Act as nonattainment for PM–10. The SCAQMD has jurisdiction over areas classified as serious for PM–10.[4] KCAPCD has jurisdiction over a portion of the Searles Valley, which is currently classified as moderate for PM–10.

South Coast Air Quality Management District

On June 14, 1978, EPA approved into the SIP a version of Rule 403, *Fugitive Dust,* that had been adopted by the SCAQMD on May 7, 1976, and submitted by CARB on August 2, 1976. On November 6, 1992, July 9, 1993, and February 14, 1997, SCAQMD adopted amendments to Rule 403, which include the following significant changes from the current SIP:

- Persons conducting active operations within the SCAB must employ BACM to minimize fugitive emissions.
- Persons conducting active operations outside of the SCAB must employ RACM.
- More stringent BACM (for active operations inside the SCAB) and RACM (for active operations outside the SCAB) are required for high wind conditions.
- Persons shall not cause or allow levels to exceed 50 micrograms per cubic meter (ug/m^3) of PM–10, as opposed to 100 ug/m^3 of TSP in the applicable SIP rule, when determined as the difference between upwind and downwind samples.
- Persons shall prevent or remove within 1 hour track-out onto public paved roads or implement specific alternative actions.
- In the event that EPA finds that the area has not met PM–10 milestones or has failed to attain or maintain the PM–10 NAAQS, the rule's applicability threshold for disturbed areas is reduced from 100 acres to 50 acres, and the threshold for daily earth-moving or throughput volume is reduced from 10,000 cubic yards to 5,000 cubic yards during the most recent 365-day period.
- Persons may submit alternative compliance plans for approval by the SCAQMD Executive Officer and USEPA.
- The rule exempts agricultural operations outside of the SCAB and agricultural operations within the SCAB provided that the combined disturbed surface area is less than 10 acres.
- The rule exempts disturbed surface areas less than ½ acre on property zoned for residential uses, and activities undertaken during a state of emergency.
- Certain additional sources are exempted from specific rule provisions under specified conditions (e.g., during a state of emergency) or because the sources are below impact thresholds.

All provisions of Rule 403 became effective upon the dates of rule adoption, although compliance with certain provisions is not required until September 1, 1998, or January 1, 1999.

EPA does not propose to approve into the SIP section (i) of Rule 403, which establishes fees which are enforced locally only, and which are not integral to the rule requirements.

As requested by CARB and SCAQMD,[5] EPA proposes to approve the following sections of the ''Rule 403 Implementation Handbook,'' which was included as part of the SIP revision and which is incorporated by reference:

(1) ''Soil Moisture Testing Methods''—ASTM Standard Test Method D 2216 for Laboratory Determination of Water (Moisture) Content of Soil, Rock, and Soil-Aggregate Mixtures, and ASTM Standard Test Method 1557 for Laboratory Compaction Characteristics of Soil Using Modified Effort (56,000 ft-lbf/ft^3 (2,700 kN-m/m^3));

(2) ''Storage Piles''—Surface-Area Calculations and ASTM Standard Method C–136 for Sieve Analysis of Fine and Coarse Aggregates;

(3) ''Best Available Control Measures'';

(4) ''Reasonably Available Control Measures'';

(5) ''Guidance for Large Operations.''

CARB and SCAQMD did not request that EPA approve as part of the SIP the remaining portion of the Rule 403 Implementation Handbook, which includes copies of SCAQMD rules, lists of chemical dust suppressants, sample recordkeeping, and guidance on preparation of high wind fugitive dust control plans. These supplementary guidance materials do not substantively affect control or compliance requirements in Rule 403. Consequently, EPA is not proposing to approve these sections of the Handbook.

The SCAQMD has indicated that any future revisions to the Handbook that affect the control and compliance requirements of Rule 403 will be submitted as a SIP revision (letters from CARB and SCAQMD referenced above).

Although Rule 403 will strengthen the SIP, the rule contains a deficiency, in allowing the SCAQMD Executive Officer and CARB the discretion to approve equivalent test methods for determining soil moisture content and soil compaction characteristics (Rule 403, Table 2, paragraphs (1a) and (1b)). This discretion could lead to the use of

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and control requirements for the new PM–2.5 NAAQS.

Emissions of fine PM contribute to the production of ground-level PM. PM can harm human health by causing lung damage, increased respiratory disease, and possibly premature death. Children, the elderly, and people suffering from heart and lung disease, like asthma, are especially at risk. PM also damages materials, reduces visibility, and adversely affects crops and forests.

[4] As indicated above, the SCAQMD has jurisdiction over the South Coast Air Basin (SCAB) and Coachella Valley PM–10 serious nonattainment areas. This Federal Register action for the SCAQMD excludes the Los Angeles County portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997.

[5] The docket to this rulemaking contains letter dated March 27, 1998, from Dean Saito, CARB, to Dave Jesson, USEPA, transmitting a letter dated December 11, 1997, from Elaine Chang, Director of Planning, SCAQMD, to Dave Jesson, USEPA.

test methods not approved by EPA, and could consequently result in enforceability problems. Thus, the provision is not consistent with CAA section 172(c)(6), which provides that SIP measures must be enforceable. Because of this deficiency, EPA cannot grant full approval of Rule 403 under section 110(k)(3) and part D. Also, because the rule is not composed of separable parts that meet all the applicable CAA requirements, EPA cannot grant partial approval of Rule 403 under section 110(k)(3). However, EPA may grant a limited approval of Rule 403 under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

At the same time, EPA is also proposing a limited disapproval of Rule 403 because it contains the deficiency identified above. The potential sanctions that might result from this disapproval are set forth in section III.B. below. EPA expects, however, that future revisions to Rule 403 will resolve this issue by requiring that equivalent test methods receive EPA approval. When this deficiency is corrected and submitted as a SIP revision, EPA intends to approve the amended rule fully thus superseding the limited disapproval.

It should be noted that Rule 403 has been adopted by SCAQMD and is currently in effect. EPA's final limited approval/limited dispproval action will not prevent SCAQMD or EPA from enforcing the rule.

There is currently no version of SCAQMD Rule 403.1, *Wind Entrainment of Fugitive Dust*, in the SIP. The submitted rule includes many definitions and other regulatory elements similar or identical to those in Rule 403, and Rule 403.1 is also accompanied by an Implementation Handbook specifying standard methods and calculations, and monitoring and reporting responsibilities. Rule 403.1 contains the following specific provisions:

- Persons involved in active operations in the Coachella Valley Blowsand Zone shall stabilize man-made deposits within 24 hours by application of water, chemical dust suppressants, and/or installation of wind breaks.
- Persons involved in agricultural tilling or soil mulching shall cease such activities when winds exceed 25 mph.

All provisions of Rule 403.1 became effective upon March 1, 1993.

As requested by CARB and SCAQMD in the correspondence previously cited (see footnote 5), EPA proposes to approve the following sections of the ''Rule 403.1 Implementation Handbook,'' which was included as part of the SIP revision and which is incorporated by reference:

(1) ''Wind Monitoring''—performance standards for wind monitoring equipment; and

(2) ''Storage Piles''—Surface-Area Calculations and ASTM Standard Method C–136 for Sieve Analysis of Fine and Coarse Aggregates.

CARB and SCAQMD did not request that EPA approve as part of the SIP the remaining portion of the Rule 403.1 Implementation Handbook, which includes copies of SCAQMD rules, notification procedures, lists of chemical dust suppressants, sample recordkeeping, and Food Securities Act fact sheets. These supplementary guidance materials do not substantively affect control or compliance requirements in Rule 403.1. Consequently, EPA is not proposing to approve these sections of the Handbook.

The SCAQMD has indicated that any future revisions to the Handbook that affect the control and compliance requirements of Rule 403.1 will be submitted as a SIP revision (letters from CARB and SCAQMD referenced above).

There is currently no version of SCAQMD Rule 1186, *PM_{10} Emissions from Paved and Unpaved Roads, and Livestock Operations*, in the SIP. The submitted rule includes the following provisions representing BACM requirements:

- Owners/operators of paved public roads shall remove visible roadway accumulations through street cleaning within 72 hours following notification.
- Agencies purchasing, leasing or contracting for street sweeper equipment for routine street sweepers shall procure PM–10 efficient equipment after January 1, 1999.
- Owners/operators of unpaved public roads having greater than the average daily trips of all unpaved roads in its jurisdiction beginning January 1, 1998 and each of the 8 calendar years thereafter shall annually

—pave at least 1 mile; or
—apply chemical stabilization to 2 miles; or
—take one or more of the following actions on 3 miles:

- Install signage at ¼ mile intervals prohibiting speeds greater than 15 mph;
- Install speed bumps every 500 feet; or
- Maintain the roadway to inhibit speeds greater than 15 mph.
- Owners/operators of livestock operations (50 or more animals) shall cease hay grinding between 2 and 5 pm if visible emissions extend more than 50 feet from the grinding source, and shall treat all unpaved access areas with pavement, gravel, or asphalt no later than January 1, 1998.

SCAQMD Rule 1186 also contains contingency requirements for new or widened paved roads with projected average daily trips of 500 or more, involving curbing, paving shoulders, and paving (or landscaping or chemically stabilizing) medians. These requirements would be triggered by an EPA finding that the area has not achieved PM–10 and PM–10 precursor emission reduction requirements at a milestone reporting period, that the region failed to attain the PM–10 NAAQS by the CAA deadline, or that the region fails to maintain the PM–10 NAAQS.

Rule 1186 has several exemption provisions and allows for submission of alternative compliance plans for approval by the SCAQMD Executive Officer and USEPA.

The February 16, 1995, SIP submittal for the Coachella Valley area includes the following local fugitive dust ordinances: City of Cathedral City Ordinance No. 377 (2/18/93), City of Coachella Ordinance No. 715 (10/6/93), City of Desert Hot Springs Ordinance No. 93–2 (5/18/93), City of Indian Wells Ordinance No. 313 (2/4/93), City of Indio Ordinance No. 1138 (3/17/93), City of La Quinta Ordinance No. 219 (12/15/92), City of Palm Desert Ordinance No. 701 (1/14/93), City of Palm Springs Ordinance No. 1439 (4/21/93), City of Rancho Mirage Ordinance No. 575 (8/5/93), and County of Riverside Ordinance No. 742 (1/4/94).

These ordinances are based on a model fugitive dust control ordinance developed by the Coachella Valley Association of Governments, local governments, and the SCAQMD. The ordinances typically require: (1) dust control plans for each construction project needing a grading permit; (2) plans to pave or chemically treat unpaved surfaces if daily vehicle trips exceed 150; (3) imposition of 15 mph speed limits for unpaved surfaces if daily vehicle trips do not exceed 150; (4) paving or chemical treatment of unpaved parking lots; and (5) actions to discourage use of unimproved property by off-highway vehicles.

The ordinances are exemplary approaches by local governments to establish reasonable controls on dust emissions. Successful implementation of the ordinances by the involved agencies and members of the public has been instrumental in bringing the Coachella Valley area into attainment of the PM–10 NAAQS.

San Diego County Air Pollution Control District

On December 5, 1984, EPA approved into the SIP a version of Rule 52, *Particulate Matter,* that had been adopted by the SDCAPCD on September 21, 1983, and submitted by CARB on March 14, 1984. On January 22, 1997, the SDCAPCD adopted an amendment to Rule 52, which includes the following significant changes from the current SIP:

- All sources subject to Rule 54 must comply with the uncorrected particulate concentration (grain loading) standard of 0.10 grain per dry standard cubic foot of gas;
- Asphalt plants are exempted until July 1, 1998, provided the plants are in compliance with Rule 54; and
- Equipment not required to obtain an Authority to Construct, Permit to Operate or Registration are exempted.

On July 6, 1982, EPA approved into the SIP a version of Rule 53, *Specific Contaminants,* that had been adopted by the SDCAPCD on November 25, 1981, and submitted on March 1, 1982. On January 22, 1997, the SDCAPCD adopted an amendment to Rule 53, which retitles the rule *Specific Air Contaminants,* and includes the following significant changes from the current SIP:

- All sources subject to Rule 54 are exempted from the particulate concentration (grain loading) standards of 0.10 grain per dry standard cubic foot of gas standardized to 12 percent of carbon dioxide, and 0.30 grain from incinerators with a rated capacity of 100 pounds per hour or less;
- Equipment operating on liquid fuel with a maximum heat input rating of 10 million Btu per hour or less are exempted;
- Equipment operating on gaseous fuel with a maximum heat input rating of 50 million Btu per hour or less are exempted; and
- Equipment not required to obtain an Authority to Construct, Permit to Operate or Registration are exempted.

On September 22, 1972, and August 31, 1978, EPA approved into the SIP versions of Rule 54, *Dust and Fumes,* that had been adopted by the SDCAPCD and submitted by CARB on June 30, 1972, and October 13, 1977. On January 22, 1997, the SDCAPCD adopted an amendment to Rule 54, which makes minor clarifications and includes the following significant changes from the current SIP:

- Process weight table emission limits less than 1.0 pounds per hour are deleted;
- Equipment not required to obtain an Authority to Construct, Permit to Operate or Registration are exempted.
- Operations comprised exclusively of a combustion process where liquid fuels, gaseous fuels, and corresponding combustion air are introduced are exempted.

Kern County Air Pollution Control District

On May 3, 1984, EPA approved into the SIP a version of Rule 405, *Particulate Matter* that had been adopted by KCAPCD on July 18, 1983, and submitted by CARB on August 30, 1983. On May 1, 1997, the KCAPCD adopted an amendment to Rule 405, which makes minor clarifications to this RACT rule and the following significant changes from the current SIP:

- Process weight table for the San Joaquin Valley air basin is deleted, since this portion of Kern County is no longer under the jurisdiction of KCAPCD;
- An exemption applicable to a 1983 project is deleted.

B. EPA Action

EPA has evaluated the submitted rules and ordinances and has determined that they are consistent with the CAA and EPA regulations, except for the director's discretion provision's of SCAQMD Rule 403, discussed above. The rules and ordinances clarify and strengthen the existing SIP. Furthermore, the SCAQMD rules and Coachella ordinances reflect applicable RACM and BACM requirements and the amended KCAPCD rule reflects applicable RACT requirements. Therefore, SCAQMD new Rules 403.1 and 1186; Coachella Valley ordinances; SDCAPCD amendments to Rules 52, 53, and 54; and KCAPCD amendments to Rule 405 are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

As mentioned in section III.A., EPA proposes a limited approval of SCAQMD Rule 403 under CAA sections 110(k)(3) and 301(a), and a limited disapproval of Rule 403, because the rule contains enforceability deficiencies inconsistent with CAA section 172(c)(6). Under CAA section 179(a)(2), if EPA disapproves a submission under section 110(k) for an area designated as nonattainment, based on the submission's failure to meet CAA requirements, EPA must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval.

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.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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 impact on 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).

C. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205,

EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action proposed does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

D. Executive Order 13045

This proposed rule is not subject to E.O. 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks, because it is not an ''economically significant'' action under E.O. 12866.

List of Subjects in 40 CFR Part 52

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

Authority: 42 U.S.C. 7401 *et seq.*

Dated: July 31, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 98–21527 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[FRL–6137–1]

RIN: 2060–AI07

Protection of Stratospheric Ozone: Halon Recycling and Recovery Equipment Certification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed determination.

SUMMARY: Through this action EPA is proposing a determination that it is neither necessary nor appropriate under section 608(a)(2) of the Clean Air Act as amended in 1990 (CAA or ''Act'') to issue a proposed rule requiring the certification of recycling and recovery equipment for halons; and further, that it is neither necessary nor appropriate under section 608(a)(2) of the CAA to require that halons be removed only through the use of certified equipment. This proposed determination is also being issued, pursuant to a consent decree, as a direct final determination in the final rules section of today's **Federal Register**. A detailed discussion of the reasoning for this proposed determination is set forth in the direct final determination and the accompanying study referred to therein. If no relevant adverse comment is timely received, no further action will be taken with respect to this proposal and the direct final determination will become final on the date provided in that action.

DATES: Comments on this proposed determination must be received by September 10, 1998.

ADDRESSES: Comments on this proposed determination should be sent to Docket No. A–98–37, U.S. Environmental Protection Agency, OAR Docket and Information Center, Room M–1500, Mail Code 6102, 401 M Street, S.W., Washington, D.C. 20460. The docket may be inspected from 8:00 a.m. until 5:30 p.m., weekdays. The docket phone number is (202) 260–7548, and the fax number is (202) 260–4400. A reasonable fee may be charged for copying docket materials. A second copy of any comments should also be sent to Lisa Chang, U.S. Environmental Protection Agency, Stratospheric Protection Division, 401 M Street, S.W., Mail Code 6205J, Washington, D.C. 20460 if by mail, or at 501 3rd Street, N.W., Room 267, Washington, D.C. 20001 if comments are sent by courier delivery.

FOR FURTHER INFORMATION CONTACT: Lisa Chang at (202) 564–9742 or fax (202) 565–1096, U.S. Environmental Protection Agency, Stratospheric Protection Division, Mail Code 6205J, 401 M Street, S.W., Washington, D.C. 20460.

SUPPLEMENTARY INFORMATION: If no relevant adverse comment is timely received, no further activity is contemplated in relation to this proposed determination and the direct final determination in the final rules section of today's **Federal Register** will be final and become effective in accordance with the information discussed in that action. If relevant adverse comment is timely received, the direct final determination will be withdrawn and all public comments will be addressed in a subsequent final determination. The Agency will not institute a second comment period on this proposed determination; therefore, any parties interested in commenting should do so during this comment period.

For more detailed information and the rationale supporing this proposed determination, the reader should review the information provided in the direct final determination in the final rules section of today's **Federal Register**.

I. Administrative Requirements

A. Executive Order 12866

Executive Order 12866 (58 FR 51735, October 4, 1993) provides for interagency review of ''significant regulatory actions.'' It has been determined by the Office of Management and Budget (OMB) and EPA that this action—which is a proposed determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate—is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review under the Executive Order.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies, when developing regulations, consider the potential impact of those regulations on small entities. Because this action is a proposed determination that requiring the certification of equipment used in halon recovery and recycling, and requiring that halons be removed from halon-containing equipment only through use of certified recovery and recycling equipment, is not necessary or appropriate, the Regulatory Flexibility Act does not apply. By its nature, this action will not have an adverse effect on the regulated community, including small entities.

C. Paperwork Reduction Act

This action does not add any new requirements or increase burdens under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

D. Unfunded Mandates Reform Act

It has been determined that this action does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector, in any one year.

E. Executive Order 13045—Children's Health

Executive Order 13045: ''Protection of Children from Environmental Health Risk and Safety Risk'' (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be ''economically significant'' as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This action is not subject to E.O. 13045 because it is not a rule and is not likely to result in a rule.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Reporting and recordkeeping requirements, Stratospheric ozone layer.

Dated: July 31, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–21526 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101–47

RIN: 3090–AG60

Utilization and Disposal of Real Property

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration proposes to amend the public benefit conveyance regulations for utilization and disposal of real property to update the regulations and to include implementation regulations for new laws. The new regulations incorporate the public benefit conveyance of excess Federal Government real property for housing, law enforcement, and emergency management purposes. The laws that this proposed regulation implements are Pub. L. 105–50, Pub. L. 105–119 Sec. 118, Pub. L. 98–181, 97 Stat. 1175, and Federal Property and Administrative Services Act amendments to 203(k).

DATES: Submit comments on or before October 13, 1998.

ADDRESSES: Address all comments concerning this proposed rule to the General Services Administration, Office of Governmentwide Policy, Real Property Policy Division (MPR), 1800 F Street, NW, Washington, DC 20405; Attention: Carol Braegelmann. Comments can also be submitted via electronic mail (E-mail) to Carol.Braegelmann@gsa.gov. Any attached files must be in Microsoft Word 97 or Microsoft Word 6.0.

FOR FURTHER INFORMATION CONTACT: Carol Braegelmann, 202–208–3992.

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866. This rule is not required to be published in the Federal Register for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. The Paperwork Reduction Act does not apply to this action because the proposed changes to the Federal Property Management Regulations do not impose reporting, record keeping or information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 41 CFR Part 101–47

Government property management, Surplus Government property.

For the reasons stated in the preamble, it is proposed that 41 CFR Part 101–47 be amended as set forth below:

PART 101–47—UTILIZATION AND DISPOSAL OF REAL PROPERTY

1. The authority citation for Part 101–47 continues to read as follows:

Authority: 40 U.S.C. 486(c).

§ 101–47.103–4 [Removed and reserved]

2. Section 101–47.103–4 is removed and reserved.

3. Section 101–47.203–5 is amended by revising paragraphs (b) and (c) to read as follows:

§ 101–47.203–5 Screening of excess real property.

* * * * *

(b) Notices of availability for information of the Secretary of Health and Human Services and the Secretary of Education in connection with the exercise of the authority vested under the provisions of section 203(k)(1) of the Act; the Secretary of the Interior in connection with provisions in 16 U.S.C. 667b through d, the exercise of the authority vested under the provisions of section 203(k)(2) of the Act, or a determination under the provisions of section 203(k)(3) of the Act; and the Secretary of Housing and Urban Development in connection with the exercise of the authority vested under the provisions of section 203(k)(6) of the Act will be sent to the offices designated by those officials to serve the areas in which the properties are located. Similar notices of availability for information of the Attorney General and the Director of the Federal Emergency Management Agency in connection with a possible determination under the provisions of section 203(p)(1) of the Act, and for information of the Secretary of Transportation in connection with the exercise of the authority vested under the provisions of section 203(q) of the Act, will be respectively sent to the Office of Justice Programs, Department of Justice; the Federal Emergency Management Agency; and the Maritime Administration, Department of Transportation.

(c) The Departments of Health and Human Services, Education, Interior, Housing and Urban Development, Justice, and Transportation, and the Federal Emergency Management Agency shall not attempt to interest a local applicant in a property until it is determined surplus, except with the prior consent of GSA on a case-by-case basis or as otherwise agreed upon. When such consent is obtained, the local applicant shall be informed that consideration of the application is conditional upon the property being determined surplus to Federal requirements and made available for the purposes of the application. However, these Federal agencies are encouraged to advise the appropriate GSA regional office of those excess properties which are suitable for their programs.

* * * * *

4. Section § 101–47.204–1 is amended by revising the first sentence in paragraph (a), and paragraphs (b) and (c) to read as follows:

§ 101–47.204–1 Reported property.

* * * * *

(a) The holding agency, the Secretary of Health and Human Services, the Secretary of Education, the Secretary of the Interior, the Secretary of Housing and Urban Development, the Attorney General, the Director of the Federal Emergency Management Agency, and the Secretary of Transportation will be notified of the date upon which determination as surplus becomes effective. * * *

(b) The notices to the Secretary of Health and Human Services, the Secretary of Education, the Secretary of

the Interior, the Secretary of Housing and Urban Development, and the Secretary of Energy will be sent to the offices designated by them to serve the area in which the property is located. The notices to the Attorney General will be sent to the Office of Justice Programs, Department of Justice. The notices to the Director of the Federal Emergency Management Agency will be sent to the Federal Emergency Management Agency. The notices to the Secretary of Transportation will be sent to the Federal Aviation Administration, the Federal Highway Administration, and the Maritime Administration. The notices to the Federal agencies having a requirement pursuant to section 218 of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 will be sent to the office making the request unless another office is designated.

(c) With regard to surplus property which GSA predetermines will not be available for disposal under any of the statutes cited in § 101–47.4905, or whenever the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act, the notice to the affected Federal agencies will contain advice of such determination or request for reimbursement. The affected Federal agencies shall not screen for potential applicants for such property.

5. Section § 101–47.303–2 is amended by revising paragraphs (e), (f), and (g) to read as follows:

§ 101–47.303–2 Disposals to public agencies.

* * * * *

(e) In the case of property which may be made available for assignment to the Secretary of Health and Human Services (HHS), the Secretary of Education (ED), the Secretary of the Interior (DOI), or the Secretary of Housing and Urban Development (HUD) for disposal under sections 203(k)(1), (2), or (6) of the Act:

(1) The disposal agency shall inform the appropriate offices of HHS, ED, NPS, or HUD 3 workdays in advance of the date the notice will be given to public agencies, to permit similar notice to be given simultaneously by HHS, ED, NPS, or HUD to additional interested public bodies and/or nonprofit institutions.

(2) The disposal agency shall furnish the Federal agencies with a copy of the postdated transmittal letter addressed to each public agency, copies (not to exceed 25) of the postdated notice, and a copy of the holding agency's Report of Excess Real Property (Standard Form 118, with accompanying schedules).

(3) As of the date of the transmittal letter and notice to public agencies, the affected Federal agencies may proceed with their screening functions for any potential applicants and thereafter may make their determinations of need and receive applications.

(f) If the disposal agency is not informed within the 20-calendar day period provided in the notice of the desire of a public agency to acquire the property under the provisions of the statutes listed in § 101–47.4905, or is not notified by ED or HHS of a potential educational or public health use, or is not notified by the DOI of a potential park or recreation, historic monument, or wildlife conservation use, or is not notified by the HUD of a potential self-help housing or housing assistance requirement, or is not notified by the Department of Justice of a potential correctional facilities or law enforcement use, or is not notified by the Federal Emergency Management Agency of a potential emergency management response use; or is not notified by the Department of Transportation of a potential port facility or public airport use, it shall be assumed that no public agency or otherwise eligible organization desires to procure the property. (The requirements of this § 101–47.303–2(f) shall not apply to the procedures for making Federal surplus real property available to assist the homeless in accordance with Section 501 of the Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11411).)

(g) The disposal agency shall promptly review each response of a public agency to the notice given pursuant to paragraph (b) of this section. The disposal agency shall determine what constitutes a reasonable period of time to allow the public agency to develop and submit a formal application for the property or its comments as to the compatibility of the disposal with its development plans and programs. When making such determination, the disposal agency shall give consideration to the potential suitability of the property for the use proposed, the length of time the public agency has stated it will require for its action, the protection and maintenance costs to the Government during such length of time, and any other relevant facts and circumstances. The disposal agency shall coordinate such review and determination with the proper office of any interested Federal agencies listed below:

(1) National Park Service, Department of the Interior;

(2) Department of Health and Human Services;

(3) Department of Education;

(4) Department of Housing and Urban Development;

(5) Federal Aviation Administration, Department of Transportation;

(6) Fish and Wildlife Service, Department of the Interior;

(7) Federal Highway Administration, Department of Transportation;

(8) Office of Justice Programs, Department of Justice;

(9) Federal Emergency Management Agency; and

(10) Maritime Administration, Department of Transportation.

* * * * *

§ 101–47.308–5 [Removed and reserved]

6. Section 101–47.308–5 is removed and reserved.

7. Section § 101–47.308–6 is revised to read as follows:

§ 101–47.308–6 Property for providing self-help housing or housing assistance.

(a) The head of the disposal agency, or his/her designee, is authorized, at his/her discretion to assign to the Secretary of the Department of Housing and Urban Development (HUD) for disposal under section 203(k)(6) of the Act such surplus real property, including buildings, fixtures, and equipment situated thereon, as is recommended by the Secretary as being needed for providing self-help housing or housing assistance for low-income individuals or families.

(b) With respect to real property and related personal property which may be made available for assignment to HUD for disposal under § 203(k)(6) of the Act for self-help housing or housing assistance purposes, the disposal agency shall notify eligible public agencies, in accordance with the provisions of § 101–47.303–2, that such property has been determined to be surplus. Such notice to eligible public agencies shall state that any planning for self-help housing or housing assistance use involved in the development of the comprehensive and coordinated plan of use and procurement for the property must be coordinated with HUD and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from HUD. The requirement for self-help housing or housing assistance use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (i) of this section, of a recommendation for assignment of Federal surplus real property received from HUD and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under

section 203(k)(6)(B) of the Act and referenced in paragraph (j) of this section.

(c) With respect to surplus real property and related personal property which may be made available for assignment to HUD for disposal under § 203(k)(6) of the Act for self-help housing or housing assistance purposes to nonprofit organizations that exist for the primary purpose of providing housing or housing assistance for low-income individuals or families, HUD may notify such eligible nonprofit organizations, in accordance with the provisions of § 101–47.303–2(e), that such property has been determined to be surplus. Any such notice to eligible nonprofit organizations shall state that any requirement for housing or housing assistance use of the property should be coordinated with the public agency declaring to the disposal agency an intent to develop and submit a comprehensive and coordinated plan of use and procurement for the property. The requirement for self-help housing or housing assistance use of the property by an eligible nonprofit organization will be contingent upon the disposal agency's approval, under paragraph (i) of this section, of an assignment recommendation received from HUD, and any subsequent transfer shall be subject to the disapproval of the head of the disposal agency as stipulated under section 203(k)(6)(B) of the Act and referenced in paragraph (j) of this section.

(d) HUD shall notify the disposal agency within 20-calendar days after the date of the notice of determination of surplus if it has an eligible applicant interested in acquiring the property. Whenever HUD has notified the disposal agency within the 20-calendar day period of a potential self-help housing or housing assistance requirement for the property, HUD shall submit to the disposal agency within 25-calendar days after the expiration of the 20-calendar day period, a recommendation for assignment of the property, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property.

(e) Whenever an eligible public agency has submitted a plan of use for property for a self-help housing or housing assistance requirement, in accordance with the provisions of § 101–47.303–2, the disposal agency shall transmit two copies of the plan to the regional office of HUD. HUD shall submit to the disposal agency, within 25-calendar days after the date the plan is transmitted, a recommendation for assignment of the property to the Secretary of HUD, or shall inform the disposal agency, within the 25-calendar day period, that a recommendation will not be made for assignment of the property to HUD.

(f) Any assignment recommendation submitted to the disposal agency by HUD shall set forth complete information concerning the self-help housing or housing assistance use, including:

(1) Identification of the property;

(2) Name of the applicant and the size and nature of its program;

(3) Specific use planned;

(4) Intended public benefit allowance; and

(5) Estimate of the value upon which such proposed allowance is based; and

(6) If the acreage or value of the property exceeds the standards established by the Secretary, an explanation therefor.

Note to paragraph (f): HUD shall furnish to the holding agency a copy of the recommendation, unless the holding agency is also the disposal agency.

(g) Holding agencies shall cooperate to the fullest extent possible with representatives of HUD in their inspection of such property and in furnishing information relating thereto.

(h) In the absence of an assignment recommendation from HUD submitted pursuant to § 101–47.308–4(d) or (e), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal action.

(i) If, after considering other uses for the property, the disposal agency approves the assignment recommendation from HUD, it shall assign the property by letter or other document to the Secretary of HUD. If the recommendation is disapproved, the disposal agency shall likewise notify the Secretary of HUD. The disposal agency shall furnish to the holding agency a copy of the assignment, unless the holding agency is also the disposal agency.

(j) Subsequent to the receipt of the disposal agency's letter of assignment, HUD shall furnish to the disposal agency a Notice of Proposed Transfer in accordance with section 203(k)(6)(B) of the Act. If the disposal agency has not disapproved the proposed transfer within 30-calendar days of the receipt of the Notice of Proposed Transfer, HUD may proceed with the transfer.

(k) HUD shall furnish the Notice of Proposed Transfer within 35-calendar days after the disposal agency's letter of assignment and shall prepare the transfer documents and take all necessary actions to accomplish the transfer within 15-calendar days after the expiration of the 30-calendar day period provided for the disposal agency to consider the notice. HUD shall furnish the disposal agency two conformed copies of deeds, leases or other instruments conveying the property under section 203(k)(6) of the Act and all related documents containing restrictions or conditions regulating the future use, maintenance or transfer of the property.

(l) HUD has the responsibility for enforcing compliance with the terms and conditions of transfer; for the reformation, correction, or amendment of any transfer instrument; for the granting of releases; and for the taking of any necessary actions for recapturing such property in accordance with the provisions of section 203(k)(4) of the Act. HUD maintains the same responsibility for properties previously conveyed under section 414(a) of the 1969 HUD Act. Any such action shall be subject to the disapproval of the head of the disposal agency. Notice to the head of the disposal agency by HUD of any action proposed to be taken shall identify the property affected, set forth in detail the proposed action, and state the reasons therefor.

(m) If any property previously conveyed under section 414(a) of the 1969 HUD Act, as amended, to an entity other than a public body is used for any purpose other than the purpose for which it was sold or leased within a period of 30 years of the conveyance, it shall revert to the United States (or, in the case of leased property, the lease shall terminate) unless the appropriate Secretary (HUD or the Secretary of Agriculture (USDA)) and the Administrator of General Services, after the expiration of the first 20 years of such period, approve the use of the property for such other purpose.

(n) In each case of repossession under a terminated lease or reversion of title by reason of noncompliance with the terms or conditions of sale or other cause, HUD (or USDA for property conveyed through the former Farmers Home Administration program under section 414(a) of the 1969 HUD Act) shall, at or prior to such repossession or reversion of title, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from HUD (or USDA) that such property has been repossessed or title has reverted, GSA will act upon the Standard Form 118. The grantee shall be required to provide

protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101–47.4913.

8. Section § 101–47.308–9 is amended by revising the section heading, paragraphs (a) through (g), and paragraphs (j) and (k) to read as follows:

§ 101–47.308–9 Property for correctional facility, law enforcement, or emergency management response purposes.

(a) Under section 203(p)(1) of the Act, the head of the disposal agency or designee may, in his/her discretion, convey, without monetary consideration, to any State, or to those governmental bodies named therein, or to any political subdivision or instrumentality thereof, surplus real and related personal property for:

(1) Correctional facility purposes, provided the Attorney General has determined that the property is required for such purposes and has approved an appropriate program or project for the care or rehabilitation of criminal offenders;

(2) Law enforcement purposes, provided the Attorney General has determined that the property is required for such purposes; and

(3) Emergency management response purposes, including fire and rescue services, provided the Director of the Federal Emergency Management Agency has determined that the property is required for such purposes.

(b) The disposal agency shall provide prompt notification to the Office of Justice Programs (OJP), Department of Justice (DOJ), and the Federal Emergency Management Agency (FEMA) of the availability of surplus properties. Included in the notification to OJP and FEMA will be a copy of the holding agency's Standard Form 118, Report of Excess Real Property, with accompanying schedules.

(c) With respect to real property and related personal property which may be made available for disposal under section 203(p)(1) of the Act for correctional facility, law enforcement, or emergency management response purposes, OJP or FEMA shall convey notices of availability of properties to the appropriate State and local public agencies. Such notice shall state that any planning for correctional facility, law enforcement, or emergency management response use involved in the development of a comprehensive and coordinated plan of use and procurement for the property must be coordinated and approved by the OJP or FEMA, as appropriate, and that an application form for such use of the property and instructions for the preparation and submission of an application may be obtained from OJP or FEMA. The requirement for correctional facility, law enforcement, or emergency management response use of the property by an eligible public agency will be contingent upon the disposal agency's approval under paragraph (g) of this section of a determination:

(1) by DOJ that identifies surplus property required for correctional facility use under an appropriate program or project for the care of rehabilitation of criminal offenders, or for law enforcement use; or

(2) by FEMA that identifies surplus property required for emergency management response use.

(d) OJP or FEMA shall notify the disposal agency within 20-calendar days after the date of the notice of determination of surplus if there is an eligible applicant interested in acquiring the property. Whenever OJP or FEMA has notified the disposal agency within the said 20-calendar day period of a potential correctional facility, law enforcement, or emergency management response requirement for the property, OJP or FEMA shall submit to the disposal agency within 25-calendar days after the expiration of the 20-calendar day period, a determination indicating a correctional facility requirement for the property and approving an appropriate program or project for the care or rehabilitation of criminal offenders, a law enforcement requirement, or an emergency management response requirement, or shall inform the disposal agency, within the 25-calendar day period, that the property will not be required for correctional facility, law enforcement, or an emergency management response use.

(e) Any determination submitted to the disposal agency by DOJ or FEMA shall set forth complete information concerning the correctional facility, law enforcement, or emergency management response use, including:

(1) Identification of the property;

(2) Certification that the property is required for correctional facility, law enforcement, or emergency management response use;

(3) A copy of the approved application which defines the proposed plan of use; and

(4) The environmental impact of the proposed correctional facility, law enforcement, or emergency management response use.

(f) Both holding and disposal agencies shall cooperate to the fullest extent possible with Federal and State agency representatives in their inspection of such property and in furnishing information relating thereto.

(g) If, after considering other uses for the property, the disposal agency approves the determination by DOJ or FEMA, it shall convey the property to the appropriate grantee. If the determination is disapproved, or in the absence of a determination from DOJ or FEMA submitted pursuant to § 101–47.308–9(d), and received within the 25-calendar day time limit specified therein, the disposal agency shall proceed with other disposal action. The disposal agency shall notify OJP or FEMA 10 days prior to any announcement of a determination to either approve or disapprove an application for correctional, law enforcement, or emergency management response purposes and shall furnish to OJP or FEMA a copy of the conveyance documents.

* * * * *

(j) The OJP or FEMA will notify GSA upon discovery of any information indicating a change in use and, upon request, make a redetermination of continued appropriateness of the use of a transferred property.

(k) In each case of repossession under a reversion of title by reason of noncompliance with the terms of the conveyance documents or other cause, OJP or FEMA shall, at or prior to such repossession, provide the appropriate GSA regional office with an accurate description of the real and related personal property involved. Standard Form 118, Report of Excess Real Property, and the appropriate schedules shall be used for this purpose. Upon receipt of advice from OJP or FEMA that such property has been repossessed and/or title has reverted, GSA will act upon the Standard Form 118. The grantee shall be required to provide protection and maintenance for the property until such time as the title reverts to the Federal Government, including the period of any notice of intent to revert. Such protection and maintenance shall, at a minimum, conform to the standards prescribed in § 101–47.4913.

§ 101–47.4905 [Amended]

9. Section § 101–47.4905 is amended as follows:

a. In the paragraphs headed ''Type of property'' under the listings for Statutes 40 U.S.C. 484(k)(2), 40 U.S.C. 484(k)(3), and 40 U.S.C. 484(q), remove the phrase ''military chapels subject to disposal as a shrine, memorial, or for religious

purposes under the provisions of § 101–47.308–5; and (4)'' wherever it appears.

b. Add paragraphs headed ''Statute'', ''Type of property'', and ''Eligible public agencies'' for statute citation 40 U.S.C. 484(k)(6) in numerical order as set forth below.

c. Revise the paragraphs headed ''Statute'', ''Type of property'', and ''Eligible public agencies'' for statute citation 40 U.S.C. 484(p) as set forth below.

d. In the paragraph headed ''Type of property'' under the listing for 49 U.S.C. 47151, remove the phrase ''military chapels subject to disposal as a shrine, memorial, or for religious purposes under the provisions of Sec. 101–47.308–5; and (3)''; and remove the numbers ''(4)'' and ''(5)'' and add in their place ''(3)'' and ''(4)'' respectively.

§ 101–47.4905 Extract of statutes authorizing disposal of surplus real property to public agencies.

* * * * *

Statute: 40 U.S.C. 484(k)(6). Disposals for self-help housing and housing assistance.

Type of property *: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Secretary of the Housing and Urban Development must recommend that the property is needed for providing self-help housing or housing assistance for low-income individuals or families.

Eligible public agencies: Any State, any political subdivision or instrumentality of a State, or any nonprofit organization that exists for the primary purpose of providing self-help housing or housing assistance for low-income individuals or families.

Statute: 40 U.S.C. 484(p). Disposals for correctional facility, law enforcement, or emergency management response purposes.

Type of property *: Any surplus real and related personal property, including buildings, fixtures, and equipment situated thereon, exclusive of (1) oil, gas, and mineral rights; (2) improvements without land; and (3) property which the holding agency has requested reimbursement of the net proceeds of disposition pursuant to section 204(c) of the Act. Before property may be conveyed under this statute, the Attorney General must determine that the property is required for correctional facility use under an appropriate program or project approved by the Attorney General for the care or rehabilitation of criminal offenders or for law enforcement use. Before property may be conveyed under this statute for emergency management response use, the Director of the Federal Emergency Management Agency must determine that the property is required for such use.

Eligible public agencies: Any State; the District of Columbia; any territory or possession of the United States; and any political subdivision or instrumentality thereof.

* * * * *

§ 101–47.4906 [Amended]

10. Amend § 101–47.4906 as follows:

a. In the list of statutes, add the statute citation ''40 U.S.C. 484(k)(6) Self-help housing and housing assistance.'' after ''40 U.S.C. 484(k)(3) Historic monument.''.

b. In the list of statutes, revise the title of 40 U.S.C. 484(p) to read as follows: ''Correctional facility, law enforcement, or emergency management response.''.

Dated: June 18, 1998.

G. Martin Wagner,

Associate Administrator for Government Policy.

[FR Doc. 98–21404 Filed 8–10–98; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Chapter IV

[HCFA–3250–N]

RIN 0938–0938–AI92

Medicare Program; Negotiated Rulemaking; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Change in Meeting Time

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: This notice announces the revised times for certain meetings of the negotiated Rulemaking Committee on Coverage and Administrative Policies for Clinical Laboratory Tests.

DATES: The meetings are scheduled as follows:

1. August 27, 1998, 8:00 a.m. to 3:00 p.m.
2. September 16, 1998, 8:00 a.m. to 3:00 p.m.
3. October 8, 1998, 8:00 a.m. to 3:00 p.m.
4. October 28, 1998, 8:00 a.m. to 3:00 p.m.
5. November 20, 1998, 8:00 a.m. to 3:00 p.m.
6. December 10, 1998, 8:00 a.m. to 3:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan (410) 786–4635.

SUPPLEMENTARY INFORMATION: The meetings for the Negotiated Rulemaking Committee on National Coverage and Administrative Policies for Clinical Laboratory Tests were originally scheduled to begin at 9:00 and to end at 5:00 p.m. on each day the Committee was scheduled to meet (63 FR 30166). The Committee will now plan to meet from 8:00 a.m. until 3:00 p.m. on the third day of each 3-day series of meetings, beginning on August 27. Therefore, the meetings on August 27, September 16, October 28, November 20, and December 10, 1998 will begin at 8:00 a.m. and end at approximately 3:00 p.m. On October 8, 1998, the meeting will begin at 8:00 a.m. and adjourn at 12:00 noon. Public comments will be heard in the morning on each of these dates.

The Negotiated Rulemaking Committee on national Coverage Policies for Clinical laboratory Tests was established under mandate of section 4554(b) of the Balanced Budget Act of 1997 to provide advice and make recommendations to the Secretary of the Department of Health and Human Services on the text or content of a proposed rule that will establish national coverage and administrative policies for clinical laboratory tests.

The meetings are open to the public without advance registration. Public attendance at the meetings may be limited to space available.

Authority: Federal Advisory Committee Act (5 U.S.C. App. 2)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical insurance Program)

Dated: August 5, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 98–21422 Filed 8–10–98; 8:45 am]

BILLING CODE 4120–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 413

[HCFA–1883–P]

RIN 0938–AI80

Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the procedures for granting exceptions to the cost limits for skilled nursing facilities (SNFs) and retain the current procedures for exceptions to the cost limits for home health agencies (HHAs). It also would remove the provision allowing reclassifications for all providers.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5:00 p.m. on October 13, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1883–P, P.O. Box 31850, Baltimore, MD 21144–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, S.W., Washington, DC 20201, or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1883–P. 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 offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Steve Raitzyk, (410) 786–4599.

SUPPLEMENTARY INFORMATION:

Copies: To order copies of the **Federal Register** containing this document, send your request to: Government Printing Office, New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

Cost Limits

Section 223 of the Social Security Amendments of 1972 (Pub Law 92–603) amended section 1861(v)(1)(A) of the Social Security Act (the Act) to authorize the Secretary to establish ''* * * limits on the direct and indirect overall incurred costs or incurred costs of specific items or services or groups of items or services * * *'' as a presumptive estimate of reasonable costs. Under section 1861(v)(1)(A), a provider's cost in excess of its Medicare cost limit is deemed to be unreasonable for the efficient delivery of needed health care services under the Medicare program. The Congress, however, in the House Committee report ''H.R. Rep. No. 92–231, 92nd Congress, 1st Session 5071 (1971),'' stated that ''Providers would, of course, have the right to * * * obtain relief from the effect of the cost limits on the basis of evidence of the need for such an exception.''

On June 1, 1979, we published a final rule in the **Federal Register** at 44 FR 31802, revising 42 CFR 405.460 to implement more effectively and equitably section 223 of the Social Security Amendments of 1972. Section 405.460, which was subsequently redesignated as § 413.30, describes the general principles and procedures for establishing cost limits and the process by which providers may appeal the applicability of these cost limits. Under § 413.30(c), a provider may obtain relief from the effects of applying cost limits, either by requesting an exemption from its limit as a new provider of inpatient services, by requesting a reclassification, or by requesting an exception to the cost limit.

In the preamble of the June 1, 1979 final rule (44 FR 31806), we clarified the difference between an exemption and an exception. If a provider receives an exemption, it is not affected at all by the cost limits and it is paid under the standard rules for reasonable cost or customary charges. If a provider receives an exception, it is paid on the basis of the cost limit, plus an incremental sum for the reasonable costs warranted by the circumstances that justified the exception.

The cost limit is a presumptive estimate of reasonable costs, which excludes costs found to be unnecessary for the efficient delivery of needed health care services. We may establish limits for direct or indirect costs, for costs of specific services, or for groups of services. Medicare payable provider costs may not exceed the amounts, estimated by us, to be necessary for the efficient delivery of needed health care services furnished by a provider.

We imposed these limits prospectively and they may be calculated on a per admission, per discharge, per diem, per visit, or other basis. All SNFs and HHAs that are paid under the cost payment methodology are subject to these cost limits.

The routine service cost per diem limits are based on the average cost of furnishing services and are determined by the SNF's or HHA's geographical location classification (urban or rural) and type of facility classification (hospital-based or freestanding). We publish in the **Federal Register**, the schedule of limits that apply to the cost reporting periods beginning during the fiscal year indicated in the notice. This published ''Schedule of Limits'' outlines the methodology and data we use to determine the average cost of providing the routine services on which we base the cost limits.

The servicing intermediary notifies each SNF or HHA of its cost limit at

least 30 days before the start of a cost reporting period to which the cost limit applies. If there is a delay, we advise the intermediary of any alternate process to compute an interim cost limit. Each intermediary ''cost limit notification'' must contain the following:

- The provider's classification and calculation of the applicable limit.
- A statement that, if the provider believes it has been incorrectly classified, it is the provider's responsibility to furnish to the intermediary evidence that demonstrates the classification is incorrect.
- A statement that the provider may be entitled to an exemption from, or an exception to, the cost limits under the provisions of § 413.30.

This proposed rule focuses on two provisions of § 413.30 established in the June 1, 1979 final rule. First, we propose to change the approval process for granting exceptions to the cost limits for SNFs; second, we propose to delete the provision for obtaining a reclassification for all providers.

II. Skilled Nursing Facility and Home Health Agency Requests Regarding Applicability of Cost Limits

A. Current Regulations Regarding SNF and HHA Exceptions to Cost Limits

The current regulation at § 413.30(f) allows a provider that is subject to cost limits to request an exception to the cost limits if its costs exceed, or are expected to exceed, the limits as a result of one of the following unusual situations:

- Atypical services.
- Extraordinary circumstances.
- Providers in areas with fluctuating populations.
- Medical and paramedical education costs.
- Unusual labor costs.

An adjustment is made only to the extent that the costs are reasonable, attributable to the circumstance specified, separately identified by the provider, and verified by the intermediary.

The provider must file a request for an exception to the cost limits no later than 180 days from the date of the intermediary's notice of program reimbursement. The intermediary reviews the request with all supporting documentation. The intermediary also makes and submits to us a recommendation on the provider's request. We make a final determination and respond to the intermediary within 180 days from the date of the intermediary's recommendation. If we do not respond within 180 days, it is considered good cause for the granting of an extension of the time limit to apply for a Provider Reimbursement Review Board review.

In the past, Providers and intermediaries had raised many questions about the documentation needed to properly file SNF exception requests. In addition, we received many complaints from the SNFs about the length of time that it took to get a response to their exception requests, mainly because the regulation did not require a time limit for the intermediary's recommendation to us.

In order to address this situation and to clarify the exceptions process, we published, in July, 1994, section 2530 of HCFA Pub. 15–1 (Transmittal No. 378), which gives SNFs detailed instructions for requesting exceptions to the SNF cost limits. Under transmittal No. 378, intermediaries process SNF exceptions in a more expeditious manner. Section 2531.1 of Transmittal 378 requires intermediaries to submit to us their recommendations on a SNF's exception request within 90 days of the receipt of the request from the SNF. Also, under section 2531.1 of Transmittal 378, we notify the intermediary of our final determination on the exception within 90 days of the date that the request is received (the current regulation (§ 413.30(c)) allows us 180 days to make our final determination).

B. Provisions of this Rule Regarding Exceptions to the Cost Limits for SNFs and HHAs

After reviewing SNF exception requests submitted by intermediaries under the rules in Transmittal 378, we identified six intermediaries that were proficiently adjudicating SNF exceptions within 90 days of reviewing the SNF's requests. We gave the six intermediaries the additional responsibility in making the determination on SNF exception requests subject to our oversight and review. This has resulted in a substantial decrease in processing time and effort. The resulting increase in administrative efficiency has benefitted SNFs, fiscal intermediaries, and the Medicare program.

We propose to revise § 413.30(c) to give all intermediaries the authority to make final determinations on SNF exception requests. This would result in an increase in administrative efficiency that would benefit all SNFs that file SNF exception requests and fiscal intermediaries that process those exception requests.

In order to assure that all intermediaries will be able to adjudicate exception requests proficiently, we would work with the Blue Cross Association to perform additional training for all fiscal intermediaries. In addition, we would designate a single contact person to handle all inquiries from fiscal intermediaries regarding exception requests.

Under proposed § 413.30(c), if the intermediary determines that the SNF did not provide adequate documentation from which a proper determination can be made, the intermediary would notify the SNF that the request is denied. The intermediary would also notify the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation, that we continue to allow the SNF to request a review by the Provider Reimbursement Review Board, and that the time we need to review the request (through the intermediary) is considered good cause for extending the time limit for the SNF to apply for the review. Otherwise, the denial is our final determination.

Section 4432 of the Balanced Budget Act of 1997, (Public Law 105–33) enacted August 5, 1997, mandates that a prospective payment system for SNFs be implemented effective for cost reporting periods beginning on or after July 1, 1998. This prospective payment system will replace the retrospective reasonable cost based system currently used by Medicare for payment of SNF services. Accordingly, exceptions will no longer be available to SNFs with cost reporting periods beginning on or after July 1, 1998. Fiscal intermediaries will continue to process, beyond July 1, 1998, SNF exception requests for cost reporting periods beginning before July 1, 1998.

Effective with cost reporting periods beginning on or after July 1, 1998, there will be a 3-year transition period to the prospective payment system. During the transition period, SNFs will be reimbursed a blended payment that is based partially on a facility-specific rate and a prospective payment rate. The base period for the facility-specific rate will be cost reporting periods beginning during the period October 1, 1994 and September 30, 1995. We recognize that providers might have questions about the relationship between the exceptions process and the calculation of the facility-specific rate under section 1888(e) of the Social Security Act, as added by the BBA. We are currently developing the regulation to implement the SNF prospective payment system enacted by the BBA and we will address those issues in that document.

The procedures for HHA exception requests would remain unchanged but would be set forth at § 413.30(c)(1).

III. Reclassification of Providers

A. Current Regulations Regarding Reclassifications

Section 413.30(d) states that a provider may obtain a reclassification if the provider can show that its classification is at variance with the criteria specified in promulgating the limits.

When cost limits were first developed, we manually arrayed the data collected from the providers' cost reports and classified them by type (hospital-based or freestanding) and location (metropolitan area or nonmetropolitan area). There were instances when providers were misclassified. Accordingly, we allowed providers to file reclassification requests under § 413.30(d) if they could show that the data we used for the classification were incorrect.

B. Provisions of this Rule To Remove the Regulation Allowing Reclassifications

We propose to remove § 413.30(d) to discontinue the use of reclassifications. HHAs and SNFs are now filing specific cost reports, and metropolitan and nonmetropolitan area designations have become linked, through automation, to the county and State where each provider is located. As a result, there is no chance that a SNF or HHA can be misclassified.

Hospitals now file for reclassifications with the Medicare Geographic Review Board. These reclassifications are specific to hospitals and are governed under subpart L of part 412. Hospitals no longer apply for reclassifications under § 413.30.

IV. Technical Changes

A. We would remove paragraph (h), pertaining to hospital cost report adjustments, as it is obsolete.

B. We would make minor editorial changes to § 413.30.

V. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments that 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 to that document.

VI. Regulatory Impact Statement

Consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), we prepare a regulatory flexibility analysis unless we certify that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs and HHAs are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. The proposed rule to eliminate reclassifications for HHAs and SNFs would have no effect, since they no longer need reclassifications. Hospitals can obtain any needed reclassifications and exceptions under subpart L of part 412. The proposed rule to change the method of processing requests for exceptions to cost limits would have no economic impact on either the providers or the Medicare program.

For these reasons, we are not preparing an analyses for either the RFA or section 1102(b) of the Act because we have determined, and we certify, that this rule would not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

VII. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Therefore, we are soliciting public comment on each of these issues for the information collection requirements discussed below.

§ 413.30 Limitations on Payable Costs

(e) *Exceptions.* Limits established under this section may be adjusted upward for a SNF or HHA under the circumstances specified in paragraphs (e)(1) through (e)(5) of this section. An adjustment is made only to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the SNF or HHA, and verified by the intermediary.

The current regulation at § 413.30(f) allows a provider that is subject to cost limits to request an exception to the cost limits if its costs exceed, or are expected to exceed, the limits as a result of one of the following unusual situations:

- Atypical services.
- Extraordinary circumstances.
- Providers in areas with fluctuating populations.
- Medical and paramedical education costs.
- Unusual labor costs.

An adjustment is made only to the extent that the costs are reasonable, attributable to the circumstance specified, separately identified by the provider, and verified by the intermediary.

The provider must file a request for an exception to the cost limits no later than 180 days from the date of the intermediary's notice of program reimbursement. The intermediary reviews the request with all supporting documentation. The intermediary also makes and submits to us a recommendation on the provider's request. We make a final determination and respond to the intermediary within 180 days from the date of the intermediary's recommendation. If we do not respond within 180 days, it is considered good cause for the granting of an extension of the time limit to apply for a Provider Reimbursement Review Board review.

We propose to revise § 413.30(c) to give all intermediaries the authority to make final determinations on SNF exception requests. This would result in an increase in administrative efficiency that would benefit all SNFs that file SNF exception requests and fiscal intermediaries that process those exception requests.

Under proposed § 413.30(c), if the intermediary determines that the SNF did not provide adequate

documentation from which a proper determination can be made, the intermediary would notify the SNF that the request is denied. The intermediary would also notify the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation, that we continue to allow the SNF to request a review by the Provider Reimbursement Review Board, and that the time we need to review the request (through the intermediary) is considered good cause for extending the time limit for the SNF to apply for the review. Otherwise, the denial is our final determination.

Section 4432 of the Balanced Budget Act of 1997, (Public Law 105–33) enacted August 5, 1997, mandates that a prospective payment system for SNFs be implemented effective for cost reporting periods beginning on or after July 1, 1998. Accordingly, exceptions will no longer be available to SNFs with cost reporting periods beginning on or after July 1, 1998.

As referenced above, a SNF or HHA may request an exception based on the information provided in its cost report, as submitted to the appropriate HCFA intermediary. Accordingly, HCFA believes that the supplemental information submitted by the provider is not subject to the PRA, as stipulated in 5 CFR 1320.3(h)(6) and 5 CFR 1320.3(h)(9). In particular, on an individual basis, providers are given an opportunity to submit additional information designed to clarify the responses disclosed in a currently approved collection, e.g., HHA/SNF cost reports (OMB #0938–0022 & 0938–0463), to demonstrate an exception.

We have submitted a copy of this rule to OMB for its review of the information collection requirements above. If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Attn: John Burke HCFA–1883.

And,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503,

List of Subjects in 42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 42 CFR Chapter IV, Subchapter B, part 413, subpart C would be amended as follows:

PART 413—[AMENDED]

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 413.30 is revised to read as follows:

§ 413.30 Limitations on payable costs.

(a) *Introduction*—(1) *Scope.* This section implements section 1861(v)(1)(A) of the Act, by setting forth the general rules under which HCFA may establish limits on SNF and HHA costs recognized as reasonable in determining Medicare program payments. It also sets forth rules governing exemptions and exceptions to limits established under this section that HCFA may make as appropriate in consideration of special needs or situations.

(2) *General principle.* Payable SNF and HHA costs may not exceed the costs HCFA estimates to be necessary for the efficient delivery of needed health services. HCFA may establish estimated cost limits for direct or indirect overall costs or for costs of specific services or groups of services. HCFA imposes these limits prospectively and may calculate them on a per admission, per discharge, per diem, per visit, or other basis.

(b) *Procedure for establishing limits.* (1) In establishing limits under this section, HCFA may classify SNFs and HHAs by factors that HCFA finds appropriate and practical, including the following:

(i) Type of services furnished.

(ii) Geographical area where services are furnished, allowing for grouping of noncontiguous areas having similar demographic and economic characteristics.

(iii) Size of institution.

(iv) Nature and mix of services furnished.

(v) Type and mix of patients treated.

(2) HCFA bases its estimates of the costs necessary for efficient delivery of health services on cost reports or other data providing indicators of current costs. HCFA adjusts current and past period data to arrive at estimated costs for the prospective periods to which limits are applied.

(3) Before the beginning of a cost period to which revised limits will be applied, HCFA will publish a notice in the **Federal Register**, establishing cost limits and explaining the basis on which they are calculated.

(4) In establishing limits under paragraph (b)(1) of this section, HCFA may find it inappropriate to apply particular limits to a class of SNFs or HHAs due to the characteristics of the SNF or HHA class, the data on which HCFA bases those limits, or the method by which HCFA determines the limits. In these cases, HCFA may exclude that class of SNFs or HHAs from the limits, explaining the basis of the exclusion in the notice setting forth the limits for the appropriate cost reporting periods.

(c) *Requests regarding applicability of cost limits.* A SNF may request an exception or exemption to the cost limits imposed under this section. An HHA may request only an exception to the cost limits. The SNF's or HHA's request must be made to its fiscal intermediary within 180 days of the date on the intermediary's notice of program reimbursement.

(1) *Home health agencies.* The intermediary makes a recommendation on the HHA's request to HCFA, which makes the decision. HCFA responds to the request within 180 days from the date HCFA receives the request from the intermediary. The intermediary notifies the HHA of HCFA's decision. The time required by HCFA to review the request is considered good cause for the granting of an extension of the time limit for the HHA to apply for a Provider Reimbursement Review Board review, as specified in § 405.1841 of this chapter. HCFA's decision is subject to review under subpart R of part 405 of this chapter.

(2) *Skilled nursing facilities.* The intermediary makes the final determination on the SNF's request within 90 days from the date that the intermediary receives the request from the SNF. If the intermediary determines that the SNF did not provide adequate documentation from which a proper determination can be made, the intermediary notifies the SNF that the request is denied. The intermediary also notifies the SNF that it has 45 days from the date on the intermediary's denial letter to submit a new exception request with the complete documentation and that otherwise, the denial is the final determination. The time required by the intermediary to review the request is considered good cause for the granting of an extension of the time limit for the SNF to apply for a Provider Reimbursement Review Board review, as specified in § 405.1841 of this

chapter. The intermediary's determination is subject to review under subpart R of part 405 of this chapter.

(d) *Exemptions.* Exemptions from the limits imposed under this section may be granted to a new SNF. A new SNF is a provider of inpatient services that has operated as the type of SNF (or the equivalent) for which it is certified for Medicare, under present and previous ownership, for less than 3 full years. An exemption granted under this paragraph, expires at the end of the SNF's first cost reporting period beginning at least 2 years after the provider accepts its first inpatient.

(e) *Exceptions.* Limits established under this section may be adjusted upward for a SNF or HHA under the circumstances specified in paragraphs (e)(1) through (e)(5) of this section. An adjustment is made only to the extent that the costs are reasonable, attributable to the circumstances specified, separately identified by the SNF or HHA, and verified by the intermediary.

(1) *Atypical services.* The SNF or HHA can show that the—

(i) Actual cost of services furnished by a SNF or HHA exceeds the applicable limit because the services are atypical in nature and scope, compared to the services generally furnished by SNFs or HHAs similarly classified; and

(ii) Atypical services are furnished because of the special needs of the patients treated and are necessary in the efficient delivery of needed health care.

(2) *Extraordinary circumstances.* The SNF or HHA can show that it incurred higher costs due to extraordinary circumstances beyond its control. These circumstances include, but are not limited to, strikes, fire, earthquake, flood, or other unusual occurrences with substantial cost effects.

(3) *Areas with fluctuating populations.* The SNF or HHA meets the following conditions:

(i) Is located in an area (for example, a resort area) that has a population that varies significantly during the year.

(ii) Is furnishing services in an area for which the appropriate health planning agency has determined does not have a surplus of beds or services and has certified that the beds or services furnished by the SNF or HHA are necessary.

(iii) Meets occupancy or capacity standards established by the Secretary.

(4) *Medical and paramedical education.* The SNF or HHA can demonstrate that, if compared to other SNFs or HHAs in its group, it incurs increased costs for items or services covered by limits under this section because of its operation of an approved education program specified in § 413.85.

(5) *Unusual labor costs.* The SNF or HHA has a percentage of labor costs that varies more than 10 percent from that included in the promulgation of the limits.

(f) *Operational review.* Any SNF or HHA that applies for an exception to the limits established under paragraph (e) of this section must agree to an operational review at the discretion of HCFA. The findings from this review may be the basis for recommendations for improvements in the efficiency and economy of the SNF's or the HHA's operations. If recommendations are made, any future exceptions are contingent on the SNF's or HHA's implementation of these recommendations.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 8, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: April 6, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–21423 Filed 8–10–98; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL MARITIME COMMISSION

46 CFR Part 514

[Docket No. 98–10]

Inquiry into Automated Tariff Filing Systems as Proposed by the Pending Ocean Shipping Reform Act of 1998

AGENCY: Federal Maritime Commission.

ACTION: Notice of inquiry; Extension of time.

SUMMARY: Upon consideration of a request from counsel for various carrier agreements and ocean common carriers a limited extension of time to comment on the Notice of Inquiry in this matter is granted.

DATES: Comments due on or before August 25, 1998.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Washington DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Bryant L. VanBrakle, Director, Bureau of Tariffs, Certification and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5796

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Commission on July 9, 1998, (63 FR 37088) published a Notice of Inquiry (''NOI'') to help determine an approach that will produce automated tariff publication systems and service contract filings that best comport with the directives of S. 414, the Ocean Shipping Reform Act of 1998, and its legislative history. The Commission directed comments to be filed by August 10, 1998, recognizing that S. 414 was awaiting action in the House of Representatives and that passage there before adjournment could leave a very short time period to adopt final implementing rules by the March 1, 1999, deadline contained in S. 414.

Counsel for numerous carrier agreements and ocean common carriers now have requested a 30-day extension of the comment period to September 11, 1998. As justification therefore counsel refer to the fact that S. 414 has not yet been passed by the House and it would be ''premature and speculative to offer comments on how it should be implemented.'' Counsel further suggest that because of the uncertainty of the legislative process they have been ''reluctant to devote much time'' to the matter and ''have not had an opportunity to meet and discuss these issues.''

The Commission, in establishing the August 10 comment deadline, recognized that enactment of S. 414 in its current form was not a certainty, but nevertheless determined that time constraints required that the NOI go forward. Nothing has changed in this regard although the House of Representatives on August 4 passed a slightly modified version of S. 414. Given the S. 414 time constraints, the Commission must continue to proceed expeditiously and cannot accommodate a 30-day extension request. Nevertheless, a 15-day extension to August 25, 1998, will be granted in the interest of maximizing public participation in the NOI. The demands inherent in meeting the proposed statutory timetable may preclude comments received after that date from

being considered in the preparation of a proposed rule.

Joseph C. Polking,

Secretary.

[FR Doc. 98–21491 Filed 8–10–98; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; DA 98–1406]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Notice of available technical information.

SUMMARY: The Office of Engineering and Technology is making available technical information relating to the *Notice of Proposed Rulemaking and Order*, 63 FR 33892 (June 22, 1998), in MM Docket No. 98–93. The information consists of two items: A report, ''Field Strength Prediction in Irregular Terrain,'' describing the derivation of the point-to-point (PTP) model proposed in the *NPRM*, and; Comparisons of the predictions of the PTP model with field measurement data. FCC staff has also placed in the docket of this proceeding a spacing table for Class C0 minimum distance separation requirements. *See* memo dated July 22, 1998 from Peter H. Doyle to Magalie Roman Salas. This table supplements the description of Class C0 separation requirements provided at footnote 72 of the *NPRM*.

This technical information is part of the record in MM Docket No. 98–93 and is available for public inspection and copying during normal business hours in the FCC Public Reference Room, Room 238, 1919 M Street, NW., Washington, DC. A complete copy of these materials may be purchased from the Commission's copy contractor, International Transcription Service (ITS), 1231 20th Street, NW., Washington, DC, (202) 857–3800 (phone), (202) 857–3805 (facsimile). This information may be reviewed or downloaded from the FCC Worldwide Web site at [http://www.fcc.gov/oet/fm/ptp/].

FOR FURTHER INFORMATION CONTACT: Peter Doyle (202–418–2126), Mass Media Bureau.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98–21389 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 98–93; DA 98–1468]

1998 Biennial Regulatory Review

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment and reply comment deadline.

SUMMARY: The Commission granted an extension for filing comments and reply comments in the NPRM Re: Biennial Regulator Review released July 23, 1998 in response to a request filed by the National Association of Broadcasters (''NAB''). The intended effect of this action is to allow parties to have additional time in which to file comments and reply comments in this proceeding.

DATES: Comments are due on or before October 20, 1998; reply comments are due on or before November 20, 1998.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul Gordon (202–418–2130) or Peter Doyle (202–418–2126), Mass Media Bureau.

SUPPLEMENTARY INFORMATION: This is a synopsis of the *Order* granting an extension of time for filing comments and reply comments in MM Docket No. 96–98–93, DA 98–1468, adopted July 23, 1998, and released July 23, 1998. The complete text of this *Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Synopsis of Order Granting Extension of Time for Filing Comments

1. On June 11, 1998, the Commission adopted a *Notice of Proposed Rulemaking and Order*, 63 FR 33892 (June 22, 1998), in this proceeding. The *Notice* solicited comment on several proposals to substantially streamline and otherwise revise a wide variety of radio technical rules. The *Notice* set the comment filing deadline at August 21, 1998 and the reply comment filing deadline at September 21, 1998.

2. On July 15, 1998, the National Association of Broadcasters (''NAB'') filed a ''Motion for Extension of Time of Comment and Reply Comment Deadlines.'' In support of its request, NAB reports that it has formed an *ad hoc* committee of broadcast engineers to study the proposals set forth in the *Notice*. According to NAB, the committee needs additional time to meet, discuss the issues, and form conclusions regarding the possible impact of the Commission's proposals. Therefore, NAB requests an extension of the comment and reply comment deadlines to October 20, 1998 and November 20, 1998, respectively, so that NAB and radio broadcasters can participate more effectively in this proceeding.

3. We will grant the requested extension. This proceeding raises a number of complex technical issues affecting the nature of the broadcast radio service provided to the public. We agree with NAB that a well-documented record will provide a more informed decision as to how the technical rules should be modified. The *ad hoc* committee of engineers that NAB has formed has the potential to make a significant contribution to such a record. NAB represents many of the parties that will most directly be affected by any actions we take in this regard, and it has shown good cause why a sixty-day extension will enable it to provide more well-informed comments.

4. Accordingly, *it is ordered* That the ''Motion for Extension of Time of Comment and Reply Comment Deadlines'' filed by the National Association of Broadcasters in MM Docket No. 98–93 Is granted. The time for filing comments *are extended* by sixty days, until October 20, 1998.

5. *It is further ordered* That the time for filing reply comments in this proceeding likewise *Is extended* for sixty days, until November 20, 1998.

6. This action is taken pursuant to the authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i) and 303(r), and sections 0.204(b), 0.283, and 1.46 of the Commission's rules, 47 CFR 0.204(b), 0.283, and 1.46.

List of Subjects in 47 CFR Parts 73 and 74

Radio, reporting and recordkeeping requirements.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 98–21388 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 980724195–8195–01; I.D. 070798F]

RIN 0648–AK95

Proposed List of Fisheries for 1999

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

ACTION: Proposed rule; request for comments.

SUMMARY: This action proposes changes for 1999 to the List of Fisheries (LOF) as required by the Marine Mammal Protection Act (MMPA) and proposes changes to the regulations implementing section 118 of the MMPA. The proposed LOF for 1999 reflects new information on interactions between commercial fisheries and marine mammals. Under the MMPA, a commercial fishery is to be placed on the LOF in one of three categories based upon the level of serious injury and mortality of marine mammals that occurs incidental to that fishery. The categorization of a fishery in the LOF determines whether the fishery is subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: Comments on the proposed rule must be received by November 9, 1998.

ADDRESSES: Send comments to Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Comments regarding the burden-hour estimates or any other aspect of the collection of information requirements contained in this proposed rule should be sent to the above individual and to the Office of Information and Regulatory Affairs, OMB, Attention: NOAA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Cathy Eisele, Office of Protected Resources, 301–713–2322; Kim Thounhurst, Northeast Region, 508–281–9138; Kathy Wang, Southeast Region, 813–570–5312; Irma Lagomarsino, Southwest Region, 562–980–4016; Brent Norberg, Northwest Region, 206–526–6733; Steven Zimmerman, Alaska Region, 907–586–7235.

SUPPLEMENTARY INFORMATION:

Background

History of the List of Fisheries

Section 118 of the MMPA requires that NMFS publish, at least annually, a list of fisheries that places all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals in each fishery.

In 1995, NMFS published proposed and final regulations implementing section 118 of the MMPA (60 FR 31666, June 17, 1995, and 60 FR 45086, August 30, 1995, respectively).

Definitions of the fishery classification criteria for Category I, II, and III fisheries are found in the implementing regulations for section 118 of the MMPA (50 CFR part 229). In addition, these definitions are described in the preambles to the final rule implementing section 118 (60 FR 45086, August 30, 1995) and in the final LOF for 1996 (60 FR 67063, December 28, 1995). Because they provide the basis for the classification of fisheries in the LOF, these criteria are summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the Potential Biological Removal (PBR) level for each marine mammal stock.

Tier 1: If the total annual mortality and serious injury across all fisheries that interact with a stock is less than or equal to 10 percent of the PBR level of this stock, all fisheries interacting with this stock would be placed in Category III. Otherwise, these fisheries are subject to the next tier of analysis to determine their classification.

Tier 2—Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level.

Tier 2—Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level.

Tier 2—Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level.

Tier 1, therefore, considers the cumulative fishery mortality and serious injury for a particular stock, while Tier 2 considers fishery-specific mortality for a particular stock. Additional details regarding how threshold percentages between the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA.

Requirements for Vessels Participating in Category I and II Fisheries

The primary functions of the LOF are to inform the public of the levels of interactions with marine mammals in various commercial fisheries and to identify fisheries for which efforts to reduce these interactions may be necessary. In addition, the LOF informs the fishing industry of which fisheries are subject to certain provisions of the MMPA.

Registration: Fishers participating in Category I or II fisheries are required, under 50 CFR 229.4, to be registered under the MMPA. Unless the Authorization Certificate program for a given fishery is integrated and coordinated with existing state fishery registration programs, fishers must obtain a registration or renewal packet from NMFS and submit the completed registration or renewal form and the required registration fee to the appropriate NMFS Regional Office. Normally, NMFS will send the fisher an Authorization Certificate, program decal, and reporting forms within 60 days of receiving the registration or renewal form and registration fee.

NMFS has successfully integrated registration under the MMPA with state fishery registration in Washington, Oregon, Alaska, and certain New England fisheries, and it anticipates being able to integrate registration with state fishery registration in North Carolina and California in the near future. The benefits of integrating registration with existing programs have included a reduction or elimination of fees for some commercial fishers and a reduction in paperwork that must be completed by fishers and by NMFS.

Reporting: Vessel owners or operators, or fishers, in the case of nonvessel fisheries, in Category I, II, or III fisheries must comply with 50 CFR 229.6 and report all incidental mortalities and injuries of marine mammals during the course of commercial fishing operations to NMFS Headquarters. ''Injury'' is defined in 50 CFR 229.2 as a wound or other physical harm. In addition, any animal that ingests fishing gear, or any animal that is released with fishing gear entangling, trailing or perforating any part of the body is considered injured and must be reported. Instructions for submission of reports are found at 50 CFR 229.6(a).

Observers: Fishers participating in Category I and II fisheries are required, upon request, to accommodate an observer aboard their vessels. Observer requirements may be found at 50 CFR 229.7.

Take Reduction Plans: Fishers participating in Category I and II fisheries are required to comply with any applicable take reduction plans. NMFS may develop and implement take reduction plans for any Category I fishery or Category II fishery that interacts with a strategic stock of marine mammals.

Sources of Information Reviewed During Development of the Proposed LOF for 1999

NMFS' Stock Assessment Reports (SARs) provide the best available information on both the level of serious injury and mortality of marine mammals that occurs incidental to commercial fisheries and the PBR levels for marine mammal stocks. The proposed LOF for 1999 is based on information provided in both the final SARs for 1996 (63 FR 60, January 2, 1998) and the draft SARs for 1998. The draft SARs for 1998 provide new estimates of total serious injury and mortality of marine mammals that occur incidental to some U.S. commercial fisheries and provide new estimates of PBR levels for some marine mammal stocks. If information in the 1998 draft SARs changes as a result of public comments or additional review by the Scientific Review Groups (SRGs), these updates will be incorporated in the final LOF for 1999.

Proposed Changes to the LOF

NMFS reviewed the marine mammal incidental serious injury and mortality information presented in the SARs for all observed fisheries to determine whether proposed changes in fishery classification were warranted. NMFS also reviewed other sources of new information, including marine mammal strandings data and other information that is not included in the SARs.

NMFS is proposing the following specific changes to the LOF that would take effect in 1999. With the exception of these proposed changes, NMFS proposes to retain the fishery classifications as published in the final LOF for 1998. Under section 118 of the MMPA, NMFS must include all U.S. commercial fisheries on the LOF. Accordingly, NMFS is publishing this comprehensive table listing all U.S. commercial fisheries. NMFS solicits comments on this list and should be advised of any fishery that is not included in this list. As a result of comments or information received after the publication of the proposed 1999 LOF, NMFS may redefine existing fishery definitions, recategorize fisheries, or add and delete fisheries from this list for the final 1999 LOF.

Changes Resulting From New Draft SARs

The table in the LOF that lists all U.S. commercial fisheries, the number of participants in each fishery, and the marine mammal stocks and/or species incidentally killed or injured in each fishery was updated to include the following changes in the draft Pacific and Atlantic SARs:

1. The CA/OR/WA stocks of Mesoplodont beaked whales were proposed to be designated as non-strategic;
2. The CA/OR/WA stock of minke whales was proposed to be designated as non-strategic; and
3. The Western North Atlantic stock of white-sided dolphin is proposed to be designated as strategic.

The draft SAR for Alaska provided updates to the number of participants in each Alaska commercial fishery and to the list of species and/or stocks incidentally injured or killed in each fishery. When possible, the number of participants provided in the table in the LOF reflects the number of permits fished in 1996. For those fisheries for which this information was not available, the number of permits issued was used to represent the number of participants.

Midwater Trawl Fishery for Atlantic Herring

The current LOF includes a Category III listing for the Gulf of Maine, U.S. mid-Atlantic coastal herring trawl fishery. This fishery was originally listed in 1989 and comprised approximately five participants who operated primarily in Maine state waters. Since that time, information has become available indicating that vessels target herring in other areas, including Jeffreys Ledge, offshore on Georges Bank, and the nearshore waters of Rhode Island, Connecticut, and New York. Based on discussions with New England Fishery Management Council staff developing the Herring Fishery Management Plan, NMFS determined that there is little difference between the boats or gear fishing in coastal areas (such as Maine state waters) and in areas such as Jeffreys Ledge or offshore; thus, these fisheries should be considered part of the same herring midwater trawl fishery.

This herring trawl fishery utilizes midwater trawl gear, a gear type used in the Atlantic squid, mackerel, butterfish trawl fishery, a Category II fishery known to take several species of cetaceans. Herring are an important prey for several Atlantic stocks of marine mammals, including the Gulf of Maine stock of harbor porpoise, a strategic stock. NMFS believes that this fishery operates at times and in locations of significant densities of marine mammals. Therefore, NMFS is proposing that ''Atlantic herring midwater trawl (including pair trawl)'' be added to the LOF as a Category II fishery. NMFS is proposing that the new listing for ''Atlantic herring midwater trawl (including pair trawl)'' include those vessels currently operating in the Gulf of Maine, U.S. Mid-Atlantic coastal herring trawl fishery. Thus, the Category III listing for the Gulf of Maine, U.S. Mid-Atlantic coastal herring trawl would be removed from the LOF.

Target species and bycatch: These vessels primarily target Atlantic herring, *Clupea harengus,* but may catch small amounts of anadromous ''river herring'' species such as blueback herring and alewife. There are several other finfish bycatch species; however, the most prominent species are mackerel, spiny dogfish, and silver hake.

Gear types: The basic gear type in this fishery is midwater trawl gear, which is defined in 50 CFR 648.2 as follows: ''*Midwater trawl gear* means trawl gear that is designed to fish for, is capable of fishing for, or is being used to fish for pelagic species, no portion of which is designed to be or is operated in contact with the bottom at any time.''

Several vessels in this fishery are using midwater trawls that are used as pair trawls (one net towed by two vessels). Although there may be a higher potential for incidental serious injury or mortality of marine mammals in pair trawl gear, NMFS has no evidence that it would be at the Category I level; therefore, NMFS proposes to include these vessels in the Category II Atlantic herring midwater trawl fishery until data on differential bycatch rates become available.

In addition, there may be internal waters processing (IWP) or joint venture (JV) operations in this fishery in certain times and areas. NMFS does not believe that a separate listing for IWP and JV operations is warranted at this time. NMFS is investigating the status of these fisheries and their potential impacts on marine mammals and will propose a separate categorization for this fishery in the LOF, if appropriate.

Although the effort data indicate that a significant amount of herring is landed by bottom trawl gear, this primarily results from a compilation of a large number of hauls with a small amount of

herring bycatch, rather than from vessels actually targeting herring. If any vessels are targeting herring with bottom trawls, that effort would be considered to be part of the existing Category III listing for the North Atlantic bottom trawl fishery.

Number of participants: According to landings data from NMFS and the Maine Department of Marine Resources, there are approximately 17 participants in this fishery, including pair trawl vessels.

Area of operation: Atlantic herring is distributed over continental shelf waters from Labrador to Cape Hatteras. Therefore, this fishery could occur anywhere in that area, although it is likely to be limited by factors such as distance from processing plants and economic viability. The primary areas of operation are Maine state waters, Jeffreys Ledge, southern New England, and Georges Bank.

Northeast Multispecies Sink Gillnet Fishery

This fishery was listed in the 1996 LOF as the ''New England multispecies sink gillnet fishery, including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish.'' In the 1997 LOF, the name of this fishery was changed to the ''Northeast multispecies sink gillnet fishery, including species as defined in the Multispecies Fisheries Management Plan and spiny dogfish and monkfish.''

NMFS is proposing to change the name of this fishery to the ''Northeast sink gillnet fishery'' to better reflect the target species and geographic boundaries of this fishery and to avoid future confusion between this fishery and the boundaries and target species addressed in the Northeast Multispecies Fishery Management Plan. The Northeast sink gillnet fishery would include effort for all target species (i.e., fishery would no longer be limited to only multispecies finfish, monkfish, and dogfish). NMFS is not proposing to change the geographic boundaries of this fishery; thus, the geographic boundary between the Northeast sink gillnet fishery and the Mid-Atlantic coastal gillnet fishery would remain as 72°30′ W. long.

Gulf of Mexico Menhaden Purse Seine Fishery

The Gulf of Mexico menhaden purse seine fishery is currently classified as a Category III fishery. Based on a review of 1992–95 observer data, NMFS is proposing that this fishery be placed in Category II.

Tier I evaluation: Currently, there is no information available on other Category I or II fisheries interacting with coastal bottlenose dolphin stocks in the Gulf of Mexico. As a result, takes of a given stock in any fishery would need to exceed 10 percent of that stock's PBR to elevate that fishery to Category II.

Tier II evaluation: An observer program conducted by Louisiana State University in 1992, 1994, and 1995 recorded nine captures of coastal bottlenose dolphin, eight from the western coastal stock, and one from the northern coastal stock. Three of the captures from the western coastal bottlenose stock were reported as mortalities. A total of 1,038 sets was observed over the 3 years in which the observer program operated. The only effort data currently available are for 1994, in which 26,097 sets were recorded in the fishery, and for 1995, when 21,150 sets were recorded. Assuming that an average of the effort in 1994 and 1995 (23,624 sets) is representative of the effort expanded over the years 1992, 1994, and 1995, the three observed mortalities would extrapolate to an annual average of 68 mortalities per year. All lethal takes occurred in the area encompassing the western coastal stock of bottlenose dolphin which has a PBR of 29 animals.

Because the annual average of 68 mortalities per year exceeds 50 percent of the PBR level for the western coastal bottlenose stock, this would ordinarily justify placement of this fishery in Category I; however, NMFS is proposing to place this fishery in Category II, pending a revised analysis of the stock structure for bottlenose dolphin in the Gulf of Mexico. The Atlantic SRG has advised that the Atlantic and Gulf of Mexico bottlenose dolphin stock structures be re-examined and has suggested that the three Gulf coastal stocks be combined. Under this scenario, the PBR levels for the three Gulf coastal stocks would result in a combined PBR of 154 animals, thus placing this fishery in Category II. NMFS has not yet determined whether this would be a biologically appropriate stock designation, but NMFS believes that provisionally placing this fishery in Category II is appropriate, pending a revised analysis of stock structure for bottlenose dolphin in the Gulf of Mexico.

North Carolina Haul Seine Fishery

NMFS has received reports that the North Carolina haul seine fishery operates in several mid-Atantic states, including North Carolina, Virginia and New Jersey; therefore, NMFS proposes to change the name of this fishery to the ''Mid-Atlantic haul seine.''

Discussion of Other Commercial Fisheries

Atlantic Squid, Mackerel, Butterfish Trawl Fishery

In June 1998, the Atlantic SRG recommended that NMFS consider reclassifying the Atlantic squid, mackerel, butterfish trawl fishery as a Category I fishery because estimated marine mammal takes in this fishery exceed the PBR level for two stocks of marine mammals.

The Northeast Fisheries Science Center (NEC) has reviewed the current mortality estimates for the Atlantic squid, mackerel, butterfish trawl fishery and found that there is substantial uncertainty surrounding these estimates. As a result, the NEC plans to re-evaluate the estimates of marine mammal mortality that occur incidental to this fishery after data collected in 1997 are analyzed.

Because the marine mammal mortality estimates are currently under revision, NMFS is not proposing to reclassify this fishery for the 1999 LOF. NMFS expects that the draft 1999 SARs will include updated marine mammal mortality estimates for this fishery, and NMFS will re-evaluate the classification of this fishery when the draft 1999 SARs become available.

U.S. Mid-Atlantic Coastal Gillnet Fishery

The U.S. mid-Atlantic coastal gillnet fishery is currently classified as a Category II fishery, and information regarding incidental bycatch of coastal bottlenose dolphin in this fishery was discussed in the proposed LOF (62 FR 28657, May 27, 1997) and in the final LOF for 1998 (63 FR 5748, February 4, 1998). No new information has been received since the publication of the final 1998 LOF to change the basis for the original Category II classification of this fishery; therefore, the fishery will remain in Category II. However, data from the current mid-Atlantic coastal gillnet observer program should be available in time for the LOF for 2000, and the status of this fishery will be reviewed at that time.

Atlantic Ocean, Gulf of Mexico Blue Crab Trap/Pot Fishery

Over the 5-year period from 1993 to 1997, eight bottlenose dolphins stranded in the Southeast Region with identifiable crab pot gear attached. During the same time period, an additional 22 bottlenose dolphin carcasses were recovered entangled in crab pot-type line from an unidentifiable source, or displaying marks on the skin consistent with

entanglement in such gear. These strandings were distributed throughout the Atlantic and Gulf of Mexico states. Manatees have also been reported entangled in this gear, but most of these animals were disentangled and released alive.

The eight confirmed dolphin/crab pot entanglements span three different geographic areas and may represent at least three bottlenose dolphin stocks, including the south Atlantic area, the south Florida area, and the Gulf of Mexico. Most, if not all, of the dolphin carcasses were recovered in inshore waters where bay, sound, and estuarine stocks of bottlenose dolphins reside.

The Atlantic SARs currently do not recognize separate coastal bottlenose stocks in the U.S. south Atlantic and south Florida area. The Atlantic SARs have not yet recognized bay, sound or estuarine bottlenose stocks in the Atlantic because very little survey data and stock structure information are available for these animals. Currently, NMFS is conducting extensive studies to gain a better understanding of bottlenose dolphin stock structure in these areas.

Until coastal bottlenose dolphin stock structure is better understood and PBR levels are available, NMFS cannot conduct the tier analyses required to determine the appropriate categorization of this fishery. Therefore, this fishery will remain in Category III at this time. Both NMFS and the Fish and Wildlife Service (FWS) are concerned about an apparent increase in manatee and dolphin entanglements in crab pot gear in recent years and intend to monitor this situation closely. FWS is currently conducting a background study regarding what is currently known about this fishery in Florida waters. NMFS also hopes to conduct a field study of dolphin/crab pot interactions in the near future.

North Carolina Inshore Gillnet Fishery

Recently, one bottlenose dolphin stranded in North Carolina with evidence of fishery interactions, and two other bottlenose dolphins were disentangled and released from gillnet gear in inshore North Carolina waters. These incidences indicate that a small number of bottlenose dolphin mortalities may have resulted from gillnets in inside waters of North Carolina. Based on current bottlenose stock structure information, these animals were most likely from the Western North Atlantic coastal stock. Assuming that these animals are from the Western North Atlantic coastal bottlenose stock, the annual take of this stock in the North Carolina inshore gillnet fishery would be less than 1 percent. Based on this information, NMFS does not propose to recategorize this fishery at this time; however, given the uncertainties regarding bottlenose dolphin stock structure, it is possible that the bottlenose dolphins in these inshore North Carolina waters may not be from the Western North Atlantic coastal stock. As noted, the stock structure for coastal bottlenose stocks is currently under revision. If new information on bottlenose dolphin stock structure indicates that this fishery is interacting with a separate stock of coastal bottlenose dolphin, NMFS will re-evaluate the categorization of this fishery.

The current observer program for the mid-Atlantic coastal gillnet fishery will likely incorporate the North Carolina inshore gillnet fishery in its monitoring program, so more conclusive information on possible interactions between this fishery and marine mammals should be available in the near future.

Hawaii Swordfish, Tuna, Billfish, Mahi Mahi, Wahoo, Oceanic Sharks Longline/Set Line Fishery

The Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery is classified as a Category III fishery. This fishery has been observed on a mandatory basis since February 1994 with low (3.5 to 4.5 percent) levels of observer coverage. Between 1994 and 1997, there were 10 observed incidental takes of marine mammals. At least five species of marine mammals were observed taken along with two unidentified animals one of which was reported as an unidentified whale and the other as an unidentified cetacean. The only observed mortality was a short-finned pilot whale in 1996.

Species	1994	1995	1996	1997	Total
Risso's dolphin		[1]2		[2]2	4
Spinner dolphin				[3]1	1
False killer whale				[2]1	1
Bottlenose dolphin		[2]1			1
Unidentified cetacean			[1]1		1
Unidentified whale			[3]1		1
Short-finned pilot whale			[4]1		1
Total	0	3	3	4	10

[1]Gear interaction type unconfirmed/unknown.
[2]Hooked.
[3]Snagged.
[4]Entangled and Killed.

Based on the observed mortality and injuries of several species of cetaceans, the Pacific SRG recommended, in April 1998, that NMFS propose to reclassify this fishery as a Category II fishery in the proposed 1999 LOF.

Estimates of total annual incidental marine mammal mortality and serious injury are not yet available for this fishery. PBR levels are unavailable for most of the stocks of marine mammals identified as incidentally taken in this fishery because the abundance of these stocks within the Hawaii Exclusive Economic Zone is unknown (Barlow et al., 1997). The only stock for which a PBR level has been calculated is for spinner dolphins; however, this is a limited PBR level (6.8 animals) which is based on a minimum count of spinner dolphins from the west coast of Hawaii only.

The majority of the marine mammals that have been incidentally taken in this fishery were released alive with injuries. NMFS has not yet considered these injuries in the classification of the Hawaii longline fishery; NMFS will be publishing proposed guidelines for determining what constitutes a serious injury to a marine mammal after the guidelines are finalized and will evaluate these incidental injuries at that time. There has been only one confirmed incidental marine mammal mortality observed in the Hawaii longline fishery over a 4-year monitoring period. NMFS believes that,

even though observer coverage levels were low, this level of incidental mortality constitutes a ''remote likelihood of incidental mortality or serious injury of marine mammals''; therefore, NMFS is proposing to retain this fishery in Category III. Consideration of incidental serious injuries in the Hawaii longline fishery may warrant the reclassification of this fishery in the LOF for 2000.

NMFS recognizes the importance of monitoring marine mammal bycatch in this fishery and of developing sound marine mammal mortality estimates. NMFS will be increasing observer coverage of the fishery this year. Although this observer coverage is intended to primarily monitor the incidental take of sea turtles, all takes of marine mammals will be recorded. NMFS is making changes to the sampling protocol for specimens and to the recording of interactions and considering making changes to the sampling design for observer coverage to improve the marine mammal bycatch information that is collected through this observer program. NMFS will continue to evaluate observer data and any new information that become available on the level of serious injury and mortality of marine mammals that is occurring incidental to this fishery and will propose a recategorization of this fishery as appropriate.

Although the Hawaii longline fishery is a Category III fishery, participants in this fishery are already required to take observers onboard, to submit vessel logbooks, to report all interactions with marine mammals, and to obtain a limited entry permit to participate in this fishery.

California Offshore Longline Fishery

The California offshore longline fishery is a small Category III fishery, with less than 10 vessels currently operating. During part of the year, vessels in the California longline fishery operate in the same times and areas as vessels in the Hawaii swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line fishery. Although the California offshore longline fishery has the potential to interact with some of the same marine mammal stocks as the Hawaii longline fishery, NMFS has no evidence of serious injuries or mortalities of marine mammals associated with the California offshore longline fishery.

Other Proposed Changes to the List of Fisheries

The following changes are being made to clarify the name of the fishery to: (1) include the specific gear type or target species, (2) update the estimated number of vessels/persons in the fishery, (3) revise the name of the fishery to identify its exact geographic area of operation, or (4) update the stock or species of marine mammals that are documented as incidentally injured or killed in the fishery.

Table 1, Category II: The name of the Alaska Peninsula/Aleutians salmon drift gillnet fishery is changed to the Alaska Peninsula/Aleutian Islands salmon drift gillnet fishery.

Table 1, Category II: The name of the Alaska Peninsula/Aleutian Island salmon set gillnet fishery is changed to the Alaska Peninsula/Aleutian Islands salmon set gillnet fishery.

Table 1, Category II: The name of the Alaska Cook Inlet drift gillnet fishery is changed to the Alaska Cook Inlet salmon drift gillnet fishery.

Table 1, Category II: The name of the Alaska Bristol Bay drift gillnet fishery is changed to the Alaska Bristol Bay salmon drift gillnet fishery.

Table 1, Category II: The name of the Alaska Bristol Bay set gillnet fishery is changed to the Alaska Bristol Bay salmon set gillnet fishery.

Table 1, Category II: The name of the Alaska pair trawl fishery is changed to the Alaska miscellaneous finfish pair trawl fishery.

Table 1, Category III: The name of the Alaska Prince William Sound set gillnet fishery is changed to the Alaska Prince William Sound salmon set gillnet fishery.

Table 1, Category III: The estimated number of vessels/persons for the Alaska Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet fishery is changed from 1,519 to 1,419.

Table 1, Category III: The name of the Alaska Metlakatla purse seine fishery is changed to the Alaska Metlakatla salmon purse seine fishery.

Table 1, Category III: The estimated number of vessels/persons for the Alaska Bering Sea, Gulf of Alaska finfish fishery is changed from 277 to 274.

Table 1, Category III: The name of the Alaska other finfish handline and mechanical jig fishery is changed to the Alaska miscellaneous finfish handline and mechanical jig fishery.

Table 1, Category III: The estimated number of vessels/persons for the Alaska, Washington, Oregon, California commercial passenger fishery is changed from >17,000 (16,276 Alaska only) to >4,000 (3,523 Alaska only).

Table 2, Category I: The stock of marine mammals that are injured/killed in the Northeast sink gillnet fishery is clarified for the following species: Common dolphin, Western North Atlantic (WNA); Fin whale, WNA; Spotted dolphin, WNA; False killer whale, WNA; Harp seal, WNA.

Table 2, Category II: The Western North Atlantic coastal stock of bottlenose dolphin is added as a stock that incurs injury or mortality incidental to the North Caroline inshore gillnet fishery.

Table 2, Category III: The name of the Gulf of Maine, southeast U.S. Atlantic coastal shad, sturgeon, gillnet (includes waters of North Carolina) fishery is changed to the Gulf of Maine, southeast U.S. Atlantic coastal shad, sturgeon, gillnet fishery. Fishermen participating in the North Carolina fishery are more appropriately identified under the U.S. mid-Atlantic coastal gillnet fishery.

Table 2, Category III: The list of marine mammal species/stocks incidentally injured/killed in the Florida east coast, Gulf of Mexico pelagics king and spanish mackerel gillnet fishery is changed from Bottlenose dolphin, Western Gulf of Mexico (GMX) coastal; Bottlenose dolphin, Northern GMX coastal; Bottlenose dolphin, Eastern GMX coastal; Bottlenose dolphin, GMX bay, sound, and estuarine, to none documented. There have been no documented interactions of marine mammals with this fishery. The fishery uses run-around gillnets and employs spotter planes to find schooling mackerel which make interactions with marine mammals highly improbable.

Proposed Changes to Regulations at 50 CFR Part 229

NMFS is proposing several revisions and technical edits to 50 CFR part 229. These changes are described here.

Definitions

In several places, the term ''take'' was replaced with the term ''serious injury and mortality'' to better reflect the statutory language of section 118 of the MMPA.

NMFS is proposing to remove the definitions of the term ''Incidental, but not intentional, take'' and the term ''Incidental mortality''. NMFS is proposing instead to include a definition of the term ''Incidental'.

NMFS is proposing to add a definition for the term ''Integrated fishery'' under § 229.2. This term is currently defined and discussed in several sections of part 229, but was not previously defined in § 229.2 *Definitions.*

Requirements for Category I and II Fisheries

Section 229.4(b)(2)(v) currently requires that vessel/gear owners provide a description of the gear type and approximate time, duration, and

locations of each fishery operation. Because this information is incorporated within the fishery title, it is not necessary for fishers to provide NMFS with this additional fishery description information. NMFS is proposing to remove this requirement.

NMFS is proposing to remove all references to an ''annual decal'' in part 229. The NMFS' Marine Mammal Authorization Program decals do not have an annual expiration and may not always be issued every year; therefore, NMFS is proposing that the term ''decal'' be used instead of the term ''annual decal''.

Under § 229.4(e)(3), Authorization Certificates must be signed and dated by the owner or the authorized representative of the owner in order to be valid. NMFS is proposing to remove this provision since the possession of a certificate is sufficient to provide an authorization for taking of marine mammals.

NMFS made several additional minor changes to § 229.4, including updating the telephone numbers of NMFS regional offices, clarifying registration requirements for participants in integrated fisheries, and restructuring sections to improve clarity and readability.

Requirements for Category III Fisheries

The marine mammal deterrence provisions under the 1994 Amendments to the MMPA should pertain to all commercial fishermen; however, § 229.5 erroneously indicates that these provisions apply only to participants in Category I and Category II fisheries. NMFS is proposing to correct the wording of this section to clarify that this deterrence provision applies to all vessel owners and crew members engaged in commercial fishing operations.

Reporting Requirements

NMFS is proposing to modify the reporting requirements under § 229.6 to include all commercial fishermen, regardless of the category of fishery they participate in, and to clarify the registration requirements for participants in non-vessel fisheries. Instead of providing the vessel name and registration number, participants in non-vessel fisheries would be required to submit the gear permit number.

Monitoring of Incidental Mortalities and Serious Injuries

Because observers may not always be onboard the vessel and may monitor bycatch from alternate platforms, NMFS proposes to remove all reference to an ''onboard observer''.

Under § 229.7(c)(4)(i), vessel operators and crew members must provide ''adequate accommodations'' for observers. In order to ensure the health and safety of marine mammal observers, NMFS is proposing to further define the specific accommodations that vessel operators must provide. Vessel operators or crew members must provide ''food, toilet, bathing, and sleeping accommodations that are equivalent to those provided to the crew''. These accommodations should be provided at no cost to the observer or to NMFS.

Section 229.7 allows observers to sample, retain, or store marine mammals or other protected species specimens. NMFS is proposing to specifically allow observers to sample, retain, or store target and non-target catch, which would include marine mammals or other protected species specimens.

Under § 229.7, the current observer requirements apply only to Authorization Certificate holders; however, the intent of these regulations is to apply to all vessel owners/operators or operators of nonvessel gear participating in Category I or II fisheries; therefore, NMFS is proposing to have the observer requirements apply to ''vessel owners/operators'' instead of ''Authorization Certificate holders''.

Under § 229.7(c)(6), marine mammals incidentally taken in commercial fishing operations may be retained only if authorized by NMFS personnel, designated contractors, an official observer, or by a scientific permit in the possession of the vessel operator. NMFS believes that it is more appropriate to place this provision with the other prohibitions under § 229.3.

Emergency Regulations

NMFS has clarified the regulatory language regarding emergency actions. Under § 229.9, the Assistant Administrator may promulgate emergency actions if the incidental mortality or serious injury of marine mammals from commercial fisheries is having, or is likely to have, an immediate significant adverse impact on a stock or species. If the stock is one for which a take reduction team has not been established or, in the case of a Category III fishery that may be adversely impacting the stock, the Assistant Administrator may immediately review the stock assessment for this stock and classification of this fishery to determine whether a take reduction team should be established. In this section, NMFS has clarified that the Assistant Administrator, in reviewing the fishery classification, would also determine whether a recategorization of the fishery is appropriate.

Take Reduction Plans

NMFS has added a new introductory section under the subpart addressing take reduction plan regulations. This new section clarifies that the MMPA authorizes NMFS to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by the plan. This introductory section is followed by sections addressing the regulatory measures of individual take reduction plans.

List of Fisheries

The following two tables list U.S. commercial fisheries according to their assigned categories under section 118 of the MMPA. The estimated number of vessels is expressed in terms of the number of active participants in the fishery, when possible.

If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants in a fishery, the number from the 1996 LOF is used. The tables also list the marine mammal species/stocks that are incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, and fishers' reports. This list includes all species or stocks known to incur injury or mortality for a given fishery; however, not all species or stocks identified are necessarily independently responsible for a fishery's categorization. There are a few fisheries that are in Category II that have no recently documented interactions with marine mammals. Justifications for placement of these fisheries are by analogy to other gear types that are known to injure or kill marine mammals, as discussed in the final LOF for 1996 (60 FR 45086, December 28, 1995).

Commercial fisheries in the Pacific Ocean are listed in Table 1; commercial fisheries in the Atlantic Ocean are listed in Table 2. An asterisk (*) indicates that the stock is a strategic stock; a plus (+) indicates that the stock is listed as threatened or endangered under the Endangered Species Act.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
Category I		
GILLNET FISHERIES:		
CA angel shark/halibut and other species large mesh (>3.5in) set gillnet.	58	Harbor porpoise, central CA Common dolphin, short-beaked, CA/OR/WA Common dolphin, long-beaked CA California sea lion, U.S. Harbor seal, CA Northern elephant seal, CA breeding
CA/OR thresher shark/swordfish drift gillnet	130	Steller sea lion, Eastern U.S.*+ Sperm whale, CA/OR/WA*+ Dall's porpoise, CA/OR/WA Pacific white sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Bottlenose dolphin, CA/OR/WA offshore Short-beaked common dolphin CA/OR/WA Long-beaked common dolphin CA/OR/WA Northern right whale dolphin, CA/OR/WA Short-finned pilot whale, CA/OR/WA* Baird's beaked whale, CA/OR/WA Mesoplodont beaked whale, CA/OR/WA Cuvier's beaked whale, CA/OR/WA Pygmy sperm whale, CA/OR/WA California sea lion, U.S. Northern elephant seal, CA breeding Humpback whale, CA/OR/WA-Mexico* Minke whale, CA/OR/WA Striped dolphin, CA/OR/WA Killer whale, CA/OR/WA Pacific coast Northern fur seal, San Miguel Island
Category II		
GILLNET FISHERIES:		
AK Prince William Sound salmon drift gillnet	509	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA* Pacific white-sided dolphin, central North Pacific Harbor porpoise, GOA Dall's porpoise, AK
AK Peninsula/ Aleutian Islands salmon drift gillnet	163	Northern fur seal, Eastern Pacific* Harbor seal, GOA Harbor porpoise, Bering Sea Dall's porpoise, AK
AK Peninsula/ Aleutian Islands salmon set gillnet	110	Steller sea lion, Western U.S.*+ Harbor porpoise, Bering Sea
Southeast Alaska salmon drift gillnet	439	Steller sea lion, Eastern U.S.*+ Harbor seal, Southeast AK Pacific white-sided dolphin, central North Pacific Harbor porpoise, Southeast AK Dall's porpoise, AK Humpback whale, central North Pacific*+.
AK Cook Inlet salmon drift gillnet	560	Steller sea lion, Western U.S.*+ Harbor seal, GOA* Harbor porpoise, GOA Dall's porpoise, AK Beluga, Cook Inlet*
AK Cook Inlet salmon set gillnet	604	Steller sea lion, Western U.S.*+ Harbor seal, GOA* Harbor porpoise, GOA Beluga, Cook Inlet* Dall's porpoise, AK
AK Yakutat salmon set gillnet	139	Harbor seal, Southeast AK Gray whale, Eastern North Pacific
AK Kodiak salmon set gillnet	172	Harbor seal, GOA* Harbor porpoise, GOA Sea otter, Southwest AK

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
AK Bristol Bay salmon drift gillnet	1,884	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, Bering Sea Beluga, Bristol Bay Gray whale, Eastern North Pacific Spotted seal, AK Pacific white-sided dolphin, central North Pacific
AK Bristol Bay salmon set gillnet	941	Harbor seal, Bering Sea Beluga, Bristol Bay Gray whale, Eastern North Pacific Northern fur seal, Eastern Pacific* Spotted seal, AK
AK Metlakatla/ Annette Island salmon drift gillnet	60	None documented
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line—Treaty Indian fishing is excluded).	900	Harbor porpoise, inland WA Dall's porpoise, CA/OR/WA Harbor seal, WA inland
PURSE SEINE FISHERIES:		
CA anchovy, mackerel, tuna purse seine	150	Bottlenose dolphin, CA/OR/WA offshore California sea lion, U.S. Harbor seal, CA
CA squid purse seine	65	Short-finned pilot whale, CA/OR/WA*
AK Southeast salmon purse seine	357	Humpback whale, central North Pacific*+
TRAWL FISHERIES:		
AK miscellaneous finfish pair trawl	4	None documented
Longline fisheries		
OR swordfish floating longline	2	None documented
OR blue shark floating longline	1	None documented
Category III		
GILLNESS FISHERIES		
AK Prince William Sound salmon set gillnet	26	Steller sea lion, Western U.S.*+ Harbor seal, GOA*
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet.	1,491	None documented
AK roe herring and food/bait herring gillnet	1,687	None documented
WA, OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet.	913	None documented
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing).	24	Harbor seal, OR/WA coast
WA, OR lower Columbia River (includes tributaries) drift gillnet.	110	California sea lion, U.S. Harbor seal, OR/WA coast
CA set and drift gillnet fisheries that use a stretched mesh size of 3.5 in or less.	341	None documented
AK miscellaneous finfish set gillnet	4	Steller sea lion, Western U.S.*+
Hawaii gillnet	115	Bottlenose dolphin, HI Spinner dolphin, HI
PURSE SEINE, BEACH SEINE, ROUND HAUL AND THROW NET FISHERIES:		
AK salmon purse seine (except Southeast Alaska, which is in Category II).	586	Harbor seal, GOA*
AK salmon beach seine	6	None documented
AK roe herring and food/bait herring purse seine	517	None documented
AK roe herring and food/bait herring beach seine	1	None documented
AK Metlakatla salmon purse seine	10	None documented
AK octopus/squid purse seine	2	None documented
CA herring purse seine	100	Bottlenose dolphin, CA coastal California sea lion, U.S. Harbor seal, CA
CA sardine purse seine	120	None documented
CA squid purse seine	145	California sea lion, U.S.
AK miscellaneous finfish purse seine	4	None documented
AK miscellaneous finfish beach seine	1	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
WA, OR herring, smelt, squid purse seine or lampara	130	None documented
WA (all species) beach seine or drag seine	235	None documented
HI purse seine	18	None documented
HI opelu/akule net	16	None documented
HI throw net, cast net	47	None documented
DIP NET FISHERIES		
WA, OR smelt, herring dip net	119	None documented
CA squid dip net	115	None documented
MARINE AQUACULTURE FISHERIES:		
WA, OR salmon net pens	21	California sea lion, U.S.
CA salmon enhancement rearing pen	≤1	None documented
OR salmon ranch	1	None documented
TROLL FISHERIES		
AK salmon troll	1149	Steller sea lion, Eastern U.S.*+
CA/OR/WA salmon troll	4,300	None documented
AK north Pacific halibut, AK bottom fish, WA, OR, CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries.	1,354	None documented
HI trolling, rod and reel	1,795	None documented
Guam tuna troll	50	None documented
Commonwealth of the Northern Mariana Islands tuna troll	50	None documented
American Samoa tuna troll	<50	None documented
HI net unclassified	106	None documented
LONGLINE/SET LINE FISHERIES:		
AK state waters sablefish long line/set line	840	None documented
Miscellaneous finfish/groundfish longline/set line	594	Harbor seal, GOA * Harbor seal, Bering Sea Dall's porpoise, AK Steller sea lion, Western U.S. Harbor seal, Southeast AK Northern elephant seal, CA breeding
HI swordfish, tuna, billfish, mahi mahi, wahoo, oceanic sharks longline/set line.	140	Hawaiian monk seal*+ Humpback whale, Central North Pacific*+ Risso's dolphin, HI Bottlenose dolphin, HI Spinner dolphin, HI Short-finned pilot whale, HI
WA, OR North Pacific halibut longline/set line	350	None documented
AK southern Bering Sea, Aleutian Islands, and Western Gulf of Alaska sablefish longline/set line (federally regulated waters).	762	Northern elephant seal, CA breeding Killer whale, resident Killer whale, transient Steller sea lion, Western U.S. Pacific white-sided dolphin, central North Pacific Dall's porpoise, AK
AK halibut longline/set line (state and Federal waters)	2,882	Steller sea lion, Western U.S.*+
WA, OR, CA groundfish, bottomfish longline/set line	367	None documented
AK octopus/squid longline	2	None documented
CA shark/bonito longline/set line	10	None documented
TRAWL FISHERIES:		
WA, OR, CA shrimp trawl	300	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet).	62	None documented
AK Gulf of Alaska groundfish trawl	201	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Harbor seal, GOA* Dall's porpoise, AK Northern elephant seal, CA breeding
AK Bering Sea and Aleutian Islands groundfish trawl	193	Steller sea lion, Western U.S.*+ Northern fur seal, Eastern Pacific* Killer whale, resident Killer whale, transient Pacific white-sided dolphin, central North Pacific Harbor porpoise, Bering Sea Harbor seal, Bering Sea Harbor seal, GOA* Bearded seal, AK Ringed seal, AK

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
		Spotted seal, AK
		Dall's porpoise, AK
		Ribbon seal, AK
		Northern elephant seal, CA breeding
		Sea otter, Southwest AK
		Pacific Walrus , AK
AK state-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl.	5	None documented
AK miscellaneous finfish otter or beam trawl	312	None documented
AK food/bait herring trawl	4	None documented
WA, OR, CA groundfish trawl	585	Steller sea lion, Western U.S.*+
		Northern fur seal, Eastern Pacific*
		Pacific white-sided dolphin, central North Pacific
		Dall's porpoise, CA/OR/WA
		California sea lion, U.S.
		Harbor seal, OR/WA coast
POT, RING NET, AND TRAP FISHERIES:		
AK crustacean pot	1,496	Harbor porpoise, Southeast AK
AK Bering Sea, GOA finfish pot	274	Harbor seal, GOA*
		Harbor seal, Bering Sea
		Sea otter, Southwest AK
WA, OR, CA sablefish pot	176	None documented
WA, OR, CA crab pot	1,478	None documented
WA, OR shrimp pot & trap	254	None documented
CA lobster, prawn, shrimp, rock crab, fish potD608	None documented	
OR, CA hagfish pot or trap	25	None documented
HI lobster trap	15	Hawaiian monk seal*+
HI crab trap	22	None documented
HI fish trap	19	None documented
HI shrimp trap	5	None documented
HANDLINE AND JIG FISHERIES:		
AK North Pacific halibut handline and mechanical jig	266	None documented
AK miscellaneous finfish handline and mechanical jig	258	None documented
AK octopus/squid handline	2	None documented
WA groundfish, bottomfish jig	679	None documented
HI aku boat, pole and line	54	None documented
HI inshore handline	650	Bottlenose dolphin, HI
HI tuna	144	Rough-toothed dolphin, HI
HI deep sea bottomfish	434	Hawaiian monk seal*+
		Bottlenose dolphin, HI
		Hawaiian monk seal*+
Guam bottomfish	< 50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
American Samoa bottomfish	<50	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	228	None documented
POUND NET/WEIR FISHERIES:		
AK Southeast Alaska herring food/bait pound net	154	None documented
WA herring brush weir	1	None documented
BAIT PENS		
WA/OR/CA bait pens	13	None documented
DREDGE FISHERIES:		
Coastwide scallop dredge	106	None documented
DIVE, HAND/MECHINICAL COLLECTION FISHERIES:		
AK abalone	9	None documented
AK dungeness crab	3	None documented
AK herring spawn-on-kelp	200	None documented
AK urchin and other fish/shellfish	442	None documented
AK clam hand shovel	162	None documented
AK clam mechanical/hydraulic1	9	None documented WA herring spawn-on-kelp4None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection.	637	None documented.
CA abalone	111	None documented.
CA sea urchin	583	None documented.
HI squiding, spear	267	None documented.

TABLE 1.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE PACIFIC OCEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally killed/injured
HI lobster diving	6	None documented.
HI coral diving	2	None documented.
HI handpick	135	None documented.
WA shellfish aquaculture	684	None documented.
WA, CA kelp	4	None documented.
HI fish pond	10	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
AK, WA, OR, CA commercial passenger fishing vessel	> 4,000 (3,523 AK only)	None documented.
AK octopus/squid ''other''	19	None documented.
HI ''other''	114	None documented.
LIVE FINFISH/SHELLFISH FISHERIES:		
CA finfish and shellfish live trap/hook-and-line	93	None documented.

* Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 1998.
* Stock is listed as threatened or endangered under the Endangered Species Act (ESA) or as depleted under the MMPA.
List of Abbreviations Used in Table 1
AK—Alaska
CA—California
HI—Hawaii
GOA—Gulf of Alaska
OR—Oregon
WA—Washington

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Category I		
GILLNET FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics drift gillnet.	15	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Sperm whale, WNA*+ Dwarf sperm whale, WNA* Cuvier's beaked whale, WNA* True's beaked whale, WNA* Gervais' beaked whale, WNA* Blainville's beaked whale, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Spinner dolphin, WNA Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF*
Northeast sink gillnet	341	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Minke whale, Canadian east coast Killer whale, WNA White-sided dolphin, WNA* Bottlenose dolphin, WNA offshore Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, WNA Common dolphin, WNA* Fin whale, WNA*+ Spotted dolphin, WNA False killer whale, WNA Harp seal, WNA
LONGLINE FISHERIES:		

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline.	361	Humpback whale, WNA*+ Minke whale, Canadian east coast Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* Atlantic spotted dolphin, WNA* Pantropical spotted dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore Bottlenose dolphin, GMX Outer Continental Shelf Bottlenose dolphin, GMX Continental Shelf Edge and Slope Atlantic spotted dolphin, Northern GMX Pantropical spotted dolphin, Northern GMX Risso's dolphin, Northern GMX Harbor porpoise, GME/BF*
TRAP/POT FISHERIES—LOBSTER:		
Gulf of Maine, U.S. mid-Atlantic lobster trap/pot	13,000	North Atlantic right whale, WNA*+ Humpback whale, WNA*+ Fin whale, WNA*+ Minke whale, Canadian east coast White-sided dolphin, WNA* Harbor seal, WNA
Category II		
GILLNET FISHERIES:		
U.S. mid-Atlantic coastal gillnet	>655	Humpback whale, WNA*+ Minke whale, Canadian east coast Bottlenose dolphin, WNA offshore Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Gulf of Maine small pelagics surface gillnet	133	Humpback whale, WNA*+ White-sided dolphin, WNA* Harbor seal, WNA
Southeastern U.S. Atlantic shark gillnet	12	Bottlenose dolphin, WNA coastal* North Atlantic right whale, WNA*+
TRAWL FISHERIES:		
Atlantic squid, mackerel, butterfish trawl	620	Common dolphin, WNA* Risso's dolphin, WNA Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* White-sided dolphin, WNA*
Atlantic herring midwater trawl (including pair trawl)	17	None documented
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	50	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal
HAUL SEINE FISHERIES:		
Mid-Atlantic haul seine	25	Bottlenose dolphin, WNA coastal* Harbor porpoise, GME/BF*
STOP NET FISHERIES:		
North Carolina roe mullet stop net	13	Bottlenose dolphin, WNA coastal*
Category III		
GILLNET FISHERIES:		
Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet.	32	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Long Island Sound inshore gillnet	20	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Delaware Bay inshore gillnet	60	Humpback whale, WNA*+ Bottlenose dolphin, WNA coastal*+ Harbor porpoise, GME/BF*
Chesapeake Bay inshore gillnet	45	None documented

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
North Carolina inshore gillnet	94	Bottlenose dolphin, WNA coastal*+
Gulf of Mexico inshore gillnet (black drum, sheepshead, weakfish, mullet, spot, croaker).	unknown	None documented
Gulf of Maine, Southeast U.S. Atlantic coastal shad, sturgeon gillnet.	1,285	Minke whale, Canadian east coast Harbor porpoise, GME/BF* Bottlenose dolphin, WNA coastal*+
Gulf of Mexico coastal gillnet (includes mullet gillnet fishery in LA and MS).	unknown	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine*
Florida east coast, Gulf of Mexico pelagics king and Spanish mackerel gillnet.	271	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine*
TRAWL FISHERIES:		
North Atlantic bottom trawl	1,052	Long-finned pilot whale, WNA* Short-finned pilot whale, WNA* Common dolphin, WNA* White-sided dolphin, WNA* Striped dolphin, WNA Bottlenose dolphin, WNA offshore
Mid-Atlantic, Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl.	>18,000	Bottlenose dolphin, WNA coastal*+
Gulf of Maine northern shrimp trawl	320	None documented
Gulf of Maine, Mid-Atlantic sea scallop trawl	215	None documented
Mid-Atlantic mixed species trawl	>1,000	None documented
Gulf of Mexico butterfish trawl	2	Atlantic spotted dolphin, Eastern GMX Pantropical spotted dolphin, Eastern GMX
Georgia, South Carolina, Maryland whelk trawl	25	None documented
Calico scallops trawl	200	None documented
Bluefish, croaker, flounder traw	l550	None documented
Crab trawl	400	None documented
U.S. Atlantic monkfish trawl	unknown	Common dolphin, WNA*
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	30	Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
Mid-Atlantic menhaden purse seine	22	Bottlenose dolphin, WNA coastal*+
Gulf of Maine menhaden purse seine	50	None documented
Florida west coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine	unknown	None documented
U.S. mid-Atlantic hand seine	> 250	None documented
LONGLINE/HOOK-AND-LINE FISHERIES:		
Gulf of Maine tub trawl groundfish bottom longline/ hook-and-line.	46	Harbor seal, WNA Gray seal, Northwest North Atlantic
Southeastern U.S. Atlantic, Gulf of Mexico snapper-grouper and other reef fish bottom longline/hook-and-line.	3,800	None documented
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line.	124	None documented
Gulf of Maine, U.S. mid-Atlantic tuna, shark swordfish hook-and-line/harpoon.	26,223	None documented
Southeastern U.S. Atlantic, Gulf of Mexico & U.S. mid-Atlantic pelagic hook-and-line/harpoon.	1,446	None documented
TRAP/POT FISHERIES—LOBSTER, CRAB, AND FISH:		
Gulf of Maine, U.S. mid-Atlantic mixed species trap/pot	100	North Atlantic right whale, WNA*+, Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. mid-Atlantic and Southeast U.S. Atlantic black sea bass trap/pot.	30	None documented
U.S. mid-Atlantic eel trap/pot	>700	None documented

TABLE 2.—LIST OF FISHERIES COMMERCIAL FISHERIES IN THE ATLANTIC OCEAN, GULF OF MEXICO, AND CARIBBEAN—Continued

Fishery description	Estimated number of vessels/persons	Marine mammal species/stocks incidentally injured/killed
Atlantic Ocean, Gulf of Mexico blue crab trap/pot	20,500	Bottlenose dolphin, WNA coastal* Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX Bay, Sound, & Estuarine* West Indian manatee, FL*+
Southeastern U.S. Atlantic, Gulf of Mexico, Caribbean spiny lobster trap/pot.	750	West Indian manatee, FL*+ Bottlenose dolphin, WNA coastal*+
STOP SEINE/WEIR/POUND FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	50	North Atlantic right whale, WNA* Humpback whale, WNA*+ Minke whale, Canadian east coast Harbor porpoise, GME/BF* Harbor seal, WNA Gray seal, Northwest North Atlantic
U.S. mid-Atlantic mixed species stop/seine/weir (except the North Carolina roe mullet stop net).	500	None documented
U.S. mid-Atlantic crab stop seine/weir	2,600	None documented
DREDGE FISHERIES:		
Gulf of Maine, U.S. mid-Atlantic sea scallop dredge	233	None documented
U.S. mid-Atlantic offshore surfclam and quahog dredge	100	None documented
Gulf of Maine mussel	>50	None documented
U.S. mid-Atlantic/Gulf of Mexico oyster	7,000	None documented.
HAUL SEINE FISHERIES:		
Southeastern U.S. Atlantic, Caribbean haul seine	25	None documented.
BEACH SEINE FISHERIES:		
Caribbean beach seine	15	West Indian manatee, FL+.
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Gulf of Maine urchin dive, hand/mechanical collection	>50	None documented.
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection.	20,000	None documented.
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel.	4,000	None documented.

*Marine mammal stock is strategic or is proposed to be listed as strategic in the draft SARs for 1998.
+Stock is listed as threatened or endangered under the ESA or as depleted under the MMPA.
AAAList of Abbreviations Used in Table 2
FL—Florida
GA—Georgia
GME/BF—Gulf of Maine/Bay of Fundy
GMX—Gulf of Mexico
NC—North Carolina
SC—South Carolina
TX—Texas
WNA—Western North Atlantic

Classification

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed LOF for 1999, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Under existing regulations certain fishers must register, obtain an Authorization Certificate, and pay a fee of $25. Such a certificate authorizes the taking of certain marine mammals incidental to commercial fishing operations. Currently, approximately 22,500 fishers are registered. The majority of these fishers do not need to register separately under this program because their registration has been coordinated with existing state or Federal registration programs. All fishers participating in Category I and II fisheries are required to register under the MMPA. This proposed rule would require the registration of additional fishers that are classified in Category II, including participants in the Atlantic herring midwater trawl fishery (17 participants) and in the Gulf of Mexico menhaden fishery (50 participants). Some of these fishers may currently participate in other Category II fisheries and, therefore, may already be required to register under the MMPA. The application fee, with respect to expected revenues, is not considered significant because it represents under 0.01 percent of the total revenue. As a result, a regulatory flexibility analysis was not prepared.

This action proposes changes to the current List of Fisheries and reflects new information on commercial fisheries, marine mammals, and interactions between commercial fisheries and marine mammals. This proposed list informs the public of which U.S. commercial fisheries may be required in 1999 to comply with certain parts of the MMPA, including requirements to register for Authorization Certificates.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

This proposed rule does not contain new collection-of-information requirements subject to the Paperwork

Reduction Act; however, the proposed addition of two fisheries to Category II in the LOF would result in up to 70 new fishers being subject to collection-of-information requirements. Some of these fishers may currently participate in other Category II fisheries and, therefore, may already be required to register under the MMPA.

The collection of information required for the reporting of marine mammal injuries or mortalities to NMFS and for the registration of fishers under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0292 (0.15 hours per report) and 0648–0293 (0.25 hours per registration). Those burdens are not expected to change significantly if this proposed rule is adopted and may actually decrease if additional registration systems are integrated with existing programs. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing the burdens, to NMFS and OMB (see **ADDRESSES**).

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

References

Barlow, J., et al. ''U.S. Pacific Marine Mammal Stock Assessments: 1996. NOAA Tech. Mem. NMFS, NOAA–TM–NMFS–SWFSC–248.'' U.S. Dept. of Commerce, NOAA, National Marine Fisheries Service, Southwest Fisheries Science Center, 1997.

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR part 229 is proposed to be amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.1, paragraph (f) is revised to read as follows:

§ 229.1 Purpose and scope.

* * * * *

(f) Authorizations under this part do not apply to the intentional lethal taking of marine mammals in the course of commercial fishing operations except as provided for under §§ 229.4(k) and 229.5(f).

* * * * *

3. In § 229.2, the definition of ''Category II fishery'' is amended by removing the word ''taking'' and adding in its place the term ''incidental serious injury and mortality'; the last sentence of paragraph (2) of the definition ''Category III fishery'' is revised; the definitions of ''Fisher'', ''Incidental, but not intentional take'' and ''Incidental mortality'' are removed; and the definitions of ''Fisher or fisherman'', ''Incidental'' and ''Integrated Fishery'' are added, to read as follows:

§ 229.2 Definitions.

* * * * *

Category III fishery. * * *. In the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, the Assistant Administrator will determine whether the incidental serious injury or mortality is ''remote'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area or at the discretion of the Assistant Administrator.

* * * * *

Fisher or fisherman means the vessel owner or operator, or the owner or operator of gear in a nonvessel fishery.

* * * * *

Incidental refers to a non-intentional or accidental act that results from, but is not the purpose of, carrying out an otherwise lawful action.

* * * * *

Integrated fishery means a fishery for which the granting and the administration of Authorization Certificates have been integrated and coordinated with existing fishery license, registration, or permit systems and related programs.

* * * * *

4. In § 229.3, the word ''taking'' is removed from paragraph (c) and the term ''injury or mortality'' is added in its place, paragraphs (e) through (j) are redesignated as paragraphs (f) through (k), and new paragraph (e) is added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(e) It is prohibited to retain any marine mammal incidentally taken in commercial fishing operations unless authorized by NMFS personnel, designated contractors or an official observer, or by a scientific research permit that is in the possession of the vessel operator.

* * * * *

§ 229.4 [Amended]

5. In § 229.4, paragraph (b)(2)(v) is removed; paragraphs (b)(2) (vi) and (c) are redesignated as paragraphs (b)(2)(v) and (b)(2)(vi), respectively; paragraphs (d) through (m) are redesignated as paragraphs (c) through (l); and in newly redesignated paragraph (g), the word ''onboard'' is removed.

6. In § 229.4, newly redesignated paragraphs (d)(1)(i) through (d)(1)(iii) are redesignated as paragraphs (d)(2)(i) through (d)(2)(iii); newly redesignated paragraphs (c) introductory text and, (c)(3) through (c)(5), (d)(1), (d)(2), and the first sentence of newly redesignated paragraph (e)(1) are revised; the last sentence of newly redesignated paragraph (d)(3) is removed; newly redesignated paragraph (e)(3) is amended by removing the term ''annual'' and newly redesignated paragraph (l) is amended by removing the phrase ''and annual decals''. Section 229.4, as amended, reads as follows:

§ 229.4 Requirements for Category I and II fisheries.

* * * * *

(c) *Address.* Unless the granting and administration of authorizations under part 229 is integrated and coordinated with existing fishery licenses, registrations, or related programs pursuant to paragraph (a) of this section, requests for registration forms and completed registration and renewal forms should be sent to the NMFS Regional Offices as follows:

* * * * *

(3) Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; telephone: 562–980–4001;

(4) Northeast Region, NMFS, 1 Blackburn Drive, Gloucester, MA 01930; telephone: 978–281–9254; or

(5) Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702; telephone: 727–570–5312.

(d) *Issuance.* (1) For integrated fisheries, an Authorization Certificate or other proof of registration will be issued annually to each fisher registered for that fishery.

(2) For all other fisheries (i.e., non-integrated fisheries), NMFS will issue an Authorization Certificate and, if necessary, a decal to an owner or authorized representative who:

* * * * *

(e) * * * (1) If a decal has been issued under the conditions specified in paragraph (e)(2) of this section, the decal must be attached to the vessel on the port side of the cabin or, in the absence of a cabin, on the forward port side of the hull, and must be free of obstruction and in good condition.

* * *

* * * * *

7. In § 229.5, paragraph (c) is amended by removing the word ''onboard''; paragraph (e) is amended by removing the phrase ''a Category I or II fishery'' and by adding in its place the phrase ''commercial fishing operations''; and paragraph (d) is revised to read as follows:

§ 229.5 Requirements for Category III fisheries.

* * * * *

(d) *Monitoring.* Vessel owners engaged in a Category III fishery must comply with the observer requirements specified under § 229.7(d).

* * * * *

8. In § 229.6, paragraph (a) is amended by removing the words ''Category I, II, and III'' and by adding in their place the word ''commercial''; and paragraph (b) is revised to read as follows:

§ 229.6 Reporting requirements.

* * * * *

(b) Participants in nonvessel fisheries must provide all of the information in paragraphs (a)(1) through (a)(4) of this section except, instead of providing the vessel name and vessel registration number, participants in nonvessel fisheries must provide the gear permit number.

* * * * *

9. In § 229.7, paragraphs (c)(4)(vi) and (c)(6) are removed; paragraphs (c)(4)(vii) through (c)(4)(x) are redesignated as paragraphs (c)(4)(vi) and (c)(4)(ix), respectively; the introductory text of paragraphs (b) and (c), and paragraphs (c)(1), (c)(2), (c)(4) introductory text, paragraph (c)(4)(i), newly redesignated (c)(4)(vi), and (c)(5), and (d) introductory text are revised to read as follows:

§ 229.7 Monitoring of incidental mortalities and serious injuries.

* * * * *

(b) Observer program. Pursuant to paragraph (a) of this section, the Assistant Administrator may observe Category I and II vessels as necessary. Observers may, among other tasks:

* * * * *

(c) Observer requirements for participants in Category I and II fisheries.

(1) If requested by NMFS or by a designated contractor providing observer services to NMFS, a vessel owner/operator must take aboard an observer to accompany the vessel on fishing trips.

(2) After being notified by NMFS, or by a designated contractor providing observer services to NMFS, that the vessel is required to carry an observer, the vessel owner/operator must comply with the notification by providing information requested within the specified time on scheduled or anticipated fishing trips.

* * * * *

(4) The vessel owner/operator and crew must cooperate with the observer in the performance of the observer's duties including:

(i) Providing, at no cost to the observer, the United States government, or the designated observer provider, food, toilet, bathing, sleeping accommodations, and other amenities that are equivalent to those provided to the crew, unless other arrangements are approved in advance by the Regional Administrator;

* * * * *

(vi) Sampling, retaining and storing of marine mammal specimens, other protected species specimens, or target or non-target catch specimens, upon request by NMFS personnel, designated contractors, or the observer, if adequate facilities are available and if feasible;

* * * * *

(5) Marine mammals or other specimens identified in paragraph (c)(4)(vi) which are readily accessible to crew members, must be brought on board the vessel and retained for the purposes of scientific research if feasible and requested by NMFS personnel, designated contractors, or the observer. Specimens so collected and retained must, upon request by NMFS personnel, designated contractors, or the observer, be retained in cold storage on board the vessel, if feasible, until removed at the request of NMFS personnel, designated contractors, or the observer, retrieved by authorized personnel of NMFS, or released by the observer for return to the ocean. These biological specimens may be transported on board the vessel during the fishing trip and back to port under this authorization.

(d) Observer requirements for participants in Category III fisheries.

* * * * *

10. In § 229.8, the last sentence of paragraph (c) is redesignated as paragraph (d), and paragraph (b)(2) is revised to read as follows:

§ 229.8 Publication of List of Fisheries.

* * * * *

(b) * * *

(2) List the marine mammals that are incidentally injured or killed by commercial fishing operations and the estimated number of vessels or persons involved in each commercial fishery.

* * * * *

11. In § 229.9, paragraph (a)(3)(ii) is revised to read as follows:

§ 229.9 Emergency regulations.

(a) * * *

(3) * * *

(ii) Immediately review the stock assessment for such stock or species and the classification of such commercial fishery under this section to determine if a take reduction team should be established and if recategorization of the fishery is warranted; and

* * * * *

12. In § 229.10, paragraphs (d) and (g)(1) are revised to read as follows:

§ 229.10 Penalties.

* * * * *

(d) Failure to comply with take reduction plans or emergency regulations issued under this part may result in suspension or revocation of an Authorization Certificate, and failure to comply with a take reduction plan or emergency regulation is also subject to the penalties of sections 105 and 107 of the Act, and may be subject to the penalties of section 106 of the Act.

* * * * *

(g) * * *

(1) Until the Authorization Certificate holder complies with the regulations under this part, the Assistant Administrator shall suspend or revoke an Authorization Certificate or deny an annual renewal of an Authorization Certificate in accordance with the provisions in 15 CFR part 904 if the Authorization Certificate holder fails to report all incidental mortality and injury of marine mammals as required under § 229.6; or fails to take aboard an observer if requested by NMFS or its designated contractors.

* * * * *

§ 229.11 [Amended]

13. In § 229.11, paragraph (b) is amended by removing the parenthetical phrase (see **ADDRESSES**).

§ 229.20 [Amended]

14. In § 229.20, paragraph (f) is amended by removing the reference to

''§ 229.21(b)'' and adding in its place a reference to ''§ 229.20(b)''.

15. Under subpart C, a new § 229.30 is added to read as follows:

§ 229.30 Basis.

Section 118(f)(9) of the Act authorizes the Director, NMFS, to impose regulations governing commercial fishing operations, when necessary, to implement a take reduction plan in order to protect or restore a marine mammal stock or species covered by such a plan.

Dated: August 6, 1998.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 98–21533 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 63, No. 154

Tuesday, August 11, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Nicore Mining Plan of Operation, Siskiyou National Forest, Josephine County, OR

AGENCY: Forest Service, USDA.

ACTION: Notice of intend to supplement a draft environmental impact statement.

SUMMARY: The USDA, Forest Service, in cooperation with the Bureau of Land Management, will prepare a supplement to a draft environmental impact statement (SDEIS) for the Nicore Mining Plan of Operation on the Illinois Valley Ranger District of the Siskiyou National Forest. The draft environmental impact statement (DEIS) was released January 1998. A SDEIS is needed because of changed conditions, including the recent closure of a nickel smelter in Riddle, Oregon; new issues raised during the DEIS comment period; the presence of a plant species now listed under the Endangered Species Act, and a need to broaden the range of alternatives considered.

ADDRESSES: Submit written comments regarding the SDEIS to Joel King, District Ranger, Illinois Valley Ranger District, 26568 Redwood Highway, Cave Junction, Oregon, 97523.

FOR FURTHER INFORMATION CONTACT: Rochelle Desser, Interdisciplinary Team Leader, Illinois Valley Ranger District, 26568 Redwood Highway, Cave Junction, Oregon, 97523 (541) 592–2166.

SUPPLEMENTARY INFORMATION: The Nicore Plan of Operations (POO) includes mining 4 sites for a total of 35 acres. The mine sites would be accessed by an existing low-standard road system that would need to be upgraded. Ore would be stockpiled for later smelting.

The Nicore DEIS considered the Proposed Plan of Operations and four alternatives. Many issues were considered in the DEIS, including risk of sediment delivery; botanical diversity and sensitive plants; costs of road development; effects on residents; visual quality, recreation, and interpretive development; impacts on the character of the South Kalmiopsis Roadless Area, noxious weeds, Port-Orford-cedar root disease; risk of hazardous fuel spills; effects on fish habitat, especially species listed under the Endangered Species Act; Aquatic Conservation Strategy and Riparian Reserve Standards and Guidelines; and Wild and Scenic River Eligibility. The SDEIS will consider additional issues and alternatives based on new information and public comment.

Substantial uncertainty exists related to the economic viability of the mining POO. Since the release of the Nicore DEIS, the only nickel smelter in the United States closed, due to low nickel prices worldwide. Public comment continues to raise issues with the reasonableness of the mining plan, given the smelter closure. In addition, reports provided by the public indicate that the plan is not currently economically viable.

Since the release of the DEIS, a plant found on the ore haul route was listed as endangered under the Endangered Species Act. The Forest Service has initiated consultation about the plant with the US Fish and Wildlife Service.

Additional alternatives are being considered for the SDEIS. The DEIS consider the Proposed Action and five alternatives. Many people commented that the range of alternatives was too limited for a full consideration of impacts. The SDEIS will consider additional access routes, additional mitigation measures, and a scaled-back operation.

The SDEIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for review in November 1998. At that time, EPA will publish a Notice of Availability in the **Federal Register**.

A 45-day comment period for the SDEIS will commence following the Notice of Availability. Those interested in the project should participate at that time. Several recent court rulings related to public participation are pertinent to this process. Reviewers of a Draft EIS *must* structure their participation in the environmental review process of the Proposed Action so that it is specific, meaningful, and alerts an agency to the Reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978).

Also, environmental objections that could be raised early-on in the environmental review process, but that are not raised until after completion of the Final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).

These court rulings reinforce the citizen's responsibility for timely participation. Comments on the SDEIS should be as specific as possible; page number citations or other references to the SDEIS within comments are most helpful.

Comments should address the adequacy of the EIS, and/or the merits of the alternatives (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 for further guidance).

After the SDEIS comment period, comments on both the DEIS and SDEIS will be considered. Comments and Agency responses will be included in the Final EIS. The Final EIS is scheduled to be completed August 1999.

The Responsible Official is the Siskiyou National Forest Supervisor. He will consider the Final EIS; applicable laws, regulations, policies; and analysis files and document his decision and rationale in the Record of Decision. That decision will be subject to appeal by the general public under 36 CFR 215 and by the miner under 36 CFR 251.

Dated: July 28, 1998.

Robert Ettner,

Acting Forest Supervisor.

[FR Doc. 98–21434 Filed 8–10–98; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Hawaii Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Hawaii Advisory Committee to the Commission will convene at 10:00 a.m.

and adjourn at 12:00 p.m. on August 20, 1998, at the Queen Liluokalani Children's Center, 1300 Halona Street, Honolulu, Hawaii 96817. The Committee is meeting to receive a status report from the Subcommittee on administration of justice.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, August 6, 1998.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 98–21552 Filed 8–6–98; 4:44 pm]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 351.213 of the Department of Commerce (the Department) Regulations (19 CFR 351.213 (1997)), that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of August 1998, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in August for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina:	
Oil Country Tubular Goods, A–357–810	8/1/97–7/31/98
Seamless Pipe, A–357–809	8/1/97–7/31/98
Australia: Corrosion-Resistant Carbon Steel Flat Products, A–602–803	8/1/97–7/31/98
Belgium:	
Cut-to-Length Carbon Steel Plate, A–423–805	8/1/97–7/31/98
Phosphoric Acid, A–423–602	8/1/97–7/31/98
Brazil:	
Cut-to-Length Carbon Steel Plate, A–351–817	8/1/97–7/31/98
Seamless Pipe, A–351–826	8/1/97–7/31/98
Canada:	
Corrosion-Resistant Carbon Steel Flat Products, A–122–822	8/1/97–7/31/98
Cut-to-Length Carbon Steel Plate, A–122–823	8/1/97–7/31/98
Magnesium, A–122–814	8/1/97–7/31/98
Finland: Cut-to-Length Carbon Steel Plate, A–405–802	8/1/97–7/31/98
France:	
Corrosion-Resistant Carbon Steel Flat Products, A–427–808	8/1/97–7/31/98
Industrial Nitrocellulose, A–427–009	8/1/97–7/31/98
Germany:	
Cold-Rolled Carbon Steel Flat Products, A–428–814	8/1/97–7/31/98
Corrosion-Resistant Carbon Steel Flat Products, A–428–815	8/1/97–7/31/98
Cut-to-Length Carbon Steel Plate, A–428–816	8/1/97–7/31/98
Seamless Pipe, A–428–820	8/1/97–7/31/98
Israel: Phosphoric Acid, A–508–604	8/1/97–7/31/98
Italy:	
Grain Oriented Electrical Steel, A–457–811	8/1/97–7/31/98
Oil Country Tubular Goods, A–475–816	8/1/97–7/31/98
PTFE Resin, A–475–703	8/1/97–7/31/98
Seamless Pipe, A–475–814	8/1/97–7/31/98
Japan:	
Acrylic Sheet, A–588–055	8/1/97–7/31/98
Brass Sheet & Strip, A–588–704	8/1/97–7/31/98
Corrosion-Resistant Carbon Steel Flat Products, A–588–824	8/1/97–7/31/98
Oil Country Tubular Goods, A–588–835	8/1/97–7/31/98
PTFE Resin, A–588–707	8/1/97–7/31/98
Kazakhstan: Titanium Sponge, A–834–803	8/1/97–7/31/98
Mexico:	
Cement, A–201–802	8/1/97–7/31/98
Cut-to-Length Carbon Steel Plate, A–201–809	8/1/97–7/31/98
Oil Country Tubular Goods, A–201–817	8/1/97–7/31/98
Poland: Cut-to-Length Carbon Steel Plate, A–455–802	8/1/97–7/31/98
Republic of Korea:	
Cold-Rolled Carbon Steel Flat Products, A–580–815	8/1/97–7/31/98
Corrosion-Resistant Carbon Steel Flat Products, A–580–816	8/1/97–7/31/98
Oil Country Tubular Goods, A–580–825	8/1/97–7/31/98
Romania: Cut-to-Length Carbon Steel Plate, A–485–803	8/1/97–7/31/98

	Period
Russia: Titanium Sponge, A–821–803	8/1/97–7/31/98
Spain: Cut-to-Length Carbon Steel Plate, A–469–803	8/1/97–7/31/98
Sweden: Cut-to-Length Carbon Steel Plate, A–401–805	8/1/97–7/31/98
Thailand: Malleable Pipe Fittings, A–549–601	8/1/97–7/31/98
The Netherlands:	
Brass Sheet & Strip, A–421–701	8/1/97–7/31/98
Cold-Rolled Carbon Steel Flat Products, A–421–804	8/1/97–7/31/98
The People's Republic of China:	
Petroleum Wax Candles, A–570–504	8/1/97–7/31/98
Sulfanilic Acid, A–570–815	8/1/97–7/31/98
The Ukraine:	
Titanium Sponge, A–823–803	8/1/97–7/31/98
Uranium, A–823–802	8/1/97–7/31/98
The United Kingdom: Cut-to-Length Carbon Steel Plate, A–412–814	8/1/97–7/31/98
Turkey: Aspirin, A–489–602	8/1/97–7/31/98
Suspension Agreements	
Japan: Color Negative Photographic Paper, A–588–832	8/1/97–7/31/98
The Netherlands: Color Negative Photographic Paper, A–421–806	8/1/97–7/31/98
The People's Republic of China: Honey, A–570–838	8/1/97–7/31/98
Countervailing Duty Proceedings	
Belgium: Cut-to-Length Carbon Steel Plate, C–423–806	1/1/97–12/31/97
Brazil: Cut-to-Length Carbon Steel Plate, C–351–818	1/1/97–12/31/97
Canada:	
Live Swine, C–122–404	4/1/97–3/31/98
Pure Magnesium, C–122–815	1/1/97–12/31/97
Alloy Magnesium, C–122–815	1/1/97–12/31/97
France: Corrosion-Resistant Carbon Steel, C–427–810	1/1/97–12/31/97
Germany:	
Cold-Rolled Carbon Steel Flat Products, C–428–817	1/1/97–12/31/97
Corrosion-Resistant Carbon Steel, C–428–817	1/1/97–12/31/97
Cut-to-Length Carbon Steel Plate, C–428–817	1/1/97–12/31/97
Israel: Industrial Phosphoric Acid, C–508–605	1/1/97–12/31/97
Italy:	
Seamless Pipe, C–475–815	1/1/97–12/31/97
Oil Country Tubular Goods, C–475–817	1/1/97–12/31/97
Mexico: Cut-to-Length Carbon Steel Plate, C–201–810	1/1/97–12/31/97
Republic of Korea:	
Cold-Rolled Carbon Steel Flat Products, C–580–818	1/1/97–12/31/97
Corrosion-Resistant Carbon Steel Plate, C–580–818	1/1/97–12/31/97
Spain: Cut-to-Length Carbon Steel Plate, C–469–804	1/1/97–12/31/97
Sweden: Cut-to—Length Carbon Steel Plate, C–401–804	1/1/97–12/31/97
United Kingdom: Cut-to-Length Carbon Steel Plate, C–412–815	1/1/97–12/31/97

In accordance with § 351.213 of the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. The Department has changed its requirements for requesting reviews for countervailing duty orders. Pursuant to 771(9) of the Act, an interested party must specify the individual producers or exporters covered by the order or suspension agreement for which they are requesting a review (Department of Commerce Regulations, 62 FR 27295, 27494 (May 19, 1997)). Therefore, for both antidumping and countervailing duty reviews, the interested party must specify for which individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/ Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with § 351.303(f)(1)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of August 1998. If the Department does not receive, by the last day of August 1998, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: August 4, 1998.

Maria Harris Tildon,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 98–21379 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–602]

Brass Sheet and Strip from Germany; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On April 7, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order on brass sheet and strip (BSS) from Germany (63 FR 16963). The review covers exports of this merchandise to the United States by one manufacturer/exporter, Wieland-Werke AG (Wieland), during the period March 1, 1996 through February 28, 1997.

We gave interested parties an opportunity to comment on our preliminary results of review. We received no comments on the preliminary results. On May 11, 1998, Wieland withdrew from participation in this review. On May 21, 1998, petitioners submitted a letter commenting on Wieland's withdrawal from participation in the review. Because of Wieland's withdrawal from participation, we have based the margin in this determination on adverse facts available, in accordance with section 776(a)(2) of the Tariff Act of 1930, as amended (the Act). As adverse facts available, we have applied the highest margin from any prior review of this order.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or John Kugelman, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2704 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations refer to the regulations as codified at 19 CFR part 353 (April 1, 1997).

Background

On April 7, 1997, the Department (the Department) published in the **Federal Register** the preliminary results of its administrative review of the antidumping duty order on BSS from Germany (63 FR 16963). The antidumping duty order on BSS from Germany was published March 6, 1987 (52 FR 6997). The petitioners are Hussey Copper, Ltd., The Miller Company, Outokumpu American Brass, Revere Copper Products, Inc., International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), Mechanics Educational Society of America (Local 56), and the United Steelworkers of America (AFL–CIO/CLC).

Scope of the Review

Imports covered by this review are shipments of BSS, other than leaded and tinned BSS, from Germany. The chemical composition of the covered products is currently defined in the Copper Development Association (C.D.A.) 200 Series or the Unified Numbering System (U.N.S.) C2000. This review does not cover products the chemical compositions of which are defined by other C.D.A. or U.N.S. series. In physical dimensions, the products covered by this review have a solid rectangular cross section over 0.006 inches (0.15 millimeters) through 0.188 inches (4.8 millimeters) in finished thickness or gauge, regardless of width. Coiled, wound-on-reels (traverse wound), and cut-to-length products are included. The merchandise is currently classified under Harmonized Tariff Schedule (HTS) item numbers 7409.21.00 and 7409.29.00. Although the HTS item numbers are provided for convenience and Customs purposes, the written description of the scope of this order remains dispositive.

The period of review is March 1, 1996 through February 28, 1997. The review involves one manufacturer/exporter, Wieland.

Facts Available

Section 776(a)(2) of the Act provides that if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use facts available in reaching the applicable determination.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See the *Statement of Administrative Action* at 870 (SAA). To determine whether the respondent ''cooperated'' by ''acting to the best of its ability'' under section 776(b), the Department considers, among other facts, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review,* 62 FR 53808, 53819–53820 (October 16, 1997).

In this case, Wieland submitted its questionnaire responses by the established deadlines and agreed to verification of its responses. Then, on May 11, 1998, Wieland informed the Department that it was withdrawing from participation in the review. As a result the Department was not able to collect necessary missing information and was unable to verify Wieland's responses. Because the Department was unable to verify the submitted information, as required by section 782(i) of the Act, the Department had no authority to rely upon that unverified information in making its determination; thus, section 776(a) of the Act mandates that the Department use facts available in making its determination.

Further, by withdrawing its participation, Wieland effectively impeded the instant review. Under section 776(a)(2)(C) and (D) of the Act, the Department has therefore used facts available. As noted above, in selecting facts otherwise available, pursuant to section 776(b) the Act, the Department may use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with requests for information. When a respondent does not allow the

Department to verify submitted information, it is deemed uncooperative, which constitutes grounds for applying adverse facts available. See *Notice of Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Venezuela,* 63 FR 8946, 8947 (February 23, 1998); *Notice of Final Determination of Sales at Less Than Fair Value: Vector Supercomputers From Japan,* 62 FR 45623, 45624 (August 28, 1997); and *Notice of Final Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe From Romania,* 61 FR 24274, 24275 (May 14, 1996).

Consistent with Department practice in cases where a respondent fails to cooperate to the best of its ability, and in keeping with section 776(b)(3) of the Act, as adverse facts available we have applied a margin based on the highest margin found either in prior reviews or in the fair value investigation. *See* for example *Viscose Rayon Staple Fiber From Finland: Final Results of Antidumping Duty Administrative Review,* 63 FR 32820, 32822, June 16, 1998). In this case the highest margin from either prior reviews or the fair value investigation is 16.18%.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as facts available. Secondary information is described in the SAA (at 870) as ''[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise.''

The SAA further provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). Thus, to corroborate secondary information, to the extent practicable, the Department will examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.,* the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). See, *e.g., Elemental Sulphur From Canada: Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 971 (January 7, 1997) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Review,* 62 FR 2081, 2088 (January 15, 1997) .

Final Results of Review

We have determined that the following margin exists for Wieland:

Manufacturer/ exporter	Period	Percent margin
Wieland-Werke AG ..	3/1/96–2/28/97	16.18

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. The Department shall issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided for by section 751(a)(1) of the Act.

(1) The cash deposit rate for Wieland will be the rate stated above;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in this or any previous review conducted by the Department, the cash deposit rate will be 7.30 percent, the ''all others'' rate established in the LTFV investigation.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction. This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 31, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–21380 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope From Mexico: Extension of Time Limits for Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for final results of antidumping duty administrative review.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Joanna Gabryszewski or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–0780 or (202) 482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, codified at 19 CFR part 351, 62 FR 27295 (May 19, 1997).

Background

On March 31, 1997, the Department of Commerce (the Department) received a request from Aceros Camesa, S.A. de C.V. (Camesa) for an antidumping duty administrative review of carbon steel wire rope from Mexico. On May 21, 1997, the Department published its initiation of this antidumping duty administrative review covering the period of March 1, 1996 through February 28, 1997 (62 FR 27721). Preliminary results were published on April 7, 1998 (63 FR 16967). A hearing was held on May 28, 1998.

Extension of Time Limit for Preliminary Results

Because of the complexities enumerated in the Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Final Results of Review of Steel Wire Rope from Mexico, dated August 3, 1998, it is not practicable to complete this review within the time limit mandated by section 751(a)(3)(A) of the Act.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limit for the final results by 30 days to September 2, 1998.

Dated: August 3, 1998.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–21381 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits For Preliminary Results of Antidumping Administrative Review.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Eric Scheier or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4052 or (202)482–3020, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Background

The Department of Commerce (the Department) received a request from petitioner and a respondent to conduct an administrative review of the antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China. On March 23, 1998 (63 FR 13837), the Department published its initiation of this administrative review covering the period February 1, 1997 through January 31, 1998.

Extension of Time Limits for Preliminary Results

By law, the Department is required to verify the Hebei Animal By-Products I/E Corp. *See* 19 CFR 351.307(b)(5)(A) and (B). At this time, it is not practicable to schedule a verification within the time limits set for the completion of an administrative review mandated by section 751(a)(3)(A) of the Act. *See* Memorandum from Joseph A. Spetrini to Robert S. LaRussa, Extension of Time Limit for the Administrative Review of Natural Bristle Paintbrushes and Brush Heads from The PRC., dated July 24, 1998.

Therefore, in accordance with section 751(a)(3)(A) of the Act, the Department is extending the time limits for the preliminary results an additional sixty days to December 31, 1998. The final results continues to be due 120 days after the publication of the preliminary results.

Dated: July 24, 1998.

Joseph A. Spetrini,

Deputy Assistant Secretary for AD/CVD Enforcement III.

[FR Doc. 98–21530 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Preliminary Results of Countervailing Duty Administrative Review; Certain Refrigeration Compressors From the Republic of Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Maria K. Dybczak or Rick Johnson, Office of Antidumping/Countervailing Duty Enforcement, Group III, Office IX, Import Administration, U.S. Department of Commerce, Room 1874, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–1398, or 482–3818, respectively.

SUMMARY: In response to requests by the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS), and the petitioner, Tecumseh Products Company (Tecumseh), the Department of Commerce (the Department) is conducting an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. This review covers the GOS, MARIS, and AMS. AMS was the sole exporter of the subject merchandise to the United States during the period April 1, 1996, through March 31, 1997, the period of review (POR). We preliminarily determine that the signatories have complied with the terms of the suspension agreement during the POR.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments in this proceeding are requested to submit with their argument (1) a statement of the issue and (2) a brief summary of the argument.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations set forth at 19 C.F.R. part 351 (62 FR 27296, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On November 25, 1997, the GOS, MARIS, and AMS, requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore (*Certain Refrigeration Compressors from the Republic of Singapore: Suspension of Countervailing Duty Investigation,* (''*Refrigeration Compressors*'') 48 FR 51167, 51170 (November 7, 1983)). On

November 26, 1997, petitioner also requested an administrative review of the agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore. We initiated the review on December 23, 1997 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 62 FR 67044 (December 23, 1997)). The Department is now conducting this review in accordance with section 751 of the Tariff Act and 19 CFR 351.221. The Department issued a questionnaire on January 23, 1998, and received a joint questionnaire response from the GOS, MARIS, and AMS, on March 23, 1998. The Department sent out two supplemental questionnaires on April 10, and May 8, 1998, and received joint supplemental questionnaire responses to each questionnaire on April 24, and May 22, 1998, respectively.

Scope of the Review

Imports covered by this review are shipments of hermetic refrigeration compressors rated not over one-quarter horsepower from Singapore. This merchandise is currently classified under *Harmonized Tariff Schedule* (HTS) item number 8414.30.40. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review period is April 1, 1996 through March 31, 1997, and includes 2 programs. The review covers one producer and one exporter of the subject merchandise, MARIS and AMS, respectively. These two companies, along with the GOS, are the signatories to the suspension agreement.

Under the terms of the suspension agreement, the GOS agrees to offset completely the amount of the net bounty or grant determined to exist by the Department in this proceeding with respect to the subject merchandise. The offset entails the collection by the GOS of an export charge applicable to the subject merchandise exported on or after the effective date of the agreement. *See Refrigeration Compressors,* 48 FR 51167, 51170 (November 7, 1983).

Analysis of Programs

(1) The Economic Expansion Incentives Act—Part VI

The Production for Export Programme under Part VI of the Economic Expansion Incentives Act allows a 90-percent tax exemption on a company's export profit if the GOS designates a company as an export enterprise. In the investigation, the Department preliminarily found this program to be countervailable because ''this tax exemption is provided only to certified export enterprises.'' *See Preliminary Affirmative Countervailing Duty Determination: Certain Refrigeration Compressors from the Republic of Singapore,* 48 FR 39109, 39110 (August 29, 1983). MARIS is designated as an export enterprise and used this tax exemption during the period of review. AMS was not designated an export enterprise under Part VI of this Economic Expansion Incentives Act for this period of review.

According to the Export Enterprise Cettificate awarded to MARIS in a letter dated May 12, 1981, MARIS is to receive this benefit on the production of compressors, electrical parts and accessories for refrigerators, and plastic refrigerators. To calculate the benefit, we divided the tax savings claimed by MARIS under this program by the f.o.b. value of total exports of products receiving the benefit for the period of review.

MARIS' response to the Department's countervailing duty questionnaire for this review shows that MARIS deducted export charges levied pursuant to the suspension agreement in arriving at an adjusted profit figure, which was then used to calculate exempt export profit for the review period. In the 90–91 administrative review, the Department determined that the amount of the export charge deduction must be added ''back to MARIS' export profit in calculating MARIS' tax savings in order to offset the deduction of the export charges in the review period.'' *See Preliminary Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore,* 57 FR 31175 (July 14, 1992), affirmed in *Final Results of Countervailing Duty Review: Certain Refrigeration Compressors from Singapore,* 57 FR 46539 (October 9, 1992). Therefore, as the Department did in the 92–93 administrative review, in calculating the benefit from this program, we have added back this deduction, as we have since the 92–93 period of review. On this basis, we preliminarily determine the benefit from this program during the review period to be 0.56 percent of the f.o.b. value of the merchandise.

(2) Financing Through the Monetary Authority of Singapore

Under the terms of the suspension agreement, MARIS and AMS agreed not to appy for or receive any financing provided by the rediscount facility of the Monetary Authority of Singapore (MAS) for shipments of the subject merchandise to the United States. In their response, respondents reported that, during the period of review, neither MARIS nor AMS received any financing through the MAS on subject merchandise exported to the United States. Therefore, we preliminarily determine that both companies have complied with this clause of the agreement.

Preliminary Results of Review

The suspension agreement states that the GOS will offset completely with an export charge the net bounty or grant calculated by the Department. We preliminarily determine that the signatories have complied with the terms of the suspension agreement, including the payment of the provisional export charges in effect for the period April 1, 1996 through March 31, 1997. We also preliminarily determine the net bounty or grant to be 0.56 percent of the f.o.b. value of the merchandise for the April 1, 1996 through March 31, 1997 review period.

Following the methodology outlined in section B.4 of the agreement, the Department preliminarily determines that, for the period April 1, 1996 through March 31, 1997, a negative adjustment may be made to the provisional export charge rate in effect. The adjustments will equal the difference between the provisional rate in effect during the review period and the rate determined in this review, plus interest. The provisional rate, established in the notice of the final results of the 10th administrative reviews of the suspension agreement (*See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 61 FR 10315 (March 13, 1996)) was 3.00 percent. This rate was in effect from April 1, 1996 through August 27, 1996. The provisional rate, established in the notice of the final results of the 11th administrative reviews of the suspension agreement (*See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 61 FR 44296 (August 28, 1996)) was 2.22 percent. This rate was in effect from August 28, 1996 through March 31, 1997. If the Department's preliminary results do not change in the final, we will notify the GOS that it may refund or credit, in accordance with section B.4.c of the agreement, the difference between the two provision rates noted above and the 0.56 percent, plus interest, calculated in accordance with section 778(b) of the Tariff Act, within 30 days of notification by the Department. The Department will notify

the GOS of these adjustments after publication of the final results of this review.

Furthermore, if the final results of this review remain the same as these preliminary results, the Department intends to notify the GOS that the provisional export charge rate on all exports to the United States with Outward Declarations filed on or after the date of publication of the final results of this administrative review shall be 0.56 percent of the f.o.b value of the merchandise.

The agreement can remain in force only as long as shipments from the signatories account for at least 85 percent of imports of the subject refrigeration compressors into the United States. Our information indicates that the two signatory companies accounted for 100 percent of imports into the United States from Singapore of this merchandise during the review period.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication of this notice. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review. This administrative review and this notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: August 3, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–21531 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080498A]

Advisory Committee and Species Working Group Technical Advisor Appointments

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

ACTION: Nominations.

SUMMARY: NMFS is soliciting nominations to the Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) as established by the Atlantic Tunas Convention Act (ATCA). NMFS is also soliciting nominations for technical advisors to the Advisory Committee's species working groups.

DATES: Nominations are due by September 25, 1998.

ADDRESSES: Nominations to the Advisory Committee or to a species working group should be sent to: Mr. Rolland A. Schmitten, Assistant Administrator, National Marine Fisheries Service, NOAA, Department of Commerce, 1315 East West Highway, Silver Spring, MD 20910, with a copy sent to Kim Blankenbeker, International Fisheries Division, Office of Sustainable Fisheries, Room 13114, NMFS, 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kim Blankenbeker, 301–713–2276.

SUPPLEMENTARY INFORMATION: Section 971b of the ATCA (16 U.S.C. 971 *et seq.*) requires that an advisory committee be established that shall be composed of (1) not less than five nor more than 20 individuals appointed by the U.S. Commissioners to ICCAT who shall select such individuals from the various groups concerned with the fisheries covered by the ICCAT Convention; and (2) the chairs (or their designees) of the New England, Mid-Atlantic, South Atlantic, Caribbean, and Gulf Fishery Management Councils. Each member of the Advisory Committee appointed under item (1) above shall serve for a term of 2 years and shall be eligible for reappointment. Members of the Advisory Committee may attend all public meetings of the ICCAT Commission, Council, or any Panel and any other meetings to which they are invited by the ICCAT Commission, Council, or any Panel. The Advisory Committee shall be invited to attend all nonexecutive meetings of the U.S. Commissioners to ICCAT and, at such meetings, shall be given the opportunity to examine and to be heard on all proposed programs of investigation, reports, recommendations, and regulations of the ICCAT Commission. Members of the Advisory Committee shall receive no compensation for their services as such members. The Secretary of Commerce and the Secretary of State may pay the necessary travel expenses of members of the Advisory Committee.

There are currently 20 appointed Advisory Committee members. The terms of these members expire on December 31, 1998. New appointments will be made this Fall, but will not take effect until January 1, 1999.

Section 971b–1 of the ATCA specifies that the U.S. Commissioners may establish species working groups for the purpose of providing advice and recommendations to the U.S. Commissioners and the Advisory Committee on matters relating to the conservation and management of any highly migratory species covered by the ICCAT Convention. Any species working group shall consist of no more than seven members of the Advisory Committee and no more than four scientific or technical personnel, as considered necessary by the Commissioners. Currently, there are four species working groups advising the Committee and the U.S. Commissioners. Specifically, there is a Bluefin Tuna Working Group, a Swordfish Working Group, a Billfish Working Group, and a BAYS (Bigeye, Albacore, Yellowfin, and Skipjack) Working Group. Technical Advisors to species working groups serve at the pleasure of the U.S. Commissioners; therefore, the Commissioners can choose to alter appointments at any time.

Nominations to the Advisory Committee or to a species working group should include a letter of interest and a resume or curriculum vitae. Letters of recommendation are useful but not required. Self-nominations are acceptable. When making a nomination, please clearly specify which appointment (Advisory Committee member or technical advisor to a species working group) is being sought. Requesting consideration for placement on both the Advisory Committee and a species working group is acceptable. Those interested in a species working group technical advisor appointment should indicate which of the four working groups is preferred. Placement on the requested species working group, however, is not guaranteed.

Authority: 16 U.S.C. 971 *et seq.*

Dated: August 4, 1998.

Bruce C. Morehead,

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

[FR Doc. 98–21394 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 073198A]

Marine Mammals; Permit No. 939

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

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that the Point Reyes Bird Observatory, 4990 Shoreline Highway, Stinson Beach, CA 94970–9701, has requested an amendment to scientific research Permit No. 939.

DATES: Written comments must be received on or before September 10, 1998.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written data or views, or requests for a public hearing on this request should be submitted to the Chief, Permits Division, F/PR1, Office of Protected Resources, National Marine Fisheries Service, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit Holder is currently authorized to flipper tag and/or mark up to 2,900 Northern elephant seals (*Mirounga angustirostris*) on the South Farallon Islands and at Point Reyes National Seashore annually, over a five-year period; and inadvertently harass up to 100 harbor seals (*Phoca vitulina*), 1,200 California sea lions (*Zalophus californianus*) and 70 northern sea lions (*Eumetopias jubatus*) during the tagging activities, and during opportunistic collection of dead prematurely born northern sea lion pups.

The Holder is now requesting that the Permit be amended to authorize: Roto-tagging of up to 50 harbor seals at Point Reyes Headland, California; dye marking of up to 100 harbor seals per year in San Francisco Bay; and blood sampling of up to 25 harbor seals per year at those locations. Authorization is also requested to inadvertently harass up to 500 harbor seals per year during the tagging, marking, and blood sampling activities.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: August 3, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–21393 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryover, carryforward and recrediting unused carryforward from 1997.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 62564, published on November 24, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

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 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 13, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	547,021 dozen.
331	1,364,879 dozen pairs.
334	181,464 dozen.
335	213,147 dozen.
336/636	433,201 dozen.
338/339	1,385,856 dozen.
340/640	3,350,905 dozen.
341	2,218,700 dozen.
342/642	482,811 dozen.
347/348	2,846,760 dozen.
352/652	10,639,243 dozen.
363	25,524,981 numbers.
634	557,155 dozen.
635	381,108 dozen.
638/639	1,757,519 dozen.
641	1,040,329 dozen.
645/646	441,466 dozen.
647/648	1,469,011 dozen.
847	384,855 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–21377 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

August 5, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for Categories 340/640 and 342/642 are being increased for carryover.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67623, published on December 29, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 5, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 19, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in El Salvador and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 11, 1998, you are directed to increase the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
340/640	1,242,066 dozen.
342/642	393,525 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The guaranteed access levels for the foregoing categories remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–21444 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Restraint Limit and Sublimit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Fiji

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit and sublimit.

EFFECTIVE DATE: August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Categories 338/339/638/639 and sublimit for Categories 338–S/339–S/638–S/639–S are being increased, respectively, for carryover and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also see 62 FR 61296, published on November 17, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

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 12, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Fiji and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 13, 1998, you are directed to increase the limit and sublimit for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/339/638/639	1,393,037 dozen of which not more than 1,072,170 dozen shall be in Categories 338–S/339–S/638–S/639–S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.8010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.9068, 6112.11.0030 and 6114.20.0005; Category 339–S: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2510, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.9070, 6112.11.0040, 6114.20.0010 and 6117.90.9020; Category 638–S: all HTS numbers except 6109.90.1007, 6109.90.1009, 6109.90.1013 and 6109.90.1025; Category 639–S: all HTS numbers except 6109.90.1050, 6109.90.1060, 6109.90.1065 and 6109.90.1070.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–21378 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Hong Kong

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used in 1997.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67830, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Hong Kong and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 12, 1998, you are directed to reduce the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Within Group I subgroup	
200	360,143 kilograms.
Sublevel in Group II	
347/348	6,777,033 dozen of which not more than 6,707,746 dozen shall be in Categories 347–W/348–W [2] and not more than 5,083,385 dozen shall be in Category 348–W.

[1] These limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 347–W: only HTS numbers 6203.19.1020, 6203.19.9020, 6203.22.3020, 6203.22.3030, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.42.4050, 6203.42.4060, 6203.49.8020, 6210.40.9033, 6211.20.1520, 6211.20.3810 and 6211.32.0040; Category 348–W: only HTS numbers 6204.12.0030, 6204.19.8030, 6204.22.3040, 6204.22.3050, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.62.4055, 6204.62.4065, 6204.69.6010, 6204.69.9010, 6210.50.9060, 6211.20.1550, 6211.20.6810, 6211.42.0030 and 6217.90.9050.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–21372 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 340 is being increased for special shift, reducing the limit for Category 640 to account for the special shift being applied.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 60828, published on November 13, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

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 6, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products, produced or manufactured in Nepal and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 12, 1998, you are directed to adjust the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Nepal:

Category	Adjusted twelve-month limit [1]
340	405,935 dozen.
640	102,598 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–21373 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textiles and Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Philippines

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, 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) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted, variously, for swing, special shift, carryforward, and the special allowance for hand-crocheted items in Category 345.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 64361, published on December 5, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man–made fiber textiles and textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 13, 1998, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
237	1,684,818 dozen.
331/631	6,163,268 dozen pairs.
340/640	1,183,333 dozen.
341/641	932,000 dozen.
345	209,105 dozen.
361	2,148,182 numbers.
369–S [2]	349,510 kilograms.
433	3,597 dozen.
443	43,944 numbers.
445/446	31,349 dozen.
447	8,361 dozen.
633	55,241 dozen.
634	627,446 dozen.
635	335,855 dozen.
638/639	2,100,864 dozen.
643	796,698 numbers.
645/646	824,996 dozen.
647/648	1,111,708 dozen.
649	7,454,736 dozen.
847	758,435 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 369–S: only HTS number 6307.10.2005.

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,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.98–21374 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Russia

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 435 is being increased for carryover.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 63527, published on December 1, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

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 24, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain wool textile products, produced or manufactured in

Russia and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on August 12, 1998, you are directed to increase the current limit for Category 435 to 54,801 dozen [1], as provided for under the terms of the current bilateral agreement between the Governments of the United States and the Russian Federation.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–21375 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the United Mexican States

August 4, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: August 12, 1998.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, 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: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limit for Category 443 is being increased for swing.

The restrictions and consultation levels in the December 22, 1997 directive to the Commissioner of Customs do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300-B, Chapter 4 and Annex 401 of the agreement.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

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 62 FR 66057, published on December 17, 1997). Also see 62 FR 67836, published on December 30, 1997.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 4, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 22, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998. The levels established in that directive do not apply to NAFTA (North American Free Trade Agreement) originating goods, as defined in Annex 300-B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on August 12, 1998, you are directed to increase the limit for Category 443 to 186,008 numbers [1], pursuant to the provisions of NAFTA.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–21376 Filed 8–10–98; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Proposed Collection; Comment Request—Customer Satisfaction Surveys

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission (CPSC) requests comments on proposed surveys and other information-collection activities to determine the kind and quality of services CPSC customers want and customers' level of satisfaction with existing services. The Commission will consider all comments received in response to this notice before requesting approval of this collection of information from the Office of Management and Budget.

DATES: Written comments must be received by the Office of the Secretary not later than October 13, 1998.

ADDRESSES: Written comments should be captioned ''Customer Satisfaction Surveys'' and mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, or delivered to that office, room 502, 4330 East-West Highway, Bethesda, Maryland, 20814. Written comments may also be sent to the Office of the Secretary by facsimile at (301) 504–0127 or by e-mail at cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For information about the proposed collection of information, or to obtain a copy of the questions to be used for this collection of information, call or write Robert E. Frye, Director, Office of Planning and Evaluation, Consumer Product Safety Commission, Washington, DC 20207; (301) 504–0416, Ext. 2264.

SUPPLEMENTARY INFORMATION:

A. Background

This request for clearance, in general, of several planned customer satisfaction surveys, is in response to the Government Performance and Results Act (GPRA)-related evaluations of service quality and customer satisfaction, and in response to the Vice President's call for ''Conversations with America,'' to survey customers and determine the type and quality of services they want and to obtain information on how to improve existing government services. ''Customers'' of CPSC include any individual or entity interested in or affected by agency activities. These would include, but not be limited to, (1) consumers telephoning the Hotline to report product-related incidents, or to receive information; (2) consumers, industry members, or others contacting the National Injury Information Clearinghouse for information; (3) State representatives who work with CPSC on cooperative programs; (4) firms using CPSC's Fast-Track Product Recall Program to report and simultaneously propose satisfactory product recall plans; (5) small

[1] The limit has not been adjusted to account for any imports exported after December 31, 1997.

businesses that have sought information or assistance from the CPSC's small business ombudsman; and (6) other individuals CPSC is providing information to, such as those through the CPSC's Office of Information and Public Affairs.

The information will be used by the CPSC Office of Planning and Evaluation to prepare sections of the agency's annual performance report (required by the GPRA). This information will provide measures of the quality and effectiveness of agency efforts related to three goals in its strategic plan (informing the public, industry services, and customer satisfaction). Also, the information will be used to guide improvements in initiatives related to the ''Conversation with America'' program. If this information is not collected, the Commission would not have useful measures of its effectiveness in providing useful services to consumers and others, and information necessary to guide program development would not be available.

B. Estimated Burden

The surveys and other information collection activities would be conducted by various methods, including contractors or in-house staff. They may be by (1) amending CPSC's web site's comment page, ''Talk to Us/Tell Us What You Think,'' to solicit feedback on the level of satisfaction with CPSC's services, (2) the periodic use of brief customer service follow-up queries (on-line) with samples of telephone hotline callers, (3) surveying a sample of firms using the Fast-Track Product Recall Program to assess their views and suggestions for improvements in the service aspects of the program, (4) including customer comment cards within the pages of the *Consumer Product Safety Review*, and (5) conducting mail surveys of state partners and samples of customers of the National Injury Information Clearinghouse. Fewer than 10 customer surveys or information collection activities a year would be conducted using this clearance.

The Commission staff estimates the number of annual respondents to be about 1,550. Among the anticipated sources and annual respondents are:

Sources	
Web site	500
CPS Review	100
Recall Round-ups	100
Hotline	300
National Injury Information Clearinghouse	300
Small Businesses	100
State Partners	50
Fast Track Product Recall Program	100
	1,550

The average time needed for each response is estimated at two minutes. Thus, the annual time burden would be about 3,100 (2 × 1,550) minutes or 51.7 hours. Using $12 an hour (the average hourly wage for all private industry workers, according to the 1996 edition of the *Statistical Abstract of the U.S.*) times 51.7 hours, the cost would be negligible (a total of about $620 per year).

For CPSC staff, the average time needed to process each response is estimated at five minutes. Thus, this information collection activity would require about 7,750 (5 × 1,550) minutes or 129.2 hours per year. Based on the average hourly Commission salary of $37.37, the 129.2 hours of CPSC staff time would be valued at about $4,828.

C. Requests for Comments

The Commission solicits written comments from all interested persons about the proposed surveys. The Commission specifically seeks information relevant to the following topics:

—Whether the surveys described above are necessary for the proper performance of the Commission's functions, including whether the information would have practical utility;

—Whether the estimated burden of the proposed collections of information are accurate;

—Whether the quality, utility, and clarity of the information to be collected could be enhanced; and

—Whether the burden imposed by the collection of information could be minimized by use of automated, electronic or other technological collection techniques, or other forms of information technology.

Dated: August 5, 1998.

Sadye E. Dunn,

Secretary Consumer Product Safety Commission.

[FR Doc. 98–21541 Filed 8–10–98; 8:45 am]

BILLING CODE 6355–01–P

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974, Deletions of Systems of Records

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Consumer Product Safety Commission is deleting two obsolete systems of records that were inadverdently left in place when two new systems with the same system number were published.

EFFECTIVE DATE: August 11, 1998.

ADDRESSES: Comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Joseph F. Rosenthal, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC. 20207, telephone 301–504–0980.

SUPPLEMENTARY INFORMATION: On June 2, 1997, at 62 FR 29714, the Consumer Product Safety Commission published notice of four new systems of records, including one designated as CPSC–7 and one designated as CPSC–18 in the mistaken belief that two no longer active systems of records with those same designations had been removed and their designations reserved. Those systems, Employee Discrimination and Investigation File—CPSC–7, and Job Applicant Files—CPSC–18, no longer exist as Privacy Act systems of records.

Accordingly, Employee Discrimination and Investigation File—CPSC–7, and Job Applicant Files—CPSC–18, are removed. This action does not affect Enforcement and Investigation Files—CPSC–7, and Procurement Integrity Records—CPSC–18, that were published on June 2, 1997 at 62 FR 29717.

Dated: August 5, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–21386 Filed 8–10–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Performance Review Boards List of Members

Below is a list of additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Awards System.

Secretariat

Mr. James R. Speer
Mr. Jerome P. Sutton
Brig Gen Larry W. Northington
Mr. Don W. Fox

Air Staff and ''Others''

Lt Gen David L. Vesely

Brig Gen Richard B. Bundy
Brig Gen Charles F. Wald
Mr. Robert E. Corsi

Air Force Materiel Command

Brig Gen Robert P. Bongiovi
Brig Gen Todd I. Stewart
Ms. Genevieve M. Haddad

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 98–21532 Filed 8–10–98; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF EDUCATION

Notice Establishing Deadlines for Submission of Requests for Waivers and Waiver Extensions That Would Directly Affect School-Level Activities

ACTION: Notice establishing deadlines for the submission of requests for waivers and waiver extensions that would directly affect school-level activities.

SUMMARY: In this notice, the Acting Deputy Secretary establishes deadlines for the submission of previously granted waivers and for the submission of new waiver requests under sections 14401 and 1113(a)(7) of the Elementary and Secondary Education Act of 1965 (ESEA), section 311(a) of the Goals 2000: Educate America Act, and section 502 of the School-to-Work Opportunities Act of 1994.

DATES: Except in extraordinary circumstances, the following deadlines apply to requests for waivers or waiver extensions affecting school-level activities:

Requests for waivers that would be implemented in the semester immediately following January 1, 1999 must be submitted no later than October 1, 1998.

Requests for waivers that would be implemented in the beginning of the 1999–2000 school year must be submitted no later than April 1, 1999.

These deadlines apply only to waivers that would directly affect school-level activities. For example, the deadlines would apply to requests for waivers of the Title I targeting provisions or of the minimum poverty threshold required for implementation of a schoolwide program. However, the deadlines would not apply to waivers of requirements relating to the consolidation of administrative funds.

SUPPLEMENTARY INFORMATION: Waiver applicants are encouraged to submit their requests as early as possible and not wait until the deadlines to seek waivers. The requests will be reviewed upon receipt.

For purposes of this notice, the submission date is the date that the waiver request is received by the U.S. Department of Education (Department) in substantially approvable form. A waiver request is considered to be in substantially approvable form when it has adequately addressed the applicable statutory criteria governing waivers.

During the period of time new waiver requests are under review by the Department, a waiver applicant must continue to comply with the requirement that is the subject of the waiver request.

ADDRESS FOR SUBMISSION OF REQUESTS: All requests for waivers or waiver extensions should be submitted to the following address: Assistant Secretary for Elementary and Secondary Education, Attention: Waiver Staff, U.S. Department of Education 400 Maryland Avenue, SW, Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Information on waivers may be obtained from the Department's Waiver Assistance Line, (202) 401–7801. Copies of the Department's updated waiver guidance, which provide examples of waivers and describe how to apply for a waiver, are available at this number. The guidance, along with other information on flexibility, is also available at the Department's World Wide Web site at http://www.ed.gov/flexibility.

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.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone (202) 219–1511 or, toll free, 1–800–222–4922. These documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Dated: August 4, 1998.

Marshall S. Smith,

Acting Deputy Secretary.

[FR Doc. 98–21402 Filed 8–10–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: Notice is hereby given that on March 31, 1998, an arbitration panel rendered a decision in the matter of *Herbert E. Brown* v. *Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired (Docket No. R–S–/97–6).* This panel was convened by the U.S. Department of Education pursuant to 20 U.S.C. 107d–1(a), upon receipt of a complaint filed by petitioner, Herbert E. Brown.

FOR FURTHER INFORMATION CONTACT: A copy of the full text of the arbitration panel decision may be obtained from George F. Arsnow, U.S. Department of Education, 600 Independence Advance, S.W., Room 3230, Mary E. Switzer Building, Washington, DC 20202–2738. Telephone: (202) 205–9317. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8298.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may also view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the pdf you must have the Adobe Acrobat Reader Program with Search,

which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G–Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

SUPPLEMENTARY INFORMATION: Pursuant to the Randolph-Sheppard Act (20 U.S.C. 107d-2(c)) (the Act), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Complainant Herbert E. Brown, a blind vendor, operated a snack bar facility with vending machines at the headquarters of the Ohio Department of Natural Resources (ODNR) in Columbus, Ohio from 1989 until his removal from the facility in January 1995.

This dispute concerns complainant's removal as the manager of the ODNR snack bar vending facility. In December 1994, Mr. Brown requested and received permission from the Ohio Rehabilitation Services Commission, Bureau of Services for the Visually Impaired, the State licensing agency (SLA), to take a vacation from December 20, 1994 to January 5, 1995 outside the State of Ohio.

In accordance with the operator's agreement and the SLA's rules and regulations governing the Randolph-Sheppard Vending Facility Program, complainant designated his employee to operate the facility in his absence. Complainant did not leave a telephone number where he could be reached during his vacation with either his employee or the SLA.

On December 21, 1994, complainant's employee fell and broke her leg en route to open the vending facility. The employee was hospitalized until January 2, 1995. A member of the SLA staff visited the employee in the hospital on December 21, 1994 and obtained the keys to the snack bar. On December 22, 1994, the SLA secured a substitute vendor to operate the vending machines that were a part of the facility. However, the over-the-counter food service of the snack bar remained closed. Mr. Brown learned on December 23 that his employee had broken her leg and was not operating the vending facility. Complainant thereafter attempted to reach the SLA staff but was unsuccessful. Complainant left a message with an SLA staff member that he was unable to return to Ohio due to illness. However, complainant again did not leave a telephone number where he could be reached.

On January 4, 1995, the SLA took possession of the vending facility and prepared a closing inventory. Mr. Brown was not present, and, according to the closing inventory, he owed the SLA $621.15.

On January 5, 1995, Mr. Brown returned to Ohio and met with the SLA staff. The staff provided complainant with written notification of his removal as manager of the vending facility and the termination of his operator's agreement. The SLA alleged that Mr. Brown had violated the SLA's rules and regulations and vendor operator's agreement by failing to have the facility open at specific times, failing to find an immediate replacement for the employee who had been hospitalized, not leaving a telephone number where complainant could be reached, and abandoning his facility.

Complainant gave the SLA a handwritten note on January 5, 1995 contesting the closing inventory amount of $621.15. However, the SLA did not treat Mr. Brown's note as a first step in the grievance process under its rules and regulations, and it considered the matter closed.

Pursuant to the SLA's rules and regulations, a vendor is ineligible to apply for operation of another vending facility if there is an outstanding closing inventory balance.

Mr. Brown requested and received a State fair hearing on the issue of his removal from the ODNR vending facility and the termination of his operator's agreement. The hearing officer affirmed the SLA's decision to remove complainant and to terminate his operator's agreement. It was that decision that Mr. Brown sought to have reviewed by a Federal arbitration panel. A hearing was held on October 31, 1997.

Arbitration Panel Decision

The issues before the arbitrator panel were whether the actions by the SLA to remove Mr. Brown from managing his vending facility and to terminate his operator's agreement were in accordance with the Act, implementing regulations, and State rules and regulations.

Regarding the issues of removal of complainant from his vending facility and termination of his operator's agreement, the panel was unanimous in finding that, given the unique facts and circumstances of the matter, the SLA's actions were improper. The panel concluded that, while complainant was not blameless in the matter, Mr. Brown had not abandoned his facility and so completely abrogated his duties as to merit removal and termination of his operator's agreement. The panel ruled that complainant should be reinstated to the first available vending facility in the Columbus, Ohio area, which is defined as Franklin County, Ohio. The panel declined to award Mr. Brown any monetary damages.

The panel directed the SLA to immediately begin the grievance process permitting Mr. Brown to contest the closing inventory amount. The arbitration panel further directed that the closing inventory issue be resolved *before* Mr. Brown is reinstated to a vending facility in compliance with the panel's decision and award.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the U.S. Department of Education.

Dated: August 6, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–21542 Filed 8–10–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–366–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1998.

Take notice that on July 31, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to become effective September 1, 1998:

Second Revised Volume No. 1

Twenty-Third Revised Sheet No. 17

Original Volume No. 2

Sixteenth Revised Sheet No. 14

ANR states that the above-referenced tariff sheets are being filed to eliminate the Volumetric Buyout Buydown Surcharge filed in Docket No. RP96–328–000 due to the expiration of such surcharge.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission,

888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21418 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–346–002]

Carnegie Interstate Pipeline Company; Notice of Compliance Filing

August 5, 1998.

Take notice that on July 31, 1998, Carnegie Interstate Pipeline Company (CIPCO), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet, to be effective August 1, 1998.

Fifth Revised Sheet No. 146

CIPCO States that this filing is being made in compliance with Commission Order No. 587–G, issued by the Commission on April 16, 1998 and with the Commission's July 27, 1998 Letter Order in this docket. Through this filing, CIPCO adopts by reference Version 1.2 of the GISB standards. CIPCO requests waiver of section 154.207 of the Commission's regulations to permit the tariff sheet to become effective on August 1, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21417 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–251–003]

Colorado Interstate Gas Company; Notice of Compliance Filing

August 6, 1998.

Take Notice that on August 3, 1998, Colorado Interstate Gas Company (CIG), tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Fifth Revised Sheet No. 246 and Fifth Revised Sheet No. 247 to be effective August 1, 1998.

CIG states that the purposes of this compliance filing is to revise tariff sheets to incorporate GISB Standard 5.3.30 as required in the Order that issued July 20, 1998 in Docket No. RP98–251–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21451 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–689–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

August 5, 1998.

Take notice that on July 23, 1998, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146 filed in Docket No. CP98–689–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to modify an existing point of delivery to Columbia Gas of Pennsylvania, Inc., (CPA) in Washington County, Pennsylvania to reassign and reduce the Maximum Daily Delivery Obligations (MDDOs) at another existing point to CPA, under Columbia's blanket certificate issued in Docket No. CP83–76–000 [1] 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.

Columbia requests authorization to modify an existing point of delivery for firm transportation service and will provide the service pursuant to Columbia's blanket certificate issued in Docket No. CP96–240–000 [2] under existing rate schedules and within certificated entitlements.

The modification of the existing point of delivery has been requested by CPA for additional firm transportation service for residential and commercial customers. CPA has not requested an increase in its total firm entitlement in conjunction with this request to modify this existing point of delivery. As part of the firm transportation service to be provided, CPA has requested that its existing SST Agreement with Columbia be amended by reducing the MDDO's at the existing Goat Hill point of delivery by 659 Dth/day and adding 659 Dth/day to the modified point of delivery which currently lists 66 Dth/day under Columbia's existing SST Rate Schedule. The estimated cost to modify the existing point of delivery is approximately $22,222.00. CPA will reimburse Columbia 100% of the actual total cost of the modification.

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 Section 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

[1] Columbia Gas Transmission Corp., 22 FERC ¶ 62,029 (1983).

[2] Columbia Gas Transmission Corp., 34 FERC ¶ 62,454 (1986).

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.

David P. Boergers,

Secretary.

[FR Doc. 98–21410 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–338–001]

Cove Point LNG Limited Partnership; Notice of Tariff Filing

August 6, 1998.

Take notice that on August 3, 1998, Cove Point LNG Limited Partnership (Cove Point) tendered for filing to become a part of Cove Point's FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective August 1, 1998:

Substitute Fourth Revised Sheet No. 136

Cove Point states that this tariff sheet is filed to comply with the Commission's Office of Pipeline Regulations' July 21, 1998, compliance letter order regarding Cove Point's July 2, 1998, filing to comply with the requirements of Order No. 587–G.

Cove Point states that copies of the filing were served upon Cove Point's customers and interested state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21453 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–367–000]

East Tennessee Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1998.

Take notice that on August 3, 1998, East Tennessee Natural Gas Company (East Tennessee), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of September 3, 1998:

Third Revised Sheet No. 1
Second Revised Sheet No. 137
Second Revised Sheet No. 150
Second Revised Sheet No. 168
First Revised Sheet No. 266
First Revised Sheet No. 267
First Revised Sheet No. 268
First Revised Sheet No. 269
First Revised Sheet No. 270
First Revised Sheet No. 271
First Revised Sheet No. 272
First Revised Sheet No. 272A
First Revised Sheet No. 279

East Tennessee states that the purpose of the filing is to modify its pro forma License Agreement for the TENN–SPEED 2 System to change the name of the TENN–SPEED 2 System to the System. East Tennessee further states that License Agreement is also modified to reflect the conversion of the current TENN–SPEED 2 System software from a customer desktop application to a version that would allow remote communications access technology.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21419 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–279–001]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1998.

Take notice that on August 4, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Fourth Revised Sheet No. 50C, proposed to become effective August 1, 1998.

Great Lakes states that the tariff sheet is being filed to comply with the Letter Order issued by the Commission on July 22, 1998, in the above-named docket (Order). In the Order the Commission directed Great Lakes to file a revised tariff sheet to (1) remove GISB standard 4.3.4 from its listing of those standards incorporated into the tariff by reference and (2) indicate that the current authorized version of all standards incorporated by reference is Version 1.2. Great Lakes states that Substitute Fourth Revised Sheet No. 50C of the instant filing complies with both directives.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21452 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–245–002]

High Island Offshore System; Notice of Compliance Filing

August 6, 1998.

Take notice that on August 4, 1998, High Island Offshore System (HIOS),

tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1998:

Sub Second Revised Sheet No. 110A,
Sub Third Revised Sheet No. 110B,
Sub First Revised Sheet No. 110C

HIOS asserts that the purpose of this filing is to comply with the Commission's Order No. 587–G in Docket No. RM96–1–1007, and its July 23, 1998 letter order in the captioned proceeding requiring HIOS to revise its list of GISB standards incorporated by reference.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21450 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–254–001]

Kern River Gas Transmission Company; Notice of Waiver Request

August 5, 1998.

Take notice that on July 31, 1998, Kern River Gas Transmission Company (Kern River) filed a request for a waiver from the Commission's requirement to comply with 18 CFR 284.10(c)(3)(iii) regarding an electronic cross-reference table correlating the names of its shippers with their DUNS numbers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20436, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21413 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–368–000]

Midwestern Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1998.

Take notice that on August 3, 1998, Midwestern Gas Transmission Company (Midwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets, with an effective date of September 3, 1998:

Second Revised Sheet No. 84
Second Revised Sheet No. 92
First Revised Sheet No. 195
First Revised Sheet No. 196
Second Revised Sheet No. 197
Second Revised Sheet No. 197
Second Revised Sheet No. 198
First Revised Sheet No. 199
First Revised Sheet No. 200
First Revised Sheet No. 201
First Revised Sheet No. 202
First Revised Sheet No. 203
First Revised Sheet No. 225

Midwestern states that the purpose of the filing is to modify its pro forma License Agreement for the TENN–SPEED 2 System to change the name of the TENN–SPEED 2 System to the System. Midwestern further states that License Agreement will be modified to reflect the conversion of the current System software from a customer desktop application to a version that would allow remote communications access technology.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21420 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–692–000]

Northern Border Pipeline Company; Notice of Request Under Blanket Authorization

August 6, 1998.

Take notice that on July 24, 1998, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 filed in Docket No. CP98–692–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to operate an existing valve setting and to construct and operate certain measurement facilities as a new delivery point (Tyler delivery point) to the town of Tyler, Minnesota under Northern Border's blanket certificate issued in Docket No. CP84–420–000 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.

Specifically, Northern Border requests authorization to operate an existing 4-inch valve setting and to construct and operate a single 2-inch rotary meter and associated piping, RTU, and meter building to serve as a delivery point to the town of Tyler, Minnesota. The estimated cost of the proposed facilities is $220,000. Northern Border will be reimbursed for all costs incurred for constructing the proposed delivery point.

The natural gas volumes to be delivered at the proposed delivery point are volumes currently being transported by Northern Border. Northern Border will deliver to the town of Tyler up to 700 Mcf on a peak day and an estimated 110,000 Mcf annually. The natural gas volumes delivered at the Tyler delivery point will be used to serve the town of Tyler, Minnesota. There will not be any impact on the peak day capability of Northern Border's existing shippers as a result of the proposed interconnect and

any impact on annual deliveries will be de minimis.

Northern Border further states that the proposed change is not prohibited by Northern Border's existing tariff. Northern Border asserts that it has sufficient capacity in its system to accomplish delivery of gas to the proposed delivery point without detriment or disadvantage to any other customer.

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 Section 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.

David P. Boergers,

Secretary.

[FR Doc. 98–21446 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–257–001]

Northwest Pipeline Corporation; Notice of Request for Waiver

August 5, 1998.

Take notice that on July 31, 1998, Northwest Pipeline Corporation (Northwest) filed a request for a waiver from the Commission's requirement to comply with 18 CFR 284.10(c)(3)(iii) regarding an electronic cross-reference table correlating the names of its shippers with their DUNS numbers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary,

[FR Doc. 98–21414 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–367–010]

Northwest Pipeline Corporation; Notice of Refund Report

August 6, 1998.

Take notice that on August 4, 1998, Northwest Pipeline Corporation (Northwest) tendered for filing a refund report pursuant to the Commission's Order Approving Settlement issued on November 25, 1997, in its Docket No. RP96–367–000 general rate proceeding.

Northwest states that the refund covers the period from March 1, 1997, through February 28, 1998.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21448 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–703–000]

Panhandle Eastern Pipe Line Company; Notice of Application

August 6, 1998.

Take notice that on July 30, 1998, Panhandle Eastern Pipe Line Company (Applicant), 5400 Westheimer Court, P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP98–703–000 an abbreviated application pursuant to Section 7(c) of the Natural Gas Act, as amended, and Section 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder, for permission and approval to upgrade an existing delivery point located in Moultrie County, Illinois in order to accommodate increased deliveries of natural gas to Central Illinois Light Company (CILCO) for redelivery to Unity Grain & Supply (Unity), an existing customer of CILCO, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant proposes to install, own, and operate an additional four-inch Roots meter, construct approximately eighty feet of two-inch connecting pipe and six feet of four-inch connecting pipe and associated facilities, and appurtenant metering and regulating equipment. Applicant asserts that these modification are necessary to accommodate increased natural gas deliveries to CILCO for the amount of Unity. Specifically, Applicant states that the maximum design capacity of the delivery point will increase from 271 Mcf per Day to approximately 1,440 Mcf per Day at 100 psig. Applicant further asserts that this proposed upgrade will not increase the existing entitlement of CILCO under its current effective service agreements. It is stated that the estimated total cost for installing the proposed facilities is $64,110, which will be reimbursed 100 per cent by CILCO.

Applicant states that it is applying for the proposal herein using case-specific authorization instead of filing pursuant to Section 157.205 of Subpart F of the Commission's Regulations because CILCO and Unity are concerned that weather conditions may cause Unity to be unable to meet its requirements for testing and commencing grain drying operations in 1998. Accordingly, Applicant is requesting Section 7(c) authority to upgrade the delivery point in order to meet its customer's requirement for natural gas service on an expedited basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 13, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). 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 the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the 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 on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–21447 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–369–000]

Tennessee Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1998.

Take notice that on August 3, 1998, Tennessee Gas Pipeline Company (Tennessee), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following revised tariff sheets, with an effective date of September 3, 1998:

Third Revised Sheet No. 329
Third Revised Sheet No. 343
First Revised Sheet No. 646
First Revised Sheet No. 647
Second Revised Sheet No. 648
Second Revised Sheet No. 649
Second Revised Sheet No. 650
First Revised Sheet No. 651
First Revised Sheet No. 652
First Revised Sheet No. 653

Tennessee states that the purpose of the filing is to modify its pro forma License Agreement for the TENN–SPEED 2 System to change the name of the TENN–SPEED 2 System to the System. Tennessee further states that License Agreement will be modified to reflect the conversion of the current System software from a customer desktop application to a version that would allow remote communications access technology.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21421 Filed 8–10–98; 8:45 am]

FILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–344–001]

Transportation Gas Pipe Line Corporation; Notice of Request for Waiver

August 5, 1998.

Take notice that on July 31, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing a request for waiver of the Commission's requirement in Order No. 587–G that, effective August 1, 1998, a cross-reference table for D–U–N–S numbers be provided by interstate pipeline companies correlating such D–U–N–S numbers with the names of shippers.

The Commission has recently been apprised by the Gas Industry Standards Board (GISB), that the proprietary issues related to gas industry usage of D–U–N–S numbers is not yet settled. Such report states that GISB executive committee officers are currently holding discussions with Dun & Bradstreet regarding the appropriate way to deal with the cross-reference table requirement. Further in its report, GISB has characterized these discussions as complex and anticipates that additional time will be required before any resolution can be reached. Therefore, given the current status of the ongoing negotiations between GISB and Dun & Bradstreet, Transco respectfully requests a wavier of § 284.10(c)(3)(iii) of the Commission's Regulations.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21416 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–13–29–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1998.

Take notice that on August 3, 1998 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1, Thirteenth Revised Sheet No. 28, with an effective date of August 1, 1998.

Transco states that the purpose of the instant filing is to track rate changes attributable to storage service purchased from Texas Eastern Transmission Corporation (TETCO) under its Rate Schedule X–28, the costs of which are included in the rates and charges payable under Transco's Rate Schedule S–2. The tracking filing is being made pursuant to tracking provisions under Section 26 of the General Terms and Conditions of Transco's Volume No. 1 Tariff.

Transco states that included in Appendix B attached to the filing are explanations of the rate changes and

details regarding the computation of the revised Rate Schedule S–2 rates.

Transco states that copies of the filing are being mailed to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Section 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David Boergers,

Secretary.

[FR Doc. 98–21455 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–244–001]

U–T Offshore System; Notice of Compliance Filing

August 6, 1998.

Take notice that on August 4, 1998 U–T Offshore System (U–TOS) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, to become effective august 1, 1998:

Sub Eighth Revised Sheet No. 73,
Sub Third Revised Sheet No. 73A,
Sub Second Revised Sheet No. 73B

U–TOS asserts that the purpose of this filing is to comply with the Commission's Order No. 587–G in Docket No. RM96–1–007, and its July 23, 1998 letter order in the captioned proceeding requiring U–TOS to revise its list of GISB standards Incorporated by reference.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21449 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–699–000]

Williams Gas Pipelines Central Inc.; Notice of Request Under Blanket Authorization

August 5, 1998.

Take notice that on July 29, 1998, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma, 74101, filed in Docket No. CP98–699–000, a request pursuant to Section 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon the receipt of transportation of natural gas from Ward Petroleum Corporation (Ward) and to reclaim facilities located in McClain County, Oklahoma, under Williams' blanket certificate issued in Docket No. CP82–479–000, pursuant to 18 CFR Part 157, Subpart F 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.

Williams specifically requests to abandon facilities and for receipt of transportation gas from Ward at the Horseshoe #1 well located in McClain County, Oklahoma. It is further stated that the facilities were originally installed by Williams in 1988 to receive transportation gas from Ward. It is further stated that the meter setting has been blinded for some time and Ward has agreed to the reclaim.

Williams states that the cost to reclaim the meter setting and appurtenant facilities is estimated to be approximately $1,254.

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) motion to intervene or notice of intervention and pursuant to Section 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 authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–21411 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–316–002]

Williams Gas Pipelines Central, Inc; Notice of Request for Waiver

August 5, 1998

Take notice that on July 31, 1998, Williams Gas Pipelines Central, Inc. (Williams) filed a request for waiver of the Federal Energy Regulatory Commission's requirement in Order No. 587–G, that a cross-reference table for D–U–N–S numbers be provided by interstate pipeline companies correlating such D–U–N–S numbers with the names of shippers.

Williams states that a copy of its filing was served on all commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before August 12, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21415 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–371–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 6, 1998.

Take notice that on August 3, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of September 3, 1998:

Second Revised Sheet Nos. 1 and 2
Fourth Revised Sheet No. 6A
First Revised Sheet Nos. 145–148
Original Sheet Nos. 149–154
Original Sheet Nos. 456F–456K
Second Revised Sheet Nos. 465–472

Williams states that this filing is being made in accordance with Section 154.202 of the Commission's regulations. Williams is proposing to offer a new interruptible Park and Loan (PLS) service under Rate Schedule PLS. Williams' PLS service will enable Williams to accommodate the needs of its customers in a manner not currently available under its existing tariff by providing shippers greater flexibility in managing their daily gas supply needs through the use of Williams' pipeline system.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21454 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–253–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 5, 1998.

Take notice that on August 3, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 1998.

Substitute Fifth Revised Sheet No. 2

Williston Basin states that on June 19, 1998, it filed revised tariff sheets in the above-referenced docket to reflect certain tariff modifications and housekeeping changes which it believes were necessary to correct and/or clarify its tariff. On July 29, 1998, the Commission issued a Letter Order which accepted the filed tariff sheets subject to Williston Basin complying with Section 154.104 of the Commission's Regulations by reinstating the listing for Pooling Service to the Table of Contents.

Accordingly, Willison Basin is submitting Substitute Fifth Revised Sheet No. 2 to Second Revised Volume No. 1 of its FERC Gas Tariff to comply with the Commission's July 29, 1998 Letter Order.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21412 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–312–001]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

August 5, 1998.

Take notice that on August 3, 1998, Williston Basin Interstate Pipeline Company (Williston Basin) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet to become effective August 1, 1998:

Substitute Fourth Revised Sheet No. 371

Williston Basin states that the revisions reflect the addition of GISB Standard 4.3.5 and the deletion of GISB Standard 4.3.4 to Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1 in compliance with the Commission's Letter Order issued July 21, 1998 in Docket No. RP98–312–000. Williston Basin further states that it is requesting rehearing of the Commission's directive to include GISB principle 2.1.4 (Version 1.2) in its Tariff as it believes that the Commission has previously stated that principles are not required to be incorporated in pipelines' tariffs and the Commission is incorrect in directing Williston Basin to include such principle in its Tariff.

Any person desiring to protect this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 98–21445 Filed 8–10–98; 8:45 am]

FILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC96–19–037, et al.]

California Power Exchange Corporation, et al.; Electric Rate and Corporate Regulation Filings

August 4, 1998.

Take notice that the following filings have been made with the Commission:

1. California Power Exchange Corporation

[Docket Nos. EC96–19–037 and ER96–1663–038]

Take notice that on July 30, 1998, the California Power Exchange Corporation (PX) filed for Commission acceptance in this docket, pursuant to Section 205 of the Federal Power Act, an application to amend the PX Operating Agreement and Tariff (including Protocols) (PX Tariff). The PX requests that the proposed PX Tariff amendments be made effective as of July 30, 1998, for certain amendments to the Hour-Ahead Market provisions and July 1, 1998 for a proposed certification and metering amendment.

In this submittal, the PX proposed PX Tariff and Protocol amendments to clarify certain aspects of the PX Hour-Ahead Market, which will begin operation on July 30, 1998, in accordance with the Commission's July 15, 1998 order accepting Tariff Amendment No. 2 for filing. *California Power Exchange Corporation*, 84 FERC ¶ 61,017 (1998). The PX also proposes to amend certain aspects of its certification process for PX Participants.

Comment date: August 25, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Allegheny Electric Cooperative v. Pennsylvania Electric Company, doing business as GPU Energy

[Docket No. EL98–65–000]

Take notice that on July 23, 1998, Allegheny Electric Cooperative, Inc. (Allegheny), tendered for filing a complaint against Pennsylvania Electric Company (Penelec) concerning the application of the 1993 Wheeling and Supplemental Power Agreement between Allegheny and Penelec in the context of Pennsylvania's recently enacted retail choice legislation.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before September 3, 1998.

3. East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company

[Docket No. EL98–66–000]

Take notice that on July 23, 1998, East Texas Electric Cooperative, Inc., tendered for filing a complaint against the four operating company subsidiaries of Central and South West Corporation (CSW Operating Companies) and Central and South West Services, Inc., the entity responsible for rates, terms and conditions of transmission access for the CSW Operating Companies.

Comment date: September 3, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall be due on or before September 3, 1998.

4. Duke Energy Marketing Corp.

[Docket No. ER96–109–014]

Take notice that on July 30, 1998, Duke Energy Marketing Corp. (DEMC) tendered for filing its report of transactions for the quarter ended June 30, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. New Energy Ventures, Inc.

[Docket No. ER96–1387–009]

On July 30, 1998, New Energy Ventures, Inc. (NEV, Inc.), submitted for filing its quarterly report regarding transactions to which it was a party the period dated April 1, 1998 through June 30, 1998, pursuant to its Market Rate Schedule accepted by the Commission in the above referenced docket.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. DPL Energy

[Docket No. ER96–2601–008]

Take notice that DPL energy (DPL) on July 30, 1998 filed a transmittal letter stating that they did not engage in any electric power transactions for the quarter ending June 30, 1998 pursuant to Docket No. ER96–2601–000.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. NESI Power Marketing, Inc.

[Docket No. ER97–841–006]

Take notice that on July 30, 1998, NESI Power Marketing, Inc., tendered for filing its Transaction Reports for short-term transactions for the second quarter of 1998 pursuant to the Commission's order in *Northern Indiana Public Service Company and NIPSCO Energy Services, Inc.*, 75 FERC 61,213 (1996) and the Commission's March 13, 1997 letter order in *NESI Power Marketing, Inc.*, Docket No. ER97–841–000.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Western Systems Power Pool

[Docket Nos. ER97–987–001, OA97–220–001, and OA97–672–001]

Take notice that on July 29, 1998, the Western Systems Power Pool (WSPP) tendered for filing revised tariff sheets to its pool-wide Open access Transmission tariff and a revised WSPP Agreement.

WSPP states that this filing is being made in compliance with the terms of the Federal Energy Regulatory Commission's April 30, 1998 Order in *Western Systems Power Pool*, 83 FERC 61,099.

Comment date: August 18, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. CSW Power Marketing, Inc.

[Docket No. ER97–1238–007]

Take notice that on July 30, 1998, CSW Power Marketing, Inc. (CSW Power), submitted a quarterly report under CSW Power's market-based sales tariff. The report is for the period April 1, 1998 through June 30, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Competitive Utility Services Corporation

[Docket No. ER97–1932–006]

Take notice that on July 30, 1998, Competitive Utility Services Corp. (CUSCO), tendered for filing with the Federal Energy Regulatory Commission information relating to the above docket.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. New Energy Ventures, L.L.C.

[Docket No. ER97–4636–003]

On July 30, 1998, New Energy Ventures, L.L.C. (NEV, L.L.C.), submitted for filing its quarterly report regarding transactions to which it was a party during the period dated April 1, 1998 through June 30, 1998, pursuant to its Market Rate Schedule accepted by the Commission in the above referenced docket.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. NEV East, L.L.C.

[Docket No. ER97–4652–003]

On July 30, 1998, NEV East, L.L.C. (NEV East), submitted for filing its quarterly report regarding transactions that occurred during the period April 1, 1998 through June 30, 1998, pursuant to its Market Rate Schedule accepted by the Commission in the above-referenced docket.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. NEV California, L.L.C.

[Docket No. ER97–4653–003]

On July 30, 1998, NEV California, L.L.C. (NEV California), submitted for filing its quarterly report regarding transactions to which it was a party during the period April 1, 1998 through June 30, 1998, pursuant to its Market Rate Schedule accepted by the Commission in Docket No. ER97–4653–000.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. NEV Midwest, L.L.C.

[Docket No. ER97–4654–003]

On July 30, 1998, NEV Midwest, L.L.C. (NEV Midwest), submitted for filing its quarterly report regarding transactions that occurred during the period April 1, 1998, through June 30, 1998, pursuant to its Market Rate Schedule accepted by the Commission in the above referenced docket.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Central and South West Services, Inc.

[Docket No. ER98–542–004]

Take notice that on July 30, 1998, Central and South West Services, Inc., as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), submitted a quarterly report under the CSW Operating Companies' market-based sales tariff. The report is for the period April 1, 1998 through June 30, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Medical Area Total

[Docket No. ER98–1992–001]

Take notice that on July 30, 1998, Medical Area Total Energy Plant, Inc. (MATEP), tendered for filing a summary of activity for the quarter ending June 30, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. CSW Energy Services, Inc.

[Docket No. ER98–2075–002]

Take notice that on July 30, 1998, CSW Energy Services, Inc. (CSW ESI), submitted a quarterly report under CSW ESIs market-based sales tariff. The report is for the period April 1, 1998 through June 30, 1998.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Alliant Services, Inc.

[Docket No. ER98–3971–000]

Take notice that on July 30, 1998, Alliant Services, Inc., tendered for filing an executed Service Agreement for Network Integration Transmission Service and an executed Network Operating Agreement, establishing Corn Belt Power cooperative as a Network Customer under the terms of the Alliant Services, Inc. Transmission tariff. These agreements provide for the continuation of service that was originally filed in Interstate Power Company Docket No. ER97–3693–000. Alliant Services, Inc. requests the cancellation of prior agreements submitted in Interstate Power Company Docket No. ER97–3693–000 and associated rate schedule designations.

Alliant Services, Inc. Requests and effective date of July 1, 1998 for the service provided to Corn Belt Power Cooperative. Alliant Services, Inc., accordingly, seeks waiver of the Commission's notice requirements to permit the requested effective date. A copy of this filing has been mailed to the Illinois Commerce Commission, the Iowa Department of Commerce, the Minnesota Public Utilities Commission, and the Public Service Commission of Wisconsin.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Carolina Power & Light Company

[Docket No. ER98–3972–000]

Take notice that on July 30, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and the following Eligible Transmission Customers: DTE Energy Trading, Inc. and El Paso Energy Marketing Company; and a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with DTE Energy Trading, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. NGE Generation, Inc.

[Docket No. ER98–3979–000]

Notice is hereby given that NGE Generation, Inc. filed on July 30, 1998 the Summary of Quarterly Activity for the calendar year quarter ending June 30, 1998 pursuant to Section 205 of the Federal Power Act, 16 U.S.C. 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35 (1997), and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's June 9, 1997 order (the Order) in Docket No. ER97–2518–000.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. The United Illuminating Company

[Docket No. ER98–3980–000]

Take notice that on July 30, 1998, The United Illuminating Company (UI), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Service and Interconnection Agreement between UI and Bridgeport Energy, L.L.C. executed pursuant to UI's Open Access Transmission Tariff, FERC Electric Tariff, Original Volume No. 4, as amended.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Potomac Electric Power Company

[Docket No. ER98–3981–000]

Take notice that on July 30,1998, Potomac Electric Power Company (Pepco), tendered for filing service agreements pursuant to Pepco FERC Electric Tariff, Original Volume No. 1, entered into between Pepco and: Duke/Louis Dreyfus, L.L.C.; Constellation Power Source, Inc; DuPont Power Marketing, Inc.; and VTEC Energy, Inc. An effective date of July 1, 1998 for these service agreements, with waiver of notice, is requested.

Comment date: August 19, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. The California Power Exchange Corp.

[Docket No. ER98–4085–000]

On July 31, 1998, the California Power Exchange Corporation (PX), tendered for filing a PX Participation Agreement between the PX and Portland General Electric Company in compliance with the Commission's May 19, 1998 order. California Power Exch. Corp., 83 FERC 61,186 (1998).

The PX states that this filing has been served upon all parties on the official service list in the above-captioned docket.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. The California Power Exchange Corp

[Docket No. ER98–4086–000]

On July 31, 1998, the California Power Exchange Corporation (PX), tendered for filing a PX Participation Agreement between the PX and the Salt River Project Agricultural Improvement and Power District in compliance with the Commission's May 19, 1998 order. California Power Exch. Corp., 83 FERC 61,186 (1998).

The PX states that this filing has been served upon all parties on the official service list in the above-captioned docket.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. The California Power Exchange Corp.

[Docket No. ER98–4087–000]

On July 31, 1998, the California Power Exchange Corporation (PX), tendered for filing a PX Participation Agreement between the PX and the Sierra Pacific Power Company in compliance with the Commission's May 19, 1998 order. California Power Exch. Corp., 83 FERC 61,186 (1998).

The PX states that this filing has been served upon the parties on the official service list in the above-captioned docket.

Comment date: August 20, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Gulf Power Company

[Docket No. DR98–57–000]

Take notice that on July 22 1998, Gulf Power Company, filed under protest a request for approval of changes in depreciation rates for accounting purposes only pursuant to Section 302 of the Federal Power Act. The proposed rates were approved for retail purposes by the Florida Public Service Commission effective as of January 1, 1998.

Comment date: September 4, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

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, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 98–21408 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–596–000]

Columbia Gulf Transmission Company; Notice of Intent To Prepare an Environmental Assessment for Columbia Gulf Transmission Company's Proposed Mainline 99 Project and Request for Comments on Environmental Issues

August 5, 1998.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction and operation of the proposed Mainline 99 Project.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

Summary of the Proposed Project

Columbia Gulf Transmission Company (Columbia Gulf) proposed to increase the horsepower at their Corinth and Inverness Compressor Stations in Alcorn County and Humphreys County, Mississippi, respectively. Columbia Gulf also proposes to increase the horsepower at its Hampshire Compressor Station in Maury County, Tennessee. A new compressor unit of greater horsepower would replace one existing compressor unit at each station. A total of 11,014-hp of compression would be added to Columbia Gulf's system which would allow an additional 96,555 Dth/day.

The Corinth and Inverness Compressor Stations each have a 12,050-hp rated Pratt & Whitney, GG3C–1 turbine and an Ingersoll-Rand IR–JP–125–30″ centrifugal compressor that would be replaced with a 17,282-hp rated Solar Turbines Incorporated (Solar) Titan 130–T18000S turbine driver with a C652 centrifugal compressor and appurtenances.

The Hampshire Compressor Station's 14,000 HP rated Pratt & Whitney, GG3C–4 power turbine, with a Clark 70–01–0–48″ centrifugal compressor would be replaced with a 14,550 HP rated Solar Mars 100–T15000S turbine driver with a C651 centrifugal compressor and appurtenances.

The construction of all new units would be within the existing compressor station sites.

The location of the project facilities is shown in appendix 2.[2] If you are interested in obtaining procedural information, please write to the Secretary of the Commission.

Land Requirements for Construction

The replacement project would not require any additional land outside the existing compressor station facilities and all earth disturbance and construction activities would take place entirely within Columbia Gulf's existing properties at all three compressor stations. The total area of earth disturbance would be approximately 0.5 acres at the Corinth and Inverness compressor stations and 0.75 acres at the Hampshire Compressor Station.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to

[1] Columbia Gulf Transmission Company's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

discover and address concerns the public may have about proposals. We call this ''scoping''. The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of the proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Air quality and noise impacts associated with construction and operation.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Environmental Review and Compliance Branch, PR–11.
- Reference Docket No. CP98–596–000; and
- Mail your comments so that they will be received in Washington, DC on or before September 4, 1998.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an ''intervenor''. Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 3). Only intervenors have the right to seek rehearing of the Commission's decision.

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 385.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 98–21409 Filed 8–10–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6141–5]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Marine Vessel Loading Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants for Marine Vessel Loading Operations (Subpart Y), OMB Control Number 2060–0289, expiration date 09/30/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. #1679.03.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Marine Vessel Loading Operations (Subpart Y) OMB Control Number 2060–0289, EPA ICR Number 1679.03, expiration date Sept. 30, 1998. This is a request for extension of a currently approved collection.

Abstract: Respondents are owners or operators of new and existing marine tank vessel loading facilities that are in operation which meet the criteria set out in 40 CFR 63.560. There are an estimated 1,500 marine tank vessel loading facilities nationwide. Of these, approximately 20 have annual gasoline throughput greater than 10 million barrel or annual crude oil throughput greater than 200 million bbl and would be required to control emissions of volatile organic compounds (VOC) and hazardous air pollutants (HAP) under section 183(f) of the Clean Air Act (the Act). These facilities require the application of reasonably available control technology (RACT). Excluding the 20 facilities subject to RACT, approximately 85 facilities have annual HAP emissions of greater than 10 tons of each individual HAP or 25 tons of the total HAP, which triggers the requirement to control emissions of HAP under section 112(d) of the Act. These facilities require the application of maximum achievable control technology (MACT). No growth is predicted for this industry.

Facilities required to install controls under these standards would have to fulfill the applicable reporting and recordkeeping requirements of the General Provisions of 40 CFR part 63, subpart Y, listed in section 4(b). The respondents must keep records of such

things as operation and maintenance records, and monitoring records. They must also submit a limited number of reports such as the annual report of exceedances of the emission limits (ongoing compliance status reports), and annual reports of Hazardous Air Pollutant (HAP) emissions control efficiencies. Information is made available to the Regional Administrator of EPA or delegated State authority upon request. Records must be maintained for a minimum of 5 years.

The review of this ICR was conducted by EPA Office of Compliance and included surveying EPA Research Triangle Park, Regional offices and other Federal Agencies with knowledge of this industry for information on possible sources. In addition the first **Federal Register** Notice in 1998 sought information on sources from the public and industry. This is a renewal for a NESHAP rule that has just been promulgated. Under sections 40 CFR 63 Subpart Y, information collection is mandatory. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on March 5, 1998 (43 FR 10870); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 268 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators of new and existing marine tank vessel loading facilities.

Estimated Number of Respondents: 105.

Frequency of Response: Occasionally.

Estimated Total Annual Hour Burden: 28,131.

Estimated Total Annualized Cost Burden: 0.

This amount, 28,131 hours, are the annual hours for annual leak checks, vapor tightness tests, record keeping on the findings, and for annual reports on excess emissions, compliance status, and the annual Hazardous Air Pollutant control report.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1679.03 and OMB Control No. 2060–0289 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs , Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 5, 1998.

Stephen T. Vineski,

Regulatory Information Division.

[FR Doc. 98–21518 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6141–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP for Beryllium Rocket Motor Firing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emission Standards for Hazardous Air Pollutants for Beryllium Rocket Motor Firing (part 61, subpart D), EPA #1125.02, OMB Control Number being requested. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1125.02.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Beryllium Rocket Motor Firing (subpart D) OMB Control Number to be assigned, EPA ICR Number 1125.02. This is a request for reinstatement of a previously approved collection.

Abstract: The purpose of this rule is to control emissions of beryllium from beryllium rocket motor firing, through the controlled firing of the rockets and containment of the beryllium. Beryllium is a hazardous air pollutant and the standards rely on the capture and reduction of beryllium emissions or controlled firing so that a minimum ambient air standard is met. Notifications from the source inform the EPA when a rocket motor firing is planned. Inspections and test reports allow the agency to check compliance with the standards. The information generated by monitoring, record keeping and reporting is used by the EPA to ensure that the facility affected continues to operate in accordance with the standards.

This is a reinstatement of a NESHAP rule that had previous lapsed. Under sections 40 CFR 61.40 TO 61.44, information collection is mandatory. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR 2; 41 FR 36902, September 1, 1976; amended by 43 FR 40000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 3/5/97 (43 FR 10039); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Test site operators of Beryllium Rocket Motor Fuel Firings.

Estimated Number of Respondents: 1.

Frequency of Response: once per test firing in 3 years. (1/3).

Estimated Total Annual Hour Burden: 8.33 hours/year.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1125.02 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 5, 1998.

Stephen T. Vineski,

Regulatory Information Division.

[FR Doc. 98–21523 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6141–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Regulation of Fuels and Fuel Additives, Gasoline Volatility Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Regulation of Fuels and Fuel Additives, Gasoline Volatility Rule; OMB Control Number 2060–0178, expiration date 8/31/98. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 10, 1998.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA, by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr/icr.htm, and refer to EPA ICR No. 1367.05.

SUPPLEMENTARY INFORMATION:

Title: Regulation of Fuels and Fuel Additives, Gasoline Volatility Rule, OMB Control Number 2060–0178, EPA ICR Number 1367.05, expiration date 8/31/98. This is a request for extension of a currently approved collection.

Abstract: Section 211(h) of the Clean Air Act (Act), 42 U.S.C. 7545(h), required the Administrator to promulgate regulations prohibiting the supply or sale of gasoline exceeding certain volatility standards during the high ozone season. The Act provides that for gasoline blends containing 10% ethanol the Reid Vapor Pressure (RVP) may be one pound per square inch (psi) greater than the applicable RVP standard for gasoline not containing 10% ethanol. Parties receiving gasoline (e.g., retailers), must know whether the gasoline contains ethanol. Otherwise gasoline not containing ethanol may be commingled with gasoline containing ethanol, resulting in gasoline exceeding the applicable non-ethanol RVP standard due to the presence of ethanol, but not at the 10% concentration required for the 1 psi exemption, in violation of the Act and regulations. Therefore, EPA requires, at 40 CFR 80.27(d)(3), that the customary business practice (CBP) transfer documents accompanying shipments of gasoline containing ethanol must state that the gasoline contains ethanol and the percentage concentration (by volume) of ethanol. The statement can be in brief code and it can be preprinted or automatically printed. There is no mandatory retention period or maintenance requirement. There is no reporting requirement or periodic recordkeeping requirement. All responses (print the information and submit to transferee of gasoline) are mandatory. EPA has authority to require this information under section 211 of the Act, 42 U.S.C. 7545, section 114 of the Act, 42 U.S.C. 7414 and section 208 of the Act, 42 U.S.C. 7542. Confidentiality of information obtained from parties is protected under 40 CFR part 2.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 2/26/98 (63 FR 9791); May 5, 1998, no comments were received. Therefore, the ICR supporting statement does not summarize comments or EPA's actions taken in response to comments. However, EPA did consult industry persons by telephone and parties contacted indicated the paperwork requirement has virtually no measurable burden for those distributors whose CBP transfer documents are computer printed or pre-printed. Parties who are not automated use a few seconds per transaction to stamp or write their code on the CBP transfer document.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.15 hour per year for all gasoline distributors handling gasoline containing ethanol and the average burden for non automated parties is 0.3 hour per year (and 0 hour per year for automated parties). Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or

provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Distributors of gasoline containing ethanol.

Estimated Number of Respondents: 8,792 gasoline distributors, only 4,396 of which have a measurable annual hourly burden.

Frequency of Response: 307 business transactions per year per respondent with paperwork required on the occasion of the transactions; approximately 2,706,000 total annual responses.

Estimated Total Annual Hour Burden: 1,319 hours.

Estimated Total Annualized Cost Burden: 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1367.05 and OMB Control No. 2060–0178 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: August 5, 1998.

Stephen T. Vineski,

Regulatory Information Division.

[FR Doc. 98–21524 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6140–8]

Waterborne Disease Studies and National Estimate of Waterborne Disease Occurrence

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability and request for comments.

SUMMARY: The Safe Drinking Water Act (SDWA) Amendments of 1996, section 1458(d), provides that within two years of enactment the Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) will conduct pilot waterborne disease occurrence studies for at least five major U.S. communities or public water systems. Section 1458(d) also provides that, within five years of enactment, EPA and CDC will prepare a report on the findings of these pilot studies and develop a national estimate of waterborne disease occurrence (''the national estimate'').

The purpose of this **Federal Register** document is to inform the public about how EPA and CDC are addressing this provision. The document includes descriptions of planned and ongoing epidemiological studies and discusses public involvement in developing an approach for estimating the national level of waterborne disease occurrence. Comments are requested on issues related to the epidemiological studies and to developing the national estimate.

DATES: Comments should be postmarked or delivered by hand on or before November 9, 1998.

ADDRESSES: Send written comments to Susan Shaw, (MC–4607); U.S. Environmental Protection Agency; 401 M Street, SW, Washington, DC 20460, or by email to shaw.susan@epamail.epa.gov. Comments may also be hand-delivered to Kimberly Miller, U.S. Environmental Protection Agency; 401 M Street, SW, Room 3809, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: For further general information and for copies of the reports from the 1997 Atlanta and the Washington, D.C. workshops discussed herein, contact the Safe Drinking Water Hotline, Telephone (800) 426–4791. The Safe Drinking Water Hotline is open Monday through Friday, excluding Federal holidays, from 9 a.m. to 5:30 p.m. Eastern Time. For technical inquiries, contact Susan Shaw, Office of Ground Water and Drinking Water (MC4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone (202) 260–8049; email: shaw.susan@epamail.epa.gov. To receive additional information about the spring 1999 public meeting, contact Kimberly Miller, Office of Ground Water and Drinking Water (MC4607), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460; telephone (202) 260–0718; email: miller.kimberly@epamail.epa.gov.

Abbreviations Used In This Document

CDC: Centers for Disease Control and Prevention
EPA: US Environmental Protection Agency
SDWA: Safe Drinking Water Act, as amended in 1986 and 1996

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1. Introduction and Statutory Authority

The Safe Drinking Water Act (SDWA) Amendments of 1996, section 1458(d), provides that within two years of enactment the Environmental Protection Agency (EPA) and the Centers for Disease Control and Prevention (CDC) will conduct pilot waterborne disease occurrence studies for at least five major U.S. communities or public water systems. Section 1458(d) also provides that, within five years of enactment, EPA and CDC will prepare a report on the findings of these pilot studies and develop a national estimate of waterborne disease occurrence.

The purpose of this **Federal Register** document is to inform the public about how EPA and CDC are addressing the provision to conduct studies on waterborne disease occurrence and to develop a national estimate of waterborne disease occurrence due to drinking water (the ''national estimate''). The document is organized as follows:

Background: Discussion of the difficulties inherent in quantifying infectious disease due to drinking water.

EPA and CDC actions and strategy to develop the national estimate: Describes

actions taken by EPA and CDC to conduct waterborne disease occurrence studies, and to develop the national estimate of waterborne disease occurrence; discusses overall strategy for complying with Section 1458(d), including public involvement.

Waterborne disease studies: Describes ongoing and planned studies funded by EPA that are expected to contribute directly to developing the national estimate of waterborne disease occurrence.

Conclusions: CDC and EPA actions to date, and next steps, including public participation and request for comments

2. Background

Although outbreaks of infectious disease attributable to drinking water are not common in the United States, they remain a concern and the extent to which they occur unrecognized by the health authorities has been the focus of much debate in recent years. One critical question of interest to those who are concerned about the microbial quality of drinking water and the associated health effects is: What is the magnitude of infectious disease in the United States that can be attributed to drinking water and, in particular, what are the levels of disease due to drinking water from public water systems that meet state and federal drinking water standards. There is no obvious and easy answer to this question. It is generally recognized that cases of waterborne disease are not likely to be recognized as such, and that therefore there is little direct information on which to base an estimate of waterborne disease occurrence and its associated costs to society. Illnesses caused by contaminated water are generally not specific to water, e.g diseases such as gastroenteritis could be caused by contaminated food or person-to-person transmission; moreover most cases will not result in illness deemed sufficiently serious by the ill person to require consulting a health care provider. Even if the disease is serious, it is highly unlikely to be traced back to drinking contaminated water unless the health care provider notices a sudden increase in the number of cases beyond what is normally expected, i.e. more cases than normal background levels within the population. In this case it is possible that the health authorities may be alerted and may consider that the increase in cases warrants an investigation which could lead to determining the vehicle of the disease agent, and thus to tracing the disease back to contaminated drinking water. This is only likely to happen in the case of an outbreak where a large fraction of the population has been infected. In order to detect any background levels of infectious disease due to drinking water, it is necessary to conduct targeted epidemiological investigations.

The issue of waterborne disease detection and how to detect disease within a population that can be attributed to drinking water is discussed in the reports from the two EPA/CDC workshops described below. The reports are available from EPA through the Safe Drinking Water Hotline. This notice describes how EPA and CDC are proceeding to develop an estimate of the level of waterborne disease in the United States based on data from targeted epidemiological studies.

3. EPA and CDC Actions and Strategy to Develop the National Estimate

EPA and CDC are working in close partnership to meet the requirements of the mandate to conduct studies on waterborne disease and to develop a national estimate of waterborne disease occurrence. Based on the legislative history, EPA and CDC interpret the term ''waterborne disease'' to refer to waterborne disease due to disease-causing microbes (pathogens) in drinking water, rather than to disease caused by chemical contamination. To the extent possible, EPA and CDC intend to consider which populations are at greatest risk, the economic impact of waterborne disease, which infectious agents are causing waterborne disease and their relative contribution to the overall incidence of waterborne disease due to drinking water, and the characteristics of water systems that are more likely to lead to waterborne disease.

In developing an approach to address the SDWA mandate, EPA and CDC invited the participation of outside experts and the public in two jointly-sponsored workshops. An initial workshop of public health experts from universities and from state and federal government took place in Atlanta in March 1997. A follow-up public workshop with wider representation of experts and other interested persons was held in the Washington, DC area in October 1997. Through this process of cooperative deliberation, EPA and CDC sought to review existing knowledge on waterborne disease and associated factors, and to evaluate different study designs to provide data necessary for calculating the national estimate of waterborne disease occurrence. Detailed summary reports of both meetings, including a list of participants, are available from EPA.

At the Atlanta workshop, attendees suggested that two components were needed to calculate a national estimate of waterborne disease: the incidence of gastrointestinal illness and the fraction of gastrointestinal illness attributable to drinking water. Cross-sectional surveys of the population were suggested as a straightforward means of determining the incidence of gastrointestinal illness. The workshop then focused on reviewing different study designs for establishing the fraction of gastroenteritis in a population that is attributable to drinking water. The participants identified the strengths and weaknesses of various designs and suggested that each be further evaluated for possible systematic biases, methods available for controlling bias, number of participants needed for a statistically stable estimate of increased risk, and the feasibility of measuring the specific pathogens associated with observed waterborne disease. Most participants felt that a population-based study, e.g. a household intervention study, would provide the strongest epidemiological evidence of waterborne disease and was the best design to determine the attributable fraction. However, participants also felt that other study designs were useful for estimating the attributable fraction and that more convincing evidence of waterborne disease risk and its magnitude would be provided by implementing several different study designs, rather than relying on multiple studies of the same design.

At the Washington workshop, specific ongoing and proposed studies and study designs were reviewed with respect to how they could contribute to the national estimate, and participants proposed alternate designs and combinations of designs. CDC presented an analysis of why it had decided to proceed with a pilot household intervention study. The participants again felt that it would be advantageous to conduct a variety of different study designs. This position is reflected in the request for proposals that was recently issued by CDC for three additional studies to provide data towards the national estimate in which the choice of study design is open to the researcher. In addition, EPA's in-house research program is conducting waterborne disease studies using other study designs.

EPA and CDC plan to host another public workshop in the spring of 1999 to review ongoing and planned studies and the need for specific additional information, and to discuss ideas on feasible approaches to developing the national estimate, taking cost and the development schedule into consideration. EPA and CDC welcome

comments on issues related to this proposed workshop, and encourage people who are interested in participating or who would like to receive notice of future meetings to notify EPA.

Since the initial workshop in March 1997, a total of $3.0 million from EPA's fiscal year 1997 and 1998 appropriations has been transferred to CDC to allow funding for seven studies on waterborne disease occurrence: A pilot household intervention study, two full-scale household intervention studies, a cross-sectional gastroenteritis and water consumption survey, and three epidemiological studies of unspecified design. CDC is managing the above projects; however, EPA and CDC work together in the review and selection of the study proposals. In addition to the above CDC/EPA collaborative studies, EPA, through its National Health and Environmental Effects Research Laboratory is funding research to characterize microbial enteric disease in a series of ''community intervention'' studies. These studies are described in more detail below.

In combination, these studies will provide a considerable amount of new data to support the development of a national estimate of waterborne disease occurrence by August 2001. However, EPA and CDC share a concern that given the two to two-and-a-half year duration for completion of some of the studies (the two household intervention studies), some of the data may not have undergone a full review by mid-2001. If this turns out to be the case, the national estimate will be revised if necessary by August 2002.

4. Studies for Developing the National Estimate of Waterborne Disease Occurrence

This section provides a brief summary of EPA and CDC's planned and ongoing studies that will contribute to developing the national estimate, including the study objectives, design, and population. Information from other studies by other organizations on waterborne disease, and relevant aspects of water quality and water treatment, will also be considered in the development of the national estimate.

A. Cross-Sectional Gastroenteritis and Water Consumption Survey

This study is being conducted as part of the CDC's FoodNet Survey, and is based on a randomized telephone survey to detect the incidence of foodborne disease, including gastroenteritis, at seven sites within the United States, including specific populations in California, Oregon, Minnesota, Georgia, New York, Maryland, and Connecticut. Approximately 9000 interviews are conducted annually. The questionnaire has recently been expanded to include questions on type and quantity of water consumption. The survey will provide data on which to base an estimate of the national incidence of gastroenteritis and national drinking water consumption patterns. The national incidence of gastroenteritis and the fraction of gastroenteritis that can be attributed to drinking water in a community (data from some of the studies described below) will provide useful information towards calculating an estimate of the national incidence of gastroenteritis due to drinking water. Other useful information from the survey includes data on measures of disease impact such as time lost from work or school, use of outpatient medical care, and hospitalization for gastrointestinal illness. However, the survey is unlikely to provide any information regarding causative pathogens or the relationship of water quality indicators with gastrointestinal illness.

B. Triple-Blinded Household Intervention Pilot Study

This is an experimental study in which persons in different households are randomly assigned to drink regular tap water or specially treated water that is expected to be pathogen free. The difference in tap water quality is achieved by installing identical looking devices at the water taps of homes of both groups; however, one group receives a device that further filters and disinfects the regular tap water, whereas the other group receives sham devices that do not provide additional treatment. If the group with the sham device has a higher incidence of gastroenteritis than the otherwise similar group with the real treatment device (the ''intervention''), then the difference will be assumed to be attributable to contamination in the regular tap water. The ''triple blinding'' refers to the design feature of ''blinding'' the researchers, statisticians and participants until the end of the study as to which households have regular tap water and which the specially treated tap water. Of particular interest for this type of study is whether persons in the households can detect (i.e. are blinded to) whether they are drinking regular tap water or the specially treated water, since knowing what group they are in might bias their response regarding whether or not they experience gastrointestinal illness.

CDC and EPA considered it necessary to perform a pilot study to test whether blinding is possible and to develop guidance regarding the logistics of future household intervention studies. The triple-blinded household intervention study design is favored because its random assignment of treatment reduces the effects of confounding, and the blinding of all participants avoids biases that affect most other study designs. The Atlanta workshop participants generally agreed that this study design, a so-called population-based intervention study, would provide the strongest epidemiological evidence of waterborne disease risk and the best estimate of the attributable risk due to drinking water. However, of all the studies evaluated, it is the most expensive to conduct. For this reason, EPA and CDC presently envision performing this type of study in only two large public water systems: a surface water site and a ground water site.

The pilot study was awarded to the California Emerging Infections Program. The site selected for the study is the Contra Costa Water District in California. Specific data that will be collected in this pilot study include amount of water consumption; symptoms of gastrointestinal illness; results of stool, sera and saliva tests; and impact of illness. The study is expected to be completed at the beginning of 1999.

C. Household Intervention—Two Requests for Proposals

In October 1998, CDC expects to issue a request for proposals for conducting two household intervention studies: One in a municipality receiving drinking water from a conventionally treated surface water source, and a second in a municipality with ground water source. In addition to determining the fraction of gastrointestinal illness due to drinking water, the project includes the collection of water quality and water treatment plant data in order to evaluate the relationship between water quality and disease incidence.

Initial funding available for the epidemiological aspects of the two projects amounts to $1.8 million. Additional funds will be available to fully fund the projects and to collect water quality data. The projects are expected to be awarded in the spring of 1999.

D. Three CDC Requests for Proposals

CDC issued a request for proposals for three additional studies to estimate the incidence of waterborne disease due to microbial contamination of drinking

water and/or to identify and describe the relationship between measures of water quality and health outcomes or evidence of infection due to gastrointestinal pathogens. The choice of study design is open to the researcher. Combined funding available for these projects amounts to $450, 000, and is anticipated to be awarded in the fall of 1998.

E. Community Intervention Studies

EPA is conducting a series of community intervention studies that are designed to characterize microbial gastroenteritis associated with drinking water that originates from selected surface water and groundwater sources. By studying communities that are planning to make improvements to their water treatment systems (e.g., adding filtration units or changing disinfectants), a ''natural experiment'' can be conducted which evaluates the enteric disease that may be present both before and after the implementation of the new system. The specific objectives of the first community study, which was conducted between June 1996 and December 1997, were to: (1) Determine rates of gastroenteritis; (2) determine the relative source contribution of factors implicated in gastroenteritis; (3) identify the microbial cause of gastroenteritis; and (4) assess surveillance methods of gastroenteritis. The data collected during the study are currently being analyzed. A community for the next community intervention study has been identified and data collection is slated to begin in the fall of 1998. EPA is also considering communities that use either ground water or surface water supplies as possible sites for future studies. EPA would welcome suggestions from the public on additional community studies.

F. Other Studies To Assist in National Estimate Development

In its development of the national estimate of waterborne disease occurrence and interpretation of the data from the epidemiological studies, EPA and CDC expect to use data from other relevant studies and databases. Information to be considered includes completed or ongoing epidemiological studies not specifically associated with the EPA/CDC effort, data on pathogen occurrence currently being collected by many utilities, studies on the effectiveness of water treatment, the dose-response relationship of certain pathogens, and studies on factors that affect the susceptibility of persons to infectious disease and disease severity.

5. Conclusions

EPA and CDC have committed to conducting waterborne infectious disease occurrence studies in at least five major U.S. communities or public water systems. One such study—a community intervention study—is nearing completion and a second community intervention study is scheduled to begin this fall. A pilot study for the two household intervention studies is underway and the two full-scale household intervention studies are expected to be awarded by April 1999. Three additional epidemiological studies of non-specified design are expected to be awarded in the fall of 1998.

In 1997, at two public workshops, EPA and CDC proposed one possible approach to developing the national estimate. However, EPA and CDC intend to continue the dialogue on this and other approaches to developing the national estimate at a public meeting scheduled for late next spring. EPA will announce the meeting in the **Federal Register**; however, to facilitate planning the meeting, EPA suggests that people who are interested in attending the meeting, or in receiving additional information about the meeting, notify EPA now (see section **FOR FURTHER INFORMATION** above) . EPA and CDC welcome comments on the issues discussed in this notice, as well as the reader's opinion on the extent to which, and how, the national estimate should address the social and economic impact of waterborne disease, the contribution of specific pathogens to the prevalence of waterborne disease, and the characteristics of public water systems and water quality indicators that are associated with a higher risk of waterborne disease. (For information on whom to address comments, see section **ADDRESSES** above.)

Dated: August 3, 1998.

J. Charles Fox,

Acting Assistant Administrator for Water.

[FR Doc. 98–21343 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–42206; FRL–6021–3]

Endocrine Disruptor Screening Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As mandated by the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, EPA is setting forth its screening program for determining which pesticide chemicals and other substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen or other endocrine effects. In developing the screening program, EPA considered recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee, a panel chartered pursuant to the Federal Advisory Committee Act. EPA refers to this program as the ''Endocrine Disruptor Screening Program'' or the ''Screening Program.'' This document describes the major elements of EPA's Endocrine Disruptor Screening Program. EPA will provide operational details regarding the Screening Program, its regulatory implementation, and provide an opportunity for public comment in a later **Federal Register** document. After public comment and before implementation, EPA will submit the Screening Program for review to a joint panel of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel and the EPA Science Advisory Board.

ADDRESSES: The official record for this document, including a public version, has been established for this document under docket control number OPPTS–42206. The public version of this record is available for inspection from noon to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located at the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: *For general information or copies of the EDSTAC report:* Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St. SW., Washington DC, 20460; telephone 202–554–1404; TDD 202–554–0551; e-mail: TSCA-Hotline@epa.gov.

For technical information: Anthony Maciorowski, Ph.D., Senior Technical Advisor, Office of Prevention, Pesticides and Toxic Substances; telephone: 202–260–3048; e-mail: maciorowski.anthony@epa.gov or Gary Timm, Senior Technical Advisor, Chemical Control Division, Office of Pollution Prevention and Toxics; telephone: 202–260–1859; e-mail: timm.gary@epa.gov).

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this document apply to me?

This document describes the major elements of EPA's Endocrine Disruptor Screening Program, and does not require any action by any potentially affected entity. EPA will provide operational details regarding the Endocrine Disruptor Screening Program and its regulatory implementation in a later **Federal Register** document. EPA will provide an opportunity for public comment on the Screening Program in this later document. You may be interested in the program set forth in this document if you produce, manufacture or import pesticide chemicals, substances that may have an effect cumulative to an effect of a pesticide, or substances found in sources of drinking water. To determine whether you or your business may have an interest in this document you should carefully examine section 408(p) of the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104-170), 21 U.S.C. 346a(p) and amendments to the Safe Drinking Water Act (Pub. L. 104-182), 42 U.S.C. 300j-17. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed in the ''FOR FURTHER INFORMATION CONTACT'' section at the beginning of this document.

B. How can I get additional information or copies of this document.

1. *Electronically.* You may obtain electronic copies of this document from the EPA internet Home Page at http://www.epa.gov/. On the Home Page select ''Laws and Regulations'' and then look up the entry for this document under the ''**Federal Register** - Environmental Documents.'' You can also go directly to the ''**Federal Register**'' listings at http://www.epa.gov/homepage/fedrgstr/.

2. *In person or by phone.* If you have any questions or need additional information about this action, contact the technical person identified in the ''FOR FURTHER INFORMATION CONTACT'' section at the beginning of this document. A public version of this record, including printed, paper versions which does not include any information claimed as CBI, is available for inspection at the address in the ''ADDRESSES'' section at the beginning of this document. The Document Control Office telephone number is 202-260-7093.

II. Background

Section 408(p) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170), 21 U.S.C. 46a(p), requires EPA, not later than August 3, 1998, to:

> * * *develop a screening program using, appropriate validated test systems and other scientifically relevant information, to determine whether certain substances may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect as the Administrator may designate.

When carrying out the Screening Program, EPA ''shall provide for the testing of all pesticide chemicals'' and ''may provide for the testing of any other substance that may have an effect that is cumulative to an effect of a pesticide chemical if the Administrator determines that a substantial population may be exposed to such a substance.'' 21 U.S.C. 346a(p)(3).

In addition, Congress amended the Safe Drinking Water Act and gave EPA authority to provide for the testing, under the FQPA Screening Program, ''of any other substance that may be found in sources of drinking water if the Administrator determines that a substantial population may be exposed to such substance.'' 42 U.S.C. 300j-17.

This document sets forth the Screening Program that EPA has developed to comply with requirements of section 408(p) of the FFDCA as amended by FQPA. In a later **Federal Register** document, EPA will provide additional information about the Screening Program and its implementation and an opportunity for the public to comment on it. After public comment and before implementation, EPA will submit the Screening Program to a joint panel of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel and the EPA Science Advisory Board for review.

III. Endocrine Disruptor Screening Program

EPA has considered recommendations of the Endocrine Disruptor Screening and Testing Advisory Committee (EDSTAC) in developing its Screening Program. The full text of the EDSTAC Draft Final Report is available on EPA's worldwide web site at: www.epa.gov/opptintr/opptendo. Paper copies can be obtained upon request from the TSCA Hotline at the address listed in ''FOR FURTHER INFORMATION CONTACT'' at the beginning of this document.

Initially, the Endocrine Disruptor Screening Program will focus on estrogenic, androgenic, and thyroid hormone effects. These three hormone systems are presently the most studied of the approximately 50 known vertebrate hormones. *In vitro* and *in vivo* test systems to examine estrogen, androgen, and thyroid effects exist, and are currently the most amenable for regulatory use. Further, inclusion of estrogen, androgen, and thyroid effects will cover aspects of reproduction, development, and growth.

EPA recognizes that there is a great deal of ongoing research related to other hormones and test systems. As more scientific information becomes available, EPA will consider expanding the scope of the Endocrine Disruptor Screening Program to other hormones. For now, however, the estrogen, androgen, and thyroid hormone effects and test systems represent a scientifically reasonable focus for the Agency's Endocrine Disruptor Screening Program.

EPA's Endocrine Disruptor Screening Program uses a tiered approach for determining whether a substance may have an effect in humans that is similar to an effect produced by naturally occurring estrogen, androgen, or thyroid hormones. The core elements of the tiered approach include initial sorting, priority setting, Tier 1 analysis, and Tier 2 analysis.

A. Initial Sorting

Chemicals under consideration for estrogen, androgen, and thyroid screening will undergo initial sorting based on existing, scientifically relevant information. EPA will use the existing information to place a chemical into one of the following four categories.

1. *Category 1—Hold.* Chemicals with sufficient, scientifically relevant information to determine that they are not likely to interact with the estrogen, androgen, and thyroid hormone systems. If EPA is able to determine, based on scientifically relevant information, that a specific chemical is not likely to interact with the estrogen, androgen, or thyroid hormone systems, it will place that chemical in a hold category. Chemicals in this hold category will have the lowest priority for further analysis and may not undergo further analysis unless new and compelling information suggests that the chemical may interact with the endocrine system. Although EPA will place chemicals in the hold category during the initial sorting phase of the Screening Program, it may add chemicals to this category if, during a later phase of the Screening Program (priority setting, Tier 1 analysis, or Tier 2 analysis), the Agency determines that a particular chemical is not likely to interact with the endocrine system.

2. *Category 2—Priority Setting/Tier 1 Analysis.* Chemicals for which there is

insufficient, scientifically relevant information to determine whether or not they are likely to interact with the estrogen, androgen, and thyroid systems. If EPA is not able to determine, based on scientifically relevant information, whether or not a chemical is likely to interact with the estrogen, androgen, and thyroid hormone systems, it will place that chemical into a ''priority setting'' category. Category 2 chemicals are those for which there is insufficient scientifically relevant information to be placed on hold (Category 1), or assigned to Tier 2 analysis (Category 3) or hazard assessment (Category 4). EPA anticipates that it will likely place the majority of chemicals into this category. Category 2 chemicals will be subjected to formal priority setting, Tier 1 analysis, and as appropriate, Tier 2 analysis.

3. *Category 3—Tier 2 Analysis.* Chemicals with sufficient, scientifically relevant information comparable to that provided by the Tier 1 analysis. Recognizing the need for flexibility, EPA has included Tier 1 analysis bypass possibilities. For example, if sufficient, scientifically relevant information exists regarding a specific chemical, EPA may move that chemical directly into Tier 2 analysis. In addition, EPA may allow a chemical to bypass Tier 1 analysis if the chemical's producer or registrant chooses to conduct Tier analysis without performing Tier 1.

4. *Category 4—Hazard Assessment.* Chemicals with sufficient, scientifically relevant information to bypass Tier 1 and Tier 2 analysis. For certain chemicals, there already may be sufficient, scientifically relevant information regarding their interaction with the estrogen, androgen, thyroid hormone systems—information comparable to that derived from Tier 1 and Tier 2 analysis—to move them directly into hazard assessment for endocrine disruption. These chemicals, thus, will bypass Tier 1 and Tier 2 analysis. It is anticipated that this will be a relatively small number (less than 100) of chemicals.

B. Priority Setting

During priority setting, EPA will determine in what order the chemicals placed in Category 2 during ''initial sorting'' will enter Tier 1 analysis. EPA will set priorities using existing exposure and effects data and statutory criteria. The exposure and effects data will consist of empirical data where available and may also employ models to estimate exposure or effects characteristics. EPA recognizes that existing endocrine specific effects data are incomplete or lacking for most chemicals. To address this inadequacy, EPA, in partnership with others, will conduct selected *in vitro* assays in a high-speed, automated fashion. This step is called ''high throughput pre-screening'' (HTPS). EPA will use the data that it generates from HTPS for priority setting. HTPS data alone is insufficient to ascertain whether or not a chemical may be an endocrine disruptor. Priority setting will result in a phased approach to screening with the highest priority chemicals evaluated first, followed by medium priority chemicals, and then low priority chemicals. EPA has adopted a priority setting approach because the available resources and laboratory capacity necessary for the Endocrine Disruptor Screening Program will not allow simultaneous entry of hundreds to thousands of chemicals into the process.

C. Tier 1 Analysis

Tier 1 analysis is designed to identify those chemicals that are not likely to interact with the estrogen, androgen, and thyroid hormone systems. During Tier 1 analysis, the Agency hopes to eliminate those chemicals that are unlikely to interact with the estrogen, androgen, and thyroid hormone systems. EPA does not believe that Tier 1 analysis will be adequate to determine whether a chemical may have an endocrine effect. Completion of Tier 1 analysis will result in either a decision to move the chemical into Tier 2 analysis, or an initial decision that no further analysis is needed, in which case EPA will place the chemical on hold (Category 1).

Under EPA's Screening Program, Tier 1 analysis involves both *in vitro* and *in vivo* test systems. The Tier I assays were designed and selected as a battery. EPA believes that data from the entire battery are necessary to make the necessary decisions about the chemicals. The individual assays and the battery were selected on the basis of scientific relevance and state of scientific development. All of the assays will be validated prior to the Screening Program's implementation. Validation will be addressed by EPA in the future **Federal Register** document. EPA will also include several alternative assays in its validation activities. The Tier 1 *in vivo* and *in vitro* assays are listed below.

1. *In Vitro* assays include an estrogen receptor binding or reporter gene assay, an androgen receptor binding or reporter gene assay, and a steroidogenesis assay with minced testis.

2. *In Vivo* assays include a rodent 3-day uterotrophic assay, a rodent 20-day pubertal female assay with enhanced thyroid endpoints, a rodent 5 to 7-day Hershberger assay, a frog metamorphosis assay, and a fish gonadal recrudescence assay.

D. Tier 2 Analysis

Tier 2 analysis is designed to determine whether a chemical may have an effect in humans similar to that of naturally occurring hormones and to identify, characterize, and quantify those effects for estrogen, androgen, and thyroid hormones. Like the Tier 1 battery, the Tier 2 analysis scheme is designed as a battery. A negative outcome in Tier 2 analysis will supersede a positive outcome in Tier 1 analysis. Furthermore, each Tier 2 assay includes endpoints that will permit a decision regarding whether or not a tested chemical may be an endocrine disruptor for estrogen, androgen, or thyroid effects. Conducting all five assays in the Tier 2 battery will provide the type of information necessary for endocrine disruptor hazard assessment. A decision to require less testing may be made by EPA based on scientifically relevant information showing that exposure is limited or that effects can be adequately characterized in a one generation assay.

1. *Tier 2 assays.* Tier 2 assays include a two-generation mammalian reproductive toxicity study or a less comprehensive alternative mammalian reproductive toxicity assay, an avian reproduction toxicity assay, a fish life cycle toxicity assay, an opossum shrimp (Mysidacea) or other invertebrate life cycle toxicity assay, and an amphibian development and reproduction assay.

2. *Assay selection.* EPA will provide guidance on the selection of Tier 2 assays, focusing upon:

a. The determination of which of the five taxonomic groups should be included in the Tier 2 analysis of a specific chemical.

b. The circumstances under which it may be appropriate to perform an alternative assay, with a particular focus on the selection of alternative mammalian assays.

c. The selection of endpoints.

d. The special case of chemicals that bypass Tier 1 analysis and go directly to Tier 2 analysis.

e. The potential need for supplemental information to complete Tier 2 analysis.

E. Evaluation of Results

A weight-of-evidence approach will be used to evaluate Tier 1 and Tier 2 analysis results. The weight-of-evidence approach will include:

1. The balance of positive and negative responses observed in both the *in vitro* and *in vivo* assays.

2. The nature and range of the biological effects observed.

3. The shape of the dose-response curves when available.

4. The severity and magnitude of the effects induced.

5. The presence or absence of responses in multiple taxa.

The evaluation of Tier 1 data, and other scientifically relevant information (e.g., HTPS or literature data), will result in a decision that either the chemical needs no further analysis and can be moved to the hold category or a decision that the chemical needs to undergo Tier 2 analysis to determine whether it may have an effect in humans that is similar to the effect produced by a naturally occurring hormone. Similarly, an evaluation of Tier 2 data will result in a decision either to move the chemical into the hold category or to move it into hazard assessment.

IV. Development of EPA Policies

EPA currently is developing policies to implement the Endocrine Disruptor Screening Program. EPA will set forth these policies in another **Federal Register** document later this year. This document will provide interpretive and operational details, and address such issues as standardization and validation of the assays, statutory and regulatory mechanisms for requiring the development of data, data reporting requirements, data compensation, confidential business information, and the process for granting waivers from screening requirements.

List of Subjects

Environmental protection.

Dated: July 31, 1998

Approved by:

J. Charles Fox,

Assistant Administrator for Water.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 98–21522 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

August 4, 1998.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collection pursuant to the Paperwork Reduction Act of 1995, Pub. L. 104-13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shannon Belliman, Federal Communications Commission, (202) 418-0408.

Federal Communications Commission.

OMB Control No.: 3060-0454.

Expiration Date: July 7, 2001.

Title: CC Docket No. 90–337, Regulation of International Accounting Rates.

Form No.: N/A.

Respondents: Business or other for-profit entities.

Number of Respondents: 12.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion.

Estimated Annual Reporting and Recordkeeping Cost Burden: $5,850.

Total Annual Burden: 780 hours.

Needs and Uses: The FCC requests this collection of information as a method to monitor the international accounting rates to insure that the public interest is being served and also to enforce Commission policies. By requiring a U.S. carrier to make an equivalency showing and to file other documents for end users interconnected international private lines, the FCC will be able to preclude one-way bypass and safeguard its international settlements policy. The data collected is required by Section 43.51(d) of the FCC's rules. Obligation to respond: required. Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance evaluation and Records Management, Washington, D.C. 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–21440 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2289]

Petitions for Reconsideration and Clarification of Action in Rulemaking Proceeding

August 4, 1998.

Petitions for reconsideration and clarification have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800. Oppositions to these petitions must be filed August 26, 1998. See Section 1.4(b)(1) of the Commission's rule (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Implementation of the Telecommunications Act of 1996: (CC Docket No. 96–115).

Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information.

Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended (CC Docket No. 96–149).

Number of Petitions Filed: 3.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–21438 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than August 26, 1998.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Hattie L. Preston, as trustee of the Hattie L. Preston Revocable Trust, Henderson, Kentucky; to retain voting

shares of Ohio Valley Bancorp, Inc., Henderson, Kentucky, and thereby indirectly retain voting shares of Ohio Valley National Bank of Henderson, Henderson, Kentucky.

Board of Governors of the Federal Reserve System, August 6, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–21540 Filed 8–10–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12 noon, Monday, August 17, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.bog.frb.fed.us for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: August 7, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–21645 Filed 8–7–98; 3:34 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Notice of Disease, Disability, and Injury Prevention and Control Special Emphasis Panel; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Deep-South Center for Agricultural Disease and Injury Research, Education, and Prevention, Program Announcement #98053, meeting.

Times and Date: 8:30–9 a.m., August 27, 1998 (Open); 9:15 a.m.–4 p.m., August 27, 1998 (Closed).

Place: CDC, Corporate Square Office Park, Building 11, Room 2214, Corporate Square Boulevard, Atlanta, Georgia 30329.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters to be Discussed: The meeting will include the selection of an applicant institution for designation as the Deep-South Center for Agricultural Disease and Injury Research, Education, and Prevention, in response to Program Announcement #98053.

Contact Person for More Infomration: Price Connor, Ph.D., CDC/NIOSH, 1600 Clifton Road, NE, M/S/ D30, Atlanta, Georgia 30333.

Dated: August 5, 1998.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 98–21433 Filed 8–10–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0522]

Rumentek Industries Pty Ltd.; Filing of Food Additive Petition (Animal Use); Formaldehyde

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Rumentek Industries Pty Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formaldehyde-treated oilseed meals and fats for dairy and beef cattle.

DATES: Written comments on the petitioner's environmental assessment by October 13, 1998.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Randall A. Lovell, Center for Veterinary Medicine (HFV–222), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0176.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2241) has been filed by Rumentek Industries Pty Ltd., Menadool Rd., P.O. Box 1416, Moree, New South Wales 2400, Australia. The petition proposes to amend the food additive regulations in part 573 (21 CFR part 573) to provide for safe use of formaldehyde treated oilseed meals and fats for dairy and beef cattle.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before October 13, 1998, submit to the Dockets Management Branch written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: August 3, 1998.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 98–21405 Filed 8–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0357]

Determination of Regulatory Review Period for Purposes of Patent Extension; Fareston®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Fareston® 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, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

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 Fareston® (toremifene citrate). Fareston® is indicated for the treatment of metastatic breast cancer in post menopausal women with estrogen receptor positive or receptor unknown tumors. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Fareston® (U.S. Patent No. 4,696,949) from ORION–YHTYMA OY, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 7, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Fareston® 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 Fareston® is 3,706 days. Of this time, 2,828 days occurred during the testing phase of the regulatory review period, while 878 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: April 8, 1987. The applicant claims March 17, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 8, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: January 3, 1995. The applicant claims February 3, 1995, as the date the new drug application (NDA) for Fareston® (NDA 20–497) was initially submitted. However, FDA records indicate that NDA 20–497 was submitted on January 3, 1995.

3. *The date the application was approved*: May 29, 1997. FDA has verified the applicant's claim that NDA 20–497 was approved on May 29, 1997.

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 1,827 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 13, 1998, 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 February 8, 1999, 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: July 8, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–21407 Filed 8–10–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9878–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Fourth Quarter 1997

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other

Federal Register notices that were published during October, November, and December of 1997 that relate to the Medicare and Medicaid programs. It also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that may be potentially covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: Bridget Wilhite, (410) 786–5248 (For Medicare instruction information). Betty Stanton, (410) 786–3247 (For Medicaid instruction information). Sharon Hippler, (410) 786–4633 (For Food and Drug Administration-approved investigational device exemption information). Pamela Gulliver, (410) 786–4659 (For all other information).

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 38 million Medicare beneficiaries and 36 million Medicaid recipients. Administration of these programs involves (1) providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public, and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I lists the publication dates of the most recent quarterly listings of program issuances.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III lists for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the parts of the Code of Federal Regulations (CFR) that have changed (if applicable), the agency file code number, the title of the regulation, the ending date of the comment period (if applicable), and the effective date (if applicable).

On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is HCFA's practice to announce in this quarterly notice all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http//www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The

online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish Rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published Rulings in the **Federal Register**. In addition, Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD-ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD-ROM. We intend to re-visit this issue in the near future, and, with the aid of newer technology, we may again be able to include the appendices on CD-ROM.

Any cost report forms incorporated in the manuals are included on the CD-ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). 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, contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, 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. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Home Health Agency Manual, (HCFA Pub. 11) transmittal entitled ''Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices,'' use the Superintendent of Documents No. HE 22.8/5 and the HCFA transmittal number 284.

V. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, Telephone (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, C4–25–02, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4633.

Questions concerning all other information may be addressed to Pamela Gulliver, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Telephone (410) 786–4659.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: July 29, 1988.

Pamela J. Gentry,

Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

April 21, 1997 (62 FR 19328)
May 12, 1997 (62 FR 25957)
November 3, 1997 (62 FR 59358)
November 21, 1997 (62 FR 62325)
June 4, 1998 (63 FR 30499)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

October 1997 through December 1997

Trans. No.	Manual/Subject/Publication No.
	Intermediary Manual **Part 3—Claims Process (HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1727	• Billing for Durable Medical Equipment, Orthotic/Prosthetic Devices and Surgical Dressings.
1728	• Further Development is Not Necessary. Further Development is Required. Coordination With Providers. Returning Bills to Provider. Review of Hospitals With On-Line Admissions Query. Assessment of the Hospital Review.
1729	• HCPCS Codes for Diagnostic Services and Medical Services. Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines. Hospital Outpatient Partial Hospitalization Services.
1730	• Establishing Pacemaker Registry Records. Pacemaker Related ICD–9–CM Procedure Codes.
	Carriers Manual **Part 3—Claims Process (HCFA Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1581	• Type of Service. Screening Mammography.
1582	• Services Eligible for HPSA Bonus Payments. Remittance Messages.
1583	• The Carrier Advisory Committee. DMERC Advisory Process. Data Analysis. Provider Tracking System. Medical Review Program General Information. Coordination With Carrier Fraud Unit. Taking Corrective Actions on Identified Problems. Evaluating Effectiveness of Correction Action. Data Analysis and Functions. Data Analysis. Medicare FMR Status Report. Prepayment Review of Selected Claims. Automated and Manual Prepayment Review. Types of Prepayment Review. Prepayment Edits. Evaluation of Prepayment Edits. Categories of Edits. Developing Claims for Additional Documentation. HCFA Mandated Edits. Personnel and Procedures. Levels of Manual Review. Postpayment Review of Claims. Comprehensive Medical Review Procedures. Conducting Comprehensive Medical Review. Comprehensive Medical Review Corrective Actions. Overpayment Assessment Procedures. Denials Based on § 1862(a)(1)(A) of the Act. Appeal of Denials. Carrier Medical Director and Carrier Coordination With Intermediaries and PROs.
	Program Memorandum **Intermediaries (HCFA Pub. 60A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–97–15	• New Reporting Requirements for Ambulance Services.
A–97–16	• Medicare Home Health Benefit-The Balanced Budget Act of 1997-Financing Shift of Home Health Services from Part A to Part B.
A–97–17	• Balanced Budget Act of 1997, P.L. 105–33 (H.R. 2015)—Outpatient Rehabilitation Services Payment Provisions.
A–97–18	• Hospital Outpatient Procedures: Medicare Changes for Radiology and Other Diagnostic Coding Due to the 1998 HCPCS Update; Miscellaneous Changes.
A–97–19	• Effects of Balanced Budget Act On Provider Cost Reporting.
A–97–20	• Rural Health Clinic/Federally Qualified Health Center Provisions Enacted by § 4205 of the Balanced Budget Act of 1997.
A–97–21	• Instructions Regarding Requests for New Provider Exemptions and the Impact of the Balanced Budget Act of 1997 on Approved New Provider Exemptions for Medicare Certified Skilled Nursing Facilities.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

October 1997 through December 1997

Trans. No.	Manual/Subject/Publication No.
	Program Memorandum Carriers (HCFA Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–97–6	• Furnishing 1998 Pricing Data.
B–97–7	• 1998 Annual Participation and Enrollment Process.
B–97–8	• 1998 Fee Screens Edit Package for the Medicare Physician Fee Schedule Database.
B–97–9	• 1998 Participation Enrollment Material.
B–97–10	• Conversion Factors for 1998 for Anesthesia Services.
B–97–11	• Suspension of National Coverage Policy on Electrostimulation for Wound Healing.
B–97–12	• Change in the Reporting of Pricing Localities for Clinical Lab Services and Drugs.
B–97–13	• Implementation of the New Payment Limit for Ambulance Services.
	Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B) (Superintendent of Documents No. HE 22.8/6–5)
AB–97–19	• 1998 HCFA Common Procedure Coding System.
AB–97–20	• Changes to the Fiscal Year 1998 Wage Index for Ambulatory Surgical Center Payments for Dates of Service on or After October 1, 1997.
AB–97–21	• File Descriptions and Instructions for Retrieving the 1998 Physician, Clinical Lab, Durable Medical Equipment, Prosthestics/Orthotics and Supplies Fee Schedule Payments Amounts Through Network Data Mover.
AB–97–22	• Coding for Adequacy of Hemodialysis on Claims Form.
AB–97–23	• Implementation of 1998 Clinical Diagnostic Laboratory Fee Schedule and Mapping for 1998 Laboratory Coding Changes.
AB–97–24	• Medicare Coverage of Colorectal Cancer Screening.
	Program Memorandum Medicaid State Agencies (HCFA Pub. 17) (Superintendent of Documents No. HE 22.8/6–5)
97–2	• Title XIX of the Social Security Act, Post-Eligibility Treatment of Income
97–3	• Title XIX of the Social Security Act, Payment of Medicare Part B Premiums
	State Operations Manual Provider Certification (HCFA Pub. 7) (Superintendent of Documents No. HE 22.8/12)
284	• The Quality of Survey and Certification Activity. The State Agency Quality Improvement Program. SAQIP Guiding Principles. SAQIP Terminology. Continuous Quality Improvement Plan. Components of an Individual Quality Improvement Plan.
285	• Minimum Data Set System.
	Hospital Manual (HCFA Pub. 10) (Superintendent of Documents No. HE 22.8/2)
723	• Consistency in Entering Other Insurer Name on Bill. Verification of MSP On-Line Data and Use of Admissions Questions. Admission Questions to Ask Medicare Beneficiaries. Documentation to Support Admission Process. Reviewing Hospital Files. Selection of Bill Sample. Review of Hospitals With On-Line Admissions.
724	• Reporting Outpatient Services Using HCFA Common Procedure Coding System. Pneumococcal Pneumonia, Influenza virus, and Hepatitits B Vaccines. HCPCS Codes for Diagnostic Services and Medical Services. Billing for Hospital Outpatient Partial Hospitalization Services.
725	• Pacemaker Registry.
	Christian Science Sanatorium Hospital Manual Supplement (HCFA Pub. 32) (Superintendent of Documents No. HE 22.8/2)
38	• Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

October 1997 through December 1997

Trans. No.	Manual/Subject/Publication No.
	Home Health Agency Manual (HCFA Pub. 11) (Superintendent of Documents No. HE 22.8/5)
284	• Billing for Durable Medical Equipment, and Orthotic/Prosthetic Devices.
285	• Billing for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
	Skilled Nursing Facility Manual (HCFA Pub. 12) (Superintendent of Documents No. HE 22.8/3)
351	• Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
	Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA Pub. 29) (Superintendent of Documents No. HE 8/13)
82	• Pneumococcal Pneumonia, and Influenza Virus Vaccines.
	End Stage Renal Dialysis Network Organizations Manual (HCFA Pub. 81) (Superintendent of Documents No. HE 8/13)
5	• Patient Grievances. Introduction. Provision of Educational Information. Provision of Technical Assistance.
	Medicare Hospice Manual (HCFA Pub. 21) (Superintendent of Documents No. HE 8/18)
51	• Special Billing Instructions for Pneumococcal Pneumonia, Influenza Virus, and Hepatitis B Vaccines.
	Provider Reimbursement Manual—Part II Provider Cost Reporting Forms and Instructions (HCFA Pub. 15–II–AI) (Superintendent of Documents No. HE 22.8/4)
3	• Skilled Nursing Facility Complex Cost Report Form HCFA–2540–96.
	Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
97–11	• Cumulative Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—July 1997.
97–12	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—September 1997.
97–13	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—October 1997.
97–14	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—November 1997.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
10/01/97	51536–51550		BPD–895–FNC	Medicare Program; Schedules of Limits and Prospectively Determined Payment Rates for Skilled Nursing Facility Inpatient Routine Service Costs.	12/01/97	10/01/97
10/01/97	51551–51552		BPD–896PN	Medicare Program; Adjustments to Cost Limits for Skilled Nursing Facility Inpatient Routine Service Costs.	12/01/97	10/01/97
10/06/97	52034	410, 412	BPD–878–CN	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1998 Rates; CORRECTION.		10/01/97

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
10/06/97	52034	418	BPD–820–CN	Medicare Program; Hospice Wage Index; CORRECTION.		10/01/97
10/15/97	53571–53572	433	MB–113–F	Medicaid Program; Limitation on Provider-Related Donations and Health Care-Related Taxes; Revision of Waiver Criteria for Tax Programs Based Exclusively on Regional Variations; CORRECTION.		09/13/93
10/28/97	55773–55774		HCFA–1007–N	Medicare Program; Meetings of the Negotiated Rulemaking Committee on the Provider-sponsored Organization Solvency Standards.		10/28/97
10/29/97	56106–56111	489	BPD–748–F	Medicare Program; Changes in Provider Agreement Regulations Related to Federal Employees Health Benefits.		11/28/97
10/31/97	59048–59260	400, 405, 410, 411, 414.	BPD–884–FC	Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule, Other Part B Payment Policies, and Establishment of the Clinical Psychologist Fee Schedule for Calendar Year 1998.	12/30/97	01/01/98
10/31/97	59261–59266		BPD–893–FN	Medicare Program; Physician Fee Schedule Conversion Factor for Calendar Year 1998 and Sustainable Growth Rate for Fiscal Year 1998.		10/01/97 01/01/98
10/31/97	59267–59269	414	BPD–901–NC	Medicare Program; Delay in Implementing the Adjustments to the Practice Expense Relative Value Units Under the Physician Fee Schedule for Calendar Year 1998.	12/30/97	
11/03/97	59358–59365		BPO–150–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—First Quarter.		
11/03/97	59366–59368		OACT–056–N	Medicare Program; Part A Premium for 1998 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement.		01/01/98
11/03/97	59365–59366		OACT–057–N	Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for 1998.		01/01/98
11/04/97	59715–59720		OACT–055–N	Medicare Program; Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 1998.		01/01/98
11/05/97	59818–59820	424	BPD–875–NC	Medicare Program; Home Health Agency Physician Certification Regulations.	01/05/98	12/05/97
11/21/97	62325–62332		BPO–151–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Second Quarter 1997.		
12/02/97	63669–63674	417	HCFA–1911–IFC	Medicare+Choice Program; Collection of User Fees From Medicare Choice Plans and Risk-Sharing Contractors.	02/02/98	01/01/98
12/03/97	63953–63954		HCFA–1024–N	Medicare Program; December 15, 1997, Meeting of the Practicing Phyisicans Advisory Council.		
12/19/97	66726–66763	416, 482, 485, 489	HCFA–3745–P	Medicare and Medicaid Programs; Hospital Conditions of Participation; Provider Agreements and Supplier Approval.	02/17/98	12/19/97
12/22/97	66932–66966	146	HCFA–2891–IFC	Interim Rules for Mental Health Parity	03/23/98	01/01/98

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 62 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
12/23/97	67174–67213	483	HCFA–2180–F	Medicare and Medicaid Programs; Resident Assessment in Long Term Care Facilities.		03/23/98 06/22/98
12/29/97	67688–67689	144, 146	HCFA–2017–N	Application of HIPAA Group Market Portability Rules to Health Flexible Spending Arrangements.		12/29/97
12/29/97	67689–67690	144, 146	HCFA–2018–N	Application of HIPAA Group Market Rules to Individuals Who Were Denied Coverage Due to a Health Status-Related Factor.	.....	12/29/97
12/30/97	67881–67882	.....	HCFA–1034–N	Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council.		

Categorization of Food and Drug Administration-Approved Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G970014 A2
G970171 A1
G970248 A2
G970278 A2
G970281 A2

The following information presents the device number, category (in this case, B), and criterion code.

G970087 B2
G970130 B2
G970146 B3
G970160 B1
G970168 B1
G970182 B4
G970186 B4
G970197 B2
G970204 B1
G970207 B3
G970208 B3
G970209 B4
G970211 B1
G970213 B3
G970214 B4
G970216 B1
G970218 B3
G970221 B1
G970223 B4
G970225 B3
G970227 B4
G970229 B1
G970231 B1
G970235 B1
G970236 B4
G970238 B1
G970239 B1
G970240 B1
G970241 B3
G970245 B1
G970250 B1
G970253 B1
G970254 B4
G970255 B4
G970256 B1
G970257 B3
G970258 B4
G970259 B4
G970260 B2
G970261 B2
G970264 B1
G970267 B3
G970268 B4
G970271 B4
G970272 B4
G970274 B2
G970276 B1
G970280 B3
G970282 B3
G970286 B4
G970289 B2
G970290 B4
G970291 B4

[FR Doc. 98–21424 Filed 8–10–98; 8:45am]
BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Proposed Collection; Comment Request Jackson Heart Study Participant Recruitment Survey

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Jackson Heart Study Participant Recruitment Survey. *Type of Information Collection Request:* NEW. *Need and Use of Information Collection:* This survey will be used as a planning tool for the upcoming NHLBI-sponsored Jackson Heart Study. Participation and retention of African-Americans in observational epidemiological studies has been much lower than for white populations. Experience with recruitment and retention of African-Americans in Jackson, Mississippi, is derived from the ongoing ARIC (Atherosclerosis Risk In Communities) study. Initial response was very low, with a 47 percent enrollment rate, and a 70 percent retention rate. The purpose of the proposed survey in this announcement, is to examine facilitators and barriers to long-term participation in observational studies by African-Americans. The findings will be incorporated with the input of the African-American community, into the recruitment and retention plan of the Jackson Heart Study. *Frequency of Response:* One-Time. *Affected Public:* Individuals or households. *Type of Respondents:* Adults ages 35–84.

The annual reporting burden is as follows: Estimated Number of Respondents: 580; *Estimated Number of Respondents per Respondent:* 1; *Average Burden Hours Per Response:* .4207; and *Estimated Total Annual Burden Hours Requested:* 244. The

annualized cost to respondents is estimated at: $2,440, assuming respondents time at the rate of $10 per hour. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

ESTIMATE OF HOUR BURDEN

Type of response	Number of respondents	Frequency of response	Average time per response	Annual hour burden
Short Version	120	1	.0334	4.00
ARIC Participants	50	1	.3006	15.03
ARIC Drop Outs	50	1	.3006	15.03
Jackson Community	300	1	.4008	120.24
In-Depth Interview	60	1	1.5000	90.00
Total	580			244.30

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

For Further Information: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Dr. Charles R. MacKay, NIH Project Clearance Officer, 6701 Rockledge Drive, MSC 7730, Rockville, MD 20892–7730, or call non-toll-free number (301) 435–0978 or E-mail your request, including your address to: MacKayC@odrockml.od.nih.gov

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received on or before October 13, 1998.

Dated: July 31, 1998.

Donald P. Christoferson,

Executive Officer, National Heart, Lung, and Blood Institute.

[FR Doc. 98–21511 Filed 8–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applictions, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: August 25, 1998.

Time: 8:30 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892.

Contact Person: Andrew P. Mariani, Chief, Scientific Review Branch 6120 Executive Blvd, Suite 350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: August 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–21515 Filed 8–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 14–15, 1998.

Open: September 14, 1998, 8:30 AM to 12:00 PM.

Agenda: This meeting will be open to the public on Monday, September 14, 8:30 a.m. to approximately 12:00 pm to discuss administrative details or other issues relating to committee activities.

Place: Natcher Conference Center, Building 49, Conference Rooms E1 & E2, National Institutes of Health, Bethesda, MD 20892.

Closed: September 14, 1998, 1:00 PM to Recess.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Conference Center, Building 49, Conference Rooms E1 & E2, National Institutes of Health, Bethesda, MD 20892.

Closed: September 15, 1998, 8:30 AM to Adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Natcher Conference Center, Building 49, Conference Rooms E1 & E2, National Institutes of Health, Bethesda, MD 20892.

Contact Person: Jane E. Ades, Committee Management Specialist, National Human Genome Research Institute, National Institutes of Health, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 594–0654.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: August 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–21512 Filed 8–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the AIDS Research Advisory Committee, NIAID.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: AIDS Research Advisory Committee, NIAID.

Date: September 25, 1998.

Time: 8:30 AM to adjournment.

Agenda: The Committee will provide advice on scientific priorities, policy, and program balance at the Division level; review the progress and productivity of ongoing efforts, and identify critical gaps and obstacles to progress.

Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.

Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, Solar Building, Room 2A17, 6003 Executive Boulevard, Bethesda, MD 20892–7601, 301–435–3732, rs170u@nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: July 31, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–21516 Filed 8–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Sciences Special Emphasis Panel.

Date: August 20, 1998.

Time: 12:00 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Clinical Sciences Special Emphasis Panel.

Date: August 21, 1998.

Time: 12:00 PM to 1:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396; 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 5, 1998.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 98–21513 Filed 8–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Sciences Special Emphasis Panel.

Date: August 13, 1998.

Time: 4:30 PM to 5:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla Chen, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.

Date: August 18, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.

Date: August 19, 1998.

Time: 2:00 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Microbiological and Immunological Sciences Special Emphasis Panel.

Date: August 27, 1998.

Time: 10:00 AM to 11:30 AM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William C. Branche, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182, MSC 7808, Bethesda, MD 20892, (301) 435–1148.

(Catalogue of Federal Domestic Assistance Program Nos. 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893; 93.306, Comparative Medicine, 93.306, National Institutes of Health, HHS)

Dated: August 5, 1998.

LaVerne Y. Stringfield,

Committee Management Office, NIH.

[FR Doc. 98–21514 Filed 8–10–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4352–N–07]

Notice of Proposed Information Collection: Comment Request

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: October 13, 1998.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 4238, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Calculation of Operating Percentage for a Requested Budget Year (RBY) PHA/IHA-Owned Rental Housing Performance Funding System (PFS).

OMB Control Number: 2577–0066.

Description of the need for the information and proposed use: This collection of information is necessary to ensure that Public Housing Agencies (PHAs) determine an appropriate and justifiable occupancy percentage for RBY in a uniform manner when calculating operating subsidy eligibility under the PFS.

Agency form numbers, if applicable: HUD–52728.

Members of affected public: All PHAs requesting operating subsidy under the provisions of the PFS.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: 3,100 PHAs (respondents), one Calculation of Occupancy Percentage for a Requested Budget Year (RBY) per PHA, two hours per response, 6,200 hours includes preparation of the response (3,100 hours) and recordkeeping burden (3,100 hours).

Status of the proposed information collection: Extension.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: August 5, 1998.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 98–21390 Filed 8–10–98; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent and Request for Comments for Information Collection to be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent for information collection.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Fish and Wildlife Service (hereinafter ''we'') is announcing its intention to request approval for the collection of information for the establishment of a regulatory strategy to reduce overabundant Mid-continent light goose populations.

DATES: Comments on the proposed information collection must be received by October 13, 1998, to be assured of consideration.

ADDRESSES: Comments should be mailed to Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact Rebecca A. Mullin at (703) 358–2287, or electronically to rmullin@fws.gov.

SUPPLEMENTARY INFORMATION: The collection of information described will be submitted to OMB for approval under the provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13). We will not conduct or sponsor any information collection until approved by OMB and a final regulation is published, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number. The proposed information collection will be used to administer a program to reduce Mid-continent light goose populations. Specifically, the information will facilitate our assessment of impacts alternative regulatory strategies may have on Mid-continent light goose and other migratory bird populations.

We have calculated burden estimates, where appropriate, to reflect current reporting levels or adjustments. We will request a 3-year term of approval for this information collection activity.

Comments are invited from you on: (1) whether the collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of burden, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information collection technology. Comments and suggestions on the requirement should be sent directly to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 224—ARLSQ, 1849 C Street NW., Washington, DC 20204 or electronically to mullinR@fws.gov.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Regulatory Strategy for control of Mid-continent light geese.

Summary: The information collected will be required to authorize State wildlife management agencies responsible for migratory bird management to take Mid-continent light geese within the conditions that we provide. The proposed information collection will be used to administer a program to reduce Mid-continent light goose populations. Specifically, the information will facilitate our assessment of impacts alternative regulatory strategies may have on Mid-continent light goose and other migratory bird populations.

Bureau Form Number: None.

Frequency of Collection: Once annually.

Description of Respondents: State governments.

Total Annual Responses: 13.

Total Annual Burden Hours: 390.

Dated: August 5, 1998.

Daniel M. Ashe,

Assistant Director for Refuges and Wildlife.

[FR Doc. 98–21436 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Aquatic Nuisance Species Task Force's Recreational Activities Committee. The meeting is open to the public. Meeting topics are identified in the **SUPPLEMENTARY INFORMATION.**

DATES: The Recreational Activities Committee will meet from 1:00 p.m. to 5:00 p.m. on Tuesday, August 18, 1998, and 8:15 a.m. to 4:30 p.m. on Wednesday, August 19, 1998.

ADDRESSES: The meeting will be held in the Whipple Federal Building, 1 Federal Drive, Room 600, Ft. Snelling, Minnesota.

FOR FURTHER INFORMATION CONTACT: Patricia Carter, Chair, Recreational Activities Committee at 404–679–7108, or Bob Peoples, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2025.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, this notice announces a public meeting of the Recreation Activities Committee of the Aquatic Nuisance Species Task Force. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990.

Topics to be covered during the meeting include brief overviews of the nonindigenous species interests and activities of Committee members, review of concerns and issues about the draft recreational activities guidelines raised by Task Force review, development of a strategy for disseminating the guidelines when approved, development of a proposal for implementing the education/outreach strategy, and addressing the exotic bait issue.

Minutes of the meeting will be maintained by the Chair, Recreational Activities Committee, U.S. Fish and Wildlife Service, Region 4, 1875 Century Boulevard, Atlanta, Georgia 30345, and Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. They will be available for public inspection at these locations during regular business hours, Monday through Friday, within 30 days following the meeting.

Dated: August 6, 1998.

Hannibal Bolton,

Acting Co-Chair, Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 98–21535 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–6678–A]

Notice for Publication; Alaska Native Claims Selection

In accordance with Departmental regulation 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, 43 U.S.C. 1601, 1613(a), will be issued to Levelock Natives, Limited for 174.58 acres. The land involved is in the vicinity of Levelock, Alaska, and is described as Tract B, U.S. Survey No. 4877, Alaska, located within T. 12 S., R. 45 W., Seward Meridian.

A notice of the decision will be published once a week, for four (4) consecutive weeks, in the *Bristol Bay Times.* Copies of the decision may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decision, an agency of the Federal government or regional corporation, shall have until September 10, 1998, to file an appeal. However, parties

receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements of 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Katherine L. Flippen,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 98–21432 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–98–7122–00–8829]

Nevada Temporary Closure of Certain Public Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Temporary Closure of Selected Public Lands in Clark County, Nevada, during the Operation of the 1998 SCORE INTERNATIONAL ''LAS VEGAS PRIMM 300'' Desert Race.

SUMMARY: The Field Office Manager of the Las Vegas Field Office announces the temporary closure of selected public lands under its administration.

This action is being taken to help ensure public safety, prevent unnecessary environmental degradation during the official permitted running of the 1998 SCORE INTERNATIONAL ''LAS VEGAS PRIMM 300'' Desert Race and to comply with provisions of the U.S. Fish and Wildlife Service's Biological Opinion for Speed Based Off-Highway Vehicle Events (1–5–95–F–237).

DATES: From 6:00 p.m. September 11, 1998 through 9:00 p.m. April 12, 1998 Pacific Standard Time.

Closure Area: As described below, an area within T. 23 S. to T. 27 S.R. 59 E. to R. 61 E.

1. The closure is a triangular shaped area bound by Interstate I–15 (between Sloan and State line) on the west; the crest of the McCullough Mountains on the east; and the California/Nevada State line on the south.

Exceptions to the closure are: State Route 163, Old Las Vegas Blvd.

2. The entire area encompassed by the designated course and all areas outside the designated course as listed in the legal description above are closed to all vehicles except Law Enforcement, Emergency Vehicles, and Official Race Vehicles. Access routes leading to the course are closed to vehicles.

3. No vehicle stopping or parking.

4. Spectators are required to remain within designated spectator area only.

5. The following regulations will be in effect for the duration of the closure, unless otherwise authorized no person shall:

a. Camp in any area outside of the designated spectator areas.

b. Enter any portion of the race course or any wash located within the race course.

c. Spectate or otherwise be located outside of the designated spectator area.

d. Cut or collect firewood of any kind, including dead and down wood or other vegetative material.

e. Possess and or consume any alcoholic beverage unless the person has reached the age of 21 years.

f. Discharge, or use firearms, other weapons or fireworks.

g. Park, stop, or stand any vehicle outside of the designated spectator areas.

h. Operate any vehicle including an off-highway vehicle (OHV), which is not legally registered for street and highway operation, including operation of such a vehicle in spectator viewing areas, along the race course, and in designated pit areas.

i. Park any vehicle in violation of posted restrictions, or in such a manner as to obstruct or impede normal or emergency traffic movement or the parking of other vehicles, create a safety hazard, or endanger any person, property or feature. Vehicles so parked are subject to citation, removal and impoundment at owners expense.

j. Take a vehicle through, around or beyond a restrictive sign, recognizable barricade, fence or traffic control barrier or device.

k. Fail to keep their site free of trash and litter during the period of occupancy, or fail to remove all personal equipment, trash, and litter upon departure.

l. Violate quiet hours by causing an unreasonable noise as determined by the authorized officer between the hours of 10:00 p.m. and 6:00 a.m. Pacific Standard Time.

m. Allow any pet or other animal in their care to be unrestrained at any time.

n. Fail to follow orders or directions of an authorized officer.

o. Obstruct, resist, or attempt to elude a Law Enforcement Officer or fail to follow their orders or direction.

Signs and maps directing the public to designated spectator areas will be provided by the Bureau of Land Management and the Event sponsor.

The above restriction do not apply to emergency vehicles and vehicles owned by the United States, the State of Nevada or Clark County. Vehicles under permit for operation by event participants must follow the race permit stipulations.

Operators of permitted vehicles shall maintain a maximum speed limit of 35 mph on all BLM roads and ways. Authority for closure of pubic lands is found in 43 CFR 8340 subpart 8341; 43 CFR 8360, subpart 8364.1 and 43 CFR 8372. Persons who violate this closure order are subject to fines and or arrest as prescribed by law.

FOR FURTHER INFORMATION CONTACT: Dave Wolf Recreation Manager or Ron Crayton or Ken Burger BLM Rangers, BLM Las Vegas Field Office 4765 Vegas Dr. Las Vegas, Nevada 89108, (702) 647–5000.

Dated: August 7, 1998.

Michael F. Dwyer,

Las Vegas Field Office Manager.

[FR Doc. 98–21501 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–045–00–7122–00; 9560]

Publication of Closure and Restriction Order for the Red Cliffs Desert Reserve

AGENCY: Bureau of Land Management, Interior.

The public land in the following described lands will be affected:

Salt Lake Meridian

T. 41 S., R. 13 W.,
- Sec.(s) 17 thru 19; (all)
- Sec.(s) 20; 21; 22; 27; 28; (all)
- Sec. 29, N½NE¼, N½S½N½, N½S½SW¼NE¼, SE¼SE¼SW¼NE¼, S½SE¼NE¼, NE¼NW¼, N½SW¼SW¼NW¼, NE¼NE¼SE¼, N½NW¼NE¼SE¼;
- Sec. 30, N½N½, embracing that portion of land north of the Virgin River, S½NE¼

T. 41 S., R. 14 W.,
- Sec. 13, SE¼NE¼, S½S½, NE¼SE¼;
- Sec.(s) 15 thru 22; (all)
- Sec. 23, W½SW¼, embracing that portion of land west of I–15 corridor;
- Sec. 24; (all)
- Sec. 25, Lots 1 thru 10, SW¼NE¼, NE¼SW¼NW¼, E½SE¼NW¼, NW¼SE¼NW¼, E½NE¼SW¼, E½W½NE¼SW¼, SE¼SW¼, W½SE¼;
- Sec. 26, Lot 4, embracing that portion of land west of I–15 corridor;
- Sec. 27, embracing that portion of land west of I–15 corridor;
- Sec.(s) 28 thru 31; (all)
- Sec. 32, embracing that portion of land north and west of I–15 corridor;

Sec. 33, embracing that portion of land north and west of I–15 corridor;
Sec. 34, embracing that portion of land north and west of I–15 corridor;
T. 41 S., R. 15 W.,
Sec.(s) 13 thru 36; (all)
T. 41 S., R. 16 W.,
Sec. 4, S½;
Sec.(s) 5 thru 9; (all)
Sec. 10, embracing that portion of land west of the SR–18 corridor, Lot 4;
Sec.(s) 11 thru 13; (all)
Sec. 14, N½, NE¼SE¼;
Sec. 15, embracing that portion of land west of the SR–18 corridor, E½NE¼;
Sec.(s) 16 thru 21; (all)
Sec. 22, W½, W½E½, embracing that portion of land west of the SR–18 corridor;
Sec. 24, E½, E½W½;
Sec. 25, E½, E½W½;
Sec. 27, SW¼NE¼, NW¼NW¼, S½NW¼, SW¼, W½SE¼;
Sec.(s) 28 thru 34; (all)
Sec. 36; (all)
T. 41 S., R. 17 W.,
Sec.(s) 1, 12, 13, 24; (all)
T. 42 S., R. 14 W.,
Sec. 5, embracing that portion of land west of I–15 corridor;
Sec. 6, embracing that portion of land west of I–15 corridor;
T. 42 S., R. 15 W.,
Sec.(s) 1 thru 9; (all)
Sec. 12; (all)
Sec.(s) 16 thru 19; (all)
Sec. 20, (all)
T. 42 S., R. 16 W.,
Sec.(s) 1 thru 3; (all)
Sec.(s) 11 thru 14; (all)
Sec. 24, (all)

EFFECTIVE DATE: August 11, 1998. This interim closure and restriction order will be superseded when the detailed recreation management plan for the Red Cliffs Desert Reserve is completed and approved by Washington County.

FOR FURTHER INFORMATION CONTACT: Mark Harris, BLM Ranger, Dixie Resource Area, 345 E. Riverside Dr, St. George, UT 84790 telephone (435) 688–3371.

SUPPLEMENTARY INFORMATION: To implement decisions of the Washington County Habitat Conservation Plan which established the Red Cliffs Desert Reserve, and to protect valuable and fragile natural resources, and provide for public safety and enjoyment, and to provide consistency with regulations that have been passed by Washington County, the Utah School and Institutional Trust Land Administration, and the cities of St. George, Washington, Ivins, and Hurricane the following closures and restrictions are established for the public lands which are included in the areas described.

Camping

Camping stay is restricted to 5 consecutive days in any 30 day period for all non-developed recreation areas.

Fires

No open fires of any kind are permitted on the ground.

Weapon Use

No firearm or other weapon may be discharged except during regulated hunting within prescribed seasons. Propelling an arrow by a bow shall be considered a discharge of a weapon. Any device loaded with powder, other explosive, or any gun actuated by compressed air shall be considered a firearm.

Motorized Vehicles

No motorized vehicles are allowed off of the county roadways.

Rock Climbing

Rock climbing is prohibited at those locations which are signed as closed to such use.

Removal of Wild Plants and Animals

Removal of animals is prohibited except during State of Utah regulated hunting within prescribed seasons for upland bird and big game. Removal of plants is prohibited.

Pets

All pets must be restrained by a leash.

The above regulations do not apply to emergency vehicles or personnel, or vehicles owned by or persons employed by the United States, the State of Utah, Washington County, or any municipality in Washington County when such vehicles or personnel are used or acting in the performance of official duties, or for authorized users of rights of way, or for owners of private land to access their private land.

Authority: The authority for issuing a closure and restriction order is contained in CFR Title 43 Subpart 8364.1a. A copy of these restrictions will be available in the Dixie Resource Area Office, which manages these lands.

Violations are punishable as class A misdemeanors.

Dated: July 31, 1998.

James D. Crisp,

Area Manager.

[FR Doc. 98–21395 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–DQP–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service, DOI.

ACTION: Notice of information collection.

SUMMARY: Under the Paperwork Reduction Act of 1995, the Minerals Management Service (MMS) is soliciting comments on a revision to an approved information collection, the Payor Information Form, Form MMS–4025 (OMB Control Number 1010–0033), which expires on June 30, 2000.

FORM: MMS–4025, Payor Information Form.

DATES: Written comments should be received on or before October 13, 1998.

ADDRESSES: Comments sent via the U.S. Postal Service should be sent to Minerals Management Service, Royalty Management Program, Rules and Publications Staff, P.O. Box 25165, MS 3021, Denver, Colorado 80225–0165; courier address is Building 85, Room A613, Denver Federal Center, Denver, Colorado 80225; e:mail address is David.Guzy@mms.gov.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, e-mail Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION: In compliance with the Paperwork Reduction Act of 1995, Section 3506(c)(2)(A), we are notifying you, members of the public and affected agencies, of this revision to an approved information collection, the Payor Information Form, Form MMS–4025 (OMB Control Number 1010–0033), which expires on June 30, 2000. Is this information collection necessary for us to properly do our job? Have we accurately estimated the industry burden for responding to this collection? Can we enhance the quality, utility, and clarity of the information we collect? Can we lessen the burden of this information collection on the respondents by using automated collection techniques or other forms of information technology?

The Secretary of the Interior is responsible for the collection of royalties from lessees producing minerals from leased Federal and Indian lands. The Secretary is required by various laws to manage the production of mineral resources on Indian lands and Federal onshore and offshore leases, to collect the royalties due, and to distribute the funds in accordance with those laws.

MMS performs the royalty management functions for the Secretary. When a company or individual enters into a contract to develop, produce, and dispose of minerals from Federal or Indian lands, that company or individual agrees to pay the United

States or Indian tribe or allottee a share (royalty) of the full value received for the minerals taken from leased lands. We use an automated fiscal accounting system, the Auditing and Financial System (AFS), to account for revenues collected from Federal and Indian leases. In addition to accounting for royalties reported by payors, AFS facilitates the monthly distribution of mineral revenues to State, Indian, and General Treasury accounts; provides royalty accounting and statistical information to States, Indians, and others who have a need for such information; and identifies underreporting and nonreporting so MMS can promptly collect revenues.

AFS is an essential part of an overall effort to improve the management of the nation's mineral resources and to ensure proper collection and accounting for revenues due from lessees removing and processing oil and gas products from Federal or Indian leases. Part of the data base for AFS consists of information collected using the Payor Information Form (PIF), MMS–4025.

PIF is used to record and report data from new producing leases, for updating payor changes, and to notify MMS of the products on which royalties will be paid.

Based upon well data provided by the Bureau of Land Management, MMS developed a well database and, consequently, payors no longer need to report certain well data when submitting the PIF. Also, the Royalty Policy Committee, established by the Secretary, and MMS personnel identified several data elements that are only needed on an exception basis and, therefore, do not need to be routinely reported on the PIF. This program change reduces the reporting burden for this information collection. We estimate that the annual burden associated with this information collection will decrease from the currently-approved 19,197 hours to 17,250 hours. Approximately 23,000 responses will be received annually, and the burden to complete a revised form will decrease from 45 to 40 minutes or 15,333 hours annually. We estimate the recordkeeping burden at 5 minutes per form or 1,917 hours annually.

As a result of this reduction in reporting burden for this information collection, the following information will no longer be required to be reported on the PIF:

Section III

- Unit/Comm Agreement Data—Tract number/percent
- Well Data—name, formation, API well number, and/or location.

Section IV

- Buyer/seller/refiner name.
- Gas contract number.
- RIK contract number.
- Company name and code for which an allowance applies.

Date: July 28, 1998.

Lucy Querques Denett,

Associate Director for Royalty Management,

[FR Doc. 98–21403 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

Gettysburg National Military Park

AGENCY: National Park Service, Interior.

ACTION: Announcing intention to issue a prospectus seeking the most qualified proponent to provide shuttle bus services to Visitors from Gettysburg National Military Park to Eisenhower National Historic Site.

RESPONSES DUE: Responses are due by 5 p.m. on October 8, 1998

FOR FURTHER INFORMATION CONTACT: Russell A. Thompson, Gettysburg National Military Park, 97 Taneytown Road, Gettysburg, Pennsylvania 17325, Phone: (717) 334–3949.

John A. Latschar,

Superintendent.

[FR Doc. 98–21392 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Subsistence Resource Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and Preserve and the Chairperson of the Denali Subsistence Resource Commission announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order by the Chair.

(2) Roll call and confirmation of quorum.

(3) Superintendent's welcome and introductions.

(4) Approval of minutes of last meeting.

(5) Additions and corrections to the agenda.

(6) Election of officers.

(7) New Business:

a. Federal subsistence program updates.

b. North access appropriations bill.

c. Spruce four access EIS.

d. Wildlife studies updates.

(8) Old Business:

a. Draft Subsistence Management Plan

b. Status report: Kantishna firearms discharge closure hearing.

(9) Public and other agency comments.

(10) Set time and place of next SRC meeting.

(11) Adjournment.

DATES: The meeting date is: Friday, August 28, 1998, 9 a.m. to 5 p.m.

ADDRESSES: The meeting location is: Cantwell Community Center, Cantwell, Alaska.

FOR FURTHER INFORMATION CONTACT: Hollis Twitchell, Subsistence Coordinator or Andrea Hansen, Denali National Park, Subsistence Branch, P.O. Box 9, Denali Park, Alaska 99755. Phone (907) 683–9544.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Paul R. Anderson,

Acting Regional Director.

[FR Doc. 98–21391 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday, August 21, 1998, at the Paiute Shoshone Indian Cultural Center, Conference Room, 2300 W. Line Street, Bishop, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretation of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows:

Sue Kunitomi Embrey, Chairperson
William Michael, Vice Chairperson
Keith Bright
Martha Davis
Ronald Izumita
Gann Matsuda
Vernon Miller
Mas Okui
Glenn Singley
Richard Stewart

The main agenda items at this meeting of the Commission will include the following:

(1) Status report on the development of Manzanar National Historic Site by Superintendent Ross R. Hopkins.

(2) General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues.

(3) Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after October 1, 1998. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: July 29, 1998.

A. Scot McElveen,

Acting Superintendent, Manzanar National Historic Site.

[FR Doc. 98–21361 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–70–p

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before August 1, 1998. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by August 26, 1998.

Patrick Andrus,

Acting Keeper of the National Register.

COLORADO

Teller County

Manitou Experimental Forest Station, 232 Cty Rd. 79, Woodland Park vicinity, 98001091

CONNECTICUT

Fairfield County

Rosemary Hall, Jct. of Ridgeway and Zaccheus Mead Ln., Greenwich, 90001137

DELAWARE

Kent County

Bethel Methodist Protestant Church, Jct. of DE 61, DE 114, and DE 304, Andrewsville, 98001093
Todd's Chapel, Jct. of Todd's Chapel Rd., and Hickman Rd., Greenwood, 98001094

New Castle County

Gilbraltar, 2501 Pennsylvania Ave., Wilmington, 98001098
Justis—Jones House, 2606 Newport Gap Pike, Wilmington vicinity, 98001096
Mount Pleasant Methodist Episcopal Church and Parsonage, 1009 Philadephia Pike, Wilmington vicinity, 98001097
Torbert Street Livery Stables, 305–307 Torbert St., Wilmington, 98001095

Sussex County

Adams, Joseph T., House, 12 E. Pine St., Georgetown, 98001092

FLORIDA

Nassau County

Mount Olive Missionary Baptist Church, FL 107, Nassauville, 98001099

INDIANA

Carroll County

Baum—Shaeffer Farm, 6678 W 200 N, Delphi vicinity, 98001102

Clay County

Eaglefield Place, 4870 E US 40, Brazil vicinity, 98001104

Lawrence County

Zahn Historic District, Roughly bounded by 17th, 20th, J., and H Sts., Bedford, 98001100

Porter County

Brown, George, Mansion, 700 W. Porter Ave., Chesterton, 98001101
New York Central Railroad Passenger Depot, 220 Broadway, Chesterton, 98001103

MASSACHUSETTS

Essex County

Swampscott Railroad Depot, 10 Railroad Ave., Swampscott, 98001106

Middlesex County

Westford Center Historic District, Roughly along Graniteville Rd., Main St., Lincoln St., and Depot St., Westford, 98001105

MINNESOTA

Pine County

Bridge No. 1811 over Kettle River (Iron and Steel Bridges in Minnesota MPS) Co. Hwy 33 over Kettle R., Rutledge vicinity, 98001107

MISSISSIPPI

Madison County

Tougaloo College, Roughly along County Line Rd., Jackson vicinity, 98001109

Marshall County

Raiford, Robert, Home and Farm, 829 Cayce Rd., Victoria vicinity, 98001110

MISSOURI

Lawrence County

Peirce City Fire Station, Courthouse and Jail, Walnut St., Pierce City, 98001108

MONTANA

Sweet Grass County

Harrison, Waborn (Wabe) and Sarah E., Ranch House, Roughly the jct. of Sweet Grass Cr. and Yellowstone R., Greycliff vicinity, 98001111

NEW YORK

Broome County

Grace Episcopal Church (Historic Churches of the Episcopal Diocese of Central New York MPS) 2624 Main St., Whitney Point, 98001113

Livingston County

Clark—Keith House, 3092 Main St., Caledonia, 98001114

New York County

Empire Building, 71 Broadway, New York, 83004643

Orange County

Hand, Elias, House (Cornwall MPS) NY 32, Mountainville, 98001119
Pigott, Patrick, House (Cornwall MPS) 105 Angola Rd., Cornwall, 98001115
Wood, Wilford, House (Cornwall MPS) 58 Pleasant Hill Rd., Mountainville, 98001118

Otsego County

Unadilla Forks School, 113 NY 18A, Unadilla Forks, 98001117

Rensselaer County

District School No. 3, 1125 S. Schodack Rd., Castleton-on-Hudson vicinity, 98001116

NORTH CAROLINA

Bertie County

Woodville Historic District, Roughly along NC 11, Lewiston-Woodville, 98001112

OREGON

Linn County

Stellmacher, Gus and Emma, Farmstead, 32404 Tangent Loop, Tangent vicinity, 98001123

Multnomah County

Povey, John E. G., House, 1312 NE Tillamook St., Portland, 98001121

Sherman County

Sherman County Courthouse, 500 Court Street, Moro, 98001122

Washington County

Macrum, Isaac, House, 2225 12th Ave., Forest Grove, 98001120

SOUTH DAKOTA

Beadle County

Piper, Albert S., Homestead Claim Shanty, 2 mi. N of Lake Byron, Carpenter vicinity, 98001126

Minnehaha County

LaSalle Apartments, 703 S. Summit, Sioux Falls, 98001125

TEXAS

Hidalgo County

Border Theater (Mission, Texas MPS) 905 North Conway Blvd., Mission, 98001124

A Request for Removal has been made for the following resources:

IOWA

Hardin County

Coal Bank Hill Bridge (Highway Bridges of Iowa MPS) Near Co. Rd. VV over Iowa R. Eldora City, 98000527

PENNSYLVANIA

Lehigh County

Lehigh County Prison 4th and Linden Sts. Allentown, 81000549

[FR Doc. 98–21431 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Arizona Project, Hayden-Rhodes Aqueduct Reach 11 Recreation Master Plan, Phoenix, AZ

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) plans to prepare a draft environmental impact statement (EIS) on the proposed implementation of the Reach 11 Recreation Master Plan. The Master Plan will be prepared concurrently with the EIS. The purpose of the recreation master planning process is to identify and plan for the community's recreation needs within the flood detention basin of the Central Arizona Project's (CAP) Hayden-Rhodes Aqueduct Reach 11 area. The EIS will address environmental consequences of implementing recreational development alternatives proposed and considered during the master planning process.

A public scoping meeting will be held to receive comments from affected and/or interested agencies and the general public on the environmental impacts, concerns, and issues that should be addressed during the master planning process and in the EIS.

DATES: The public meeting will be held on September 10, 1998, from 6:30 to 8:30 p.m. To ensure consideration in the preparation of the draft EIS, written comments must be received by November 6, 1998. The draft EIS is expected to be available for review and comment by August 1999.

ADDRESSES: The public meeting will be held at the Paradise Valley Community Center, 17402 North 40th Street (at Bell Road), Phoenix, Arizona. Written comments should be sent to Ms. Sandra Eto, Environmental Protection Specialist, Bureau of Reclamation, Phoenix Area Office (mail code PXAO–1500), P.O. Box 81169, Phoenix, Arizona 85069–1169.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Eto at (602) 216–3857.

SUPPLEMENTARY INFORMATION:

Background

The Colorado River Basin Project Act of 1968 authorized the Secretary of the Interior, acting through Reclamation, to construct the CAP. As part of the CAP canal, a flood-retention dike and the Paradise Valley Flood Detention Basin were constructed to provide flood water protection for the CAP canal and adjacent communities. Flood protection, therefore, is the primary purpose of the Basin. In December 1986, Reclamation and the city of Phoenix entered into a land-use agreement under which approximately 1,500 acres within the Paradise Valley Flood Detention Basin are managed by the City of Phoenix's Parks, Recreation, and Library Department (PRLD) for recreational purposes. This area is located between Cave Creek and Scottsdale roads north of the CAP canal, and is commonly known as the Reach 11 Recreation Area.

PRLD's responsibilities include the planning, design, operation, and maintenance of the Reach's recreational developments, although Reclamation retains ownership of the land. A conceptual recreation plan, developed in 1974 as part of the plans for the CAP Reach 11 area, was accepted by Reclamation in 1975. The PRLD updated the 1975 conceptual plan in 1985; this revised conceptual plan was adopted by the Phoenix Parks and Recreation Board in January 1987. Revisions were made to the adopted 1987 master plan in 1995. An equestrian facility and nature trail have been developed within the Reach; no other developments identified in either plan adopted by the Phoenix Parks and Recreation Board have been approved for implementation by Reclamation.

Rapid residential development has occurred south of the Reach, and most of the land to the north is owned by the State of Arizona and private landowners. Given the planned construction of a major freeway and population growth projections for this area, it is anticipated the Reach will become increasingly important in providing open space and recreational opportunities. In 1995, the city of Phoenix and Reclamation recognized that a comprehensive planning effort (i.e., an updated recreational master plan developed with input from the community) would better facilitate future recreational development and use of the entire Reach 11 Recreation Area.

Public Meetings and Written Comments

The scoping process for the EIS and the master plan will consist of a community open house/public meeting (see **DATES** and **ADDRESSES** sections), and community leader and interest group interviews. Thus far, anticipated environmental issues include differing impacts of passive versus active (i.e., developed) recreation; water quality; and the potential for developed wetlands. Three additional open houses will be held at key milestones throughout the master planning and environmental impact analysis process.

Comments regarding the proposed action are welcome at the open house/public meeting. All public input received by Reclamation as a result of previous public involvement related to the Reach will automatically be considered in the preparation of the draft EIS.

If you would like to be placed on the mailing list to receive future information, please contact Ms. Sandra Eto.

Note: Hearing impaired, visually impaired, and/or mobility impaired persons planning to attend this meeting may arrange for necessary accommodations by calling Ms. Kristin Darr, Dames & Moore at 602–861–7476, or faxogram 602–861–7431, no later than August 31, 1998.

Dated: August 5, 1998.

Robert W. Johnson,

Regional Director.

[FR Doc. 98–21435 Filed 8–10–98; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree was lodged in *United States* v. *Acadiana Treatment Systems, Inc.,* Civil Action No. 6:98CV0687 (W.D. La.), on July 24, 1998, with the United States District Court for the Western District of Louisiana.

Johnson Properties, Inc. and its subsidiaries own and operate more than 170 sewage treatment plants located throughout the state of Louisiana. The United States' Complaint was brought pursuant to Section 309(b), of the Clean Water Act, 33 U.S.C. 1319(b), for injunctive relief and civil penalties for discharge of pollutants into the navigable waters of the United States in violation of Section 301 of the Clean Water Act, 33 U.S.C. 1311, and for violations of certain terms, conditions and limitations of National Pollutant Discharge Elimination System (NPDES) permits issued to Defendants pursuant to Section 402 of the Clean Water Act, 33 U.S.C. 1342. The United States filed an Amended Complaint and a Second Amended Complaint to include all of the subsidiaries of Johnson Properties, Inc., Glenn K. Johnson, and Darren K. Johnson as defendants in this action. The Louisiana Department of Environmental Quality (LDEQ) filed a Complaint in Intervention as a plaintiff in these proceedings.

The United States and LDEQ have entered into a consent decree with the defendants in this action that resolves the claims for injunctive relief asserted by the United States and LDEQ against the defendants. Under the Consent Decree the defendants must implement specific compliance measures at all the sewage treatment plants that they own and operate in Louisiana. The consent decree also provides that the defendants must hire an environmental auditor to assess and monitor compliance at the sewage treatment plants for a period of five years. The consent decree does not settle the penalties portion of the case, and it expressly reserves to the United States and to LDEQ the right to seek civil penalties for the violations alleged in the second amended compliant at any time in the future.

The Department of Justice will receive, for a period of 30 days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Acadiana Treatment Systems, Inc.,* DOJ Ref. #90–5–1–1–4375.

The proposed consent decree may be examined at the office of the United States Attorney, Western District of Louisiana, First National Bank Tower, 600 Jefferson Street, Suite 1000, Lafayette, Louisiana 70501–7206, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. To request a copy of the consent decree in *United States* v. *Acadiana Treatment Systems, Inc.,* Civil Action No. 6:98CV0687 (W.D. La.), please refer to that case title, and DOJ No. 90–5–1–1–4375, and enclose a check for the amount of $11.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21499 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Clean Air Act Civil Enforcement Action

In accordance with the Department Policy, 28 CFR 50.7, notice is hereby given that a conset Decree in *United States and Commonwealth of Pennsylvania* v. *Celotex Corporation,* Civil Action No. 4CV–97–0256, was lodged with the United States District Court for the Middle District of Pennsylvania on July 30, 1998. The United States filed a complaint on Febuary 20, 1997, against Celotex, alleging violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.,* occurring at Celotex's fiberboard manufacturing facility located in Sunbury, Pennsylvania. The United States' compaint alleged that Celotex violated the Clean Air Act by emitting air pollutants in excess of the standards for visible emissions and fugitive emissions established in the federally-approved and federally-enforceable Pennsylvania State Implementation Plan (''SIP''). The Commonwealth of Pennsylvania intervened in the action filed by the United States, alleging the same violations.

The proposed Consent Decree resolves Celotex's liability to the United States and the Commonwealth of Pennsylvania for violations alleged in the complaints. The Decree requires Celotex to: (1) make modifications to and install air pollution control equipment at its Sunbury facility; (2) comply with the fugitive and visible emissions provisions of the Pennsylvania SIP; and (3) pay a civil penalty of $200,000 to the United States and $200,000 to the Commonwealth of Pennsylvania.

The Department of Justice will accept written comments on the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611; Ben Frankin station, Washington, D.C. 22044 and refer to *United States and Commonwealth of Pennsylvania* v. *Celotex Corporation,* DOJ No. 90–5–2–1–2112.

Copies of the proposed Consent Decree may be examined at the office of the United States Attorney, Middle District of Pennsylvania, Federal Building, Room 1162, 228 Walnut Street, Harrisburg, Pennsylania; Region III Office of EPA, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. When requesting a copying of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the ''Consent Decree Library'' in the amount of $12.75, and please reference DOJ No. 90–2–1–2112.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Nature Resources Division, U.S. Department of Justice.

[FR Doc. 98–21496 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Comprehensive Environmental Response, Compensation and Liability Act (CERCLA)

In accordance with Department of Justice policy, notice is hereby given that on July 15, 1998, a proposed Consent Decree in *United States* v. *Cowles Media Company, et al.,* Civil No. 4–96–958, was lodged in the United

States District Court for the District of Minnesota. The Complaint filed by the United States sought to recover costs incurred by the United States pursuant to CERCLA, 42 U.S.C. § 9601 et seq., at the Brooklyn Park Dump Site (''Site'') in Brooklyn Park, Minnesota. The Consent Decree requires Defendant, Gopher Oil Company (''Gopher''), to consent to entry of judgment for the total amount of all unreimbursed response costs incurred by the United States in connection with the Site. In addition, Gopher is required to pay the United States 90% of all insurance proceeds attributable to claims relating to the Site. The Consent Decree contains provisions relating to Gopher's receipt of insurance proceeds for the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. box 7611, Ben Franklin Station, Washington, D.C. 20044, and should refer to *United States* v. *Cowles Media Company, et al.*, D.J. Ref. No. 90–11–2–1099.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the District of Minnesota, 234 United States Courthouse, 110 S. 4th Street, Minneapolis, MN 55401 (contact Assistant United States Attorney Friedrich Siekert); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Elizabeth Murphy); and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, 202–624–0892. Copies of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, telephone (202) 624–0892. For a copy of the Consent Decree please enclose a check in the amount of $9.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

Joel M. Gross,

Section Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 98–21500 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 C.F.R. § 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Esso Virgin Islands, Inc.*, Civil No. 1998–0171 was lodged on July 24, 1998 with the United States District Court of the Virgin Islands. The complaint asserts claims against Esso Virgin Islands, Inc. (''Esso'') for its alleged violations of Sections 111(e) and 114(a) of the Clean Air Act (the ''Act''), 42 U.S.C. 7411(e) and 7414(a), at its St. Thomas, Virgin Islands bulk gasoline terminal, through multiple violations of the Standards of Performance for Bulk Gasoline Terminals, found at 40 C.F.R. 60.500 to 60.506 (''Subpart XX'').

The proposed Consent Decree provides for Esso to pay a $294,200 civil penalty. The decree also provides for Esso to: (1) minimize emissions by using only one loading arm at a time on its fuel loading rack; (2) properly operate and maintain the facility's vapor collection equipment; (3) properly load only vapor-tight gasoline tank trucks; and (4) record and maintain records of all information required under Subpart XX.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree.

Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States* v. *Esso Virgin Islands, Inc.*, U.S. DOJ No. 90–5–2–1–1846.

The proposed consent decree may be examined at the Office of the United States Attorney, 1108 King St. Suite 201, Christiansted, U.S.V.I. 00820–4951; the Region II Office of the Environmental Protection Agency, Region II Records Center, 290 Broadway, 17th Floor, New York, NY 10007–1866; and at the Consent Decree Library, 1120 G Street, NW., Fourth Floor, Washington, DC 20005, (202) 6 24–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, Fourth Floor, NW., Washington, DC 20005. In requesting a copy, please refer to the referenced case and endorse a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 98–21497 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; medical examination of aliens seeking adjustment of status.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 13, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Medical Examination of Aliens Seeking Adjustment of Status.

(3) *Agency form number, if any, and the applicable component of the*

Department of Justice sponsoring the collection: Form I–693. Examinations Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection will be used by the Service in considering eligibility for adjustment of status under sections 209, 210, 245 and 245A of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 800,000 respondents at 1.5 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 1,200,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 5, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–21426 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; visa waiver nonimmigrant arrival/departure document.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 13, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Visa Waiver Nonimmigrant Arrival/Departure Document.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–94W. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals and households. This form is used by nonimmigrant aliens applying for admission to the United States under the Visa Waiver Program (Section 217 of the Immigration and Nationality Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 4,000,000 responses at 6 minutes (.105) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 420,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 5, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–21427 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; waiver of rights, privileges, exemptions and immunities.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 13, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the

proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Waiver of Rights, Privileges, Exemptions and Immunities.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–508. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used by the Service to determine eligibility of an applicant to retain the status of alien lawfully admitted to the United States for permanent residence.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,800 responses at 5 minutes (.083) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 150 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, (202)–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 5, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–21428 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; passenger list, crew list.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 13, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Passenger List, Crew List.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–418. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is prescribed by the Attorney General for the INS for use by masters, owners or agents of vessels in complying with sections 231 and 251 of the Immigration and Nationality Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 95,000 respondents at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 95,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 5, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–21429 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Extension of Existing Collection; Comment Request

ACTION: Notice of information collection under review; immigrant petition for alien workers.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and

clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until October 13, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Workers.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–140. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is used to petition to classify a person under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Immigration and Nationality Act. The data collected on this form will be used by the Service to determine eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 186,000 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 186,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: August 5, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–21430 Filed 8–10–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

August 3, 1998.

The Department of Labor has submitted the Business-to-Business Mentoring Initiative on Child/Dependent Care information collection request and explanatory letters (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (P.L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by August 8, 1998. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd R. Owen ((202) 219–5095 x 143).

Comments and questions about the Mentoring Program should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Women's Bureau, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316). The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarification of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological, e.g., permitting submissions of responses.

Agency: Women's Bureau.

Title: Department of Labor's Business-to-Business Mentoring Initiative on Child/Dependent Care.

OMB Number: 1225-Onew.

Number of Respondents: 1,000.

Estimated Time per Response: 15 minutes for sign-up and 15 minutes for summary report.

Total Burden Hours: 500.

Frequency: One-time response and one-time follow-up.

Affected Public: Employers.

Total Burden Cost (capital/startup): $0.00.

Total Burden Cost (operating/maintaining): $0.00.

Description: The Women's Bureau, through its 10 regional offices, will provide technical assistance to businesses and other employers and facilitate a Mentoring initiative by linking employers who are willing to mentor others on cutting edge child care programs with employers that wish to receive Mentoring services. Utilizing the WB Internet website as a matching mechanism, employers willing to mentor can be located by those who need these services. A report of the program's activities will be prepared approximately one year from program implementation.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–21482 Filed 8–10–98; 8:45 am]

FILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

August 5, 1998.

The Department of Labor (DOL) has submitted the following public

information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Adjudication Determinations Activity Report.

OMB Number: 1205–0150 (extension).

Agency Numbers: ETA.

Frequency: Quarterly.

Affected Public: States.

Number of Respondents: 53.

Total Responses: 224.

Estimated Time per Respondent: Regular Reports, 244 minutes per year; Extended Benefits Report, 240 minutes per year.

Total Burden Hours: 910.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Data are used to monitor the impact of the disqualification provisions, to measure workload, and to appraise adequacy and effectiveness of State and Federal nonmonetary determination procedures.

Agency: Occupational Safety and Health Administration.

Title: 4,4-Methylenedianiline (MDA) (29 CFR 1926.60).

OMB Number: 1218–0183 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 66.

Total Responses: 2,848.

Estimated Time per Respondent: Varies from 5 minutes to maintain a record to 2 hours to monitor employee exposure.

Total Burden hours: 1,796.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $59,120.

Description The MDA standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to MDA. The standard requires that employers establish a compliance program. Also, the standard requires employers to monitor employee exposure to MDA, to provide medical surveillance, to train employees about the hazards of MDA, and to establish and maintain accurate records of employee exposure to MDA. These records are used by employees, physicians, employers, and OSHA to determine the effectiveness of the employers' compliance efforts. The standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the MDA standard.

Agency: Occupational Safety and Health Administration.

Title: 4,4–Methylenedianiline (MDA) (29 CFR 1910.50).

OMB Number: 1218–0184 (extension).

Frequency: On Occasion.

Affected Public: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 18.

Total Responses: 1,175.

Estimated Time per Respondent: Ranges from 5 minutes to maintain a record to 2 hours to monitor employee exposure.

Total Burden Hours: 722.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $26,616.

Description: The MDA standard and its information collection requirements provide protection for employees from the adverse health effects associated with occupational exposure to MDA. The standard requires that employers establish a compliance program. Also, the standard requires employers to monitor employee exposure to MDA, to provide medical surveillance, to train employees about the hazards of MDA, and to establish and maintain accurate records of employee exposure to MDA. These records are used by employees, physicians, employers, and OSHA to determine the effectiveness of the employers' compliance efforts. The standard requires that OSHA have access to various records to ensure that employers are complying with the disclosure provisions of the MDA standard.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–21483 Filed 8–10–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–33, 513]

Levi Strauss & Company; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48888). The certification was subsequently amended to include the subject firm workers at El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997, and published in the **Federal Register** on September 30, 1997 (62 FR 51155). The certification was subsequently amended to include the subject firm workers at facilities in Fayetteville and Harrison, Arkansas and the Dallas, Texas Regional Levi Strauss Office. This amendment was issued on December 9, 1997 and published in the **Federal Register** on December 18, 1997 (62 FR 66393). The certification was subsequently amended to include the subject firm workers at a facility in Miami Lakes, Florida and Temporary and contract workers at various facilities where the subject firm's workers had been previously certified eligible to apply for assistance. This amendment

was issued on April 15, 1998 and was published in the **Federal Register** on May 5, 1998 (62 FR 24826–28).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations for those workers engaged in the manufacture of Levi Strauss denims and Dockers have also occurred. Based on this new information, the Department is amending the certification to cover additional workers at the subject firm.

The intent of the Department's certification is to include all workers of Levi Strauss and Company, as well as contract workers, who were adversely affected by increased imports.

The amended notice applicable to TA–W–33,513 is hereby issued as follows:

All workers of Levi Strauss and Company at the Wichita Falls Production Plant in Wichita Falls, Texas, the McAllen Production Plant in McAllen, Texas, the Atlanta CF Regional/Sales Office in Atlanta, Georgia, the Johnson City Production Plant in Johnson City, Tennessee, and the San Francisco Office in San Francisco, California who became totally or partially separated from employment on or after May 13, 1996 through August 7, 1999 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of July, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–21486 Filed 8–10–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 199, 199A, 199B]

Sangamon, Incorporated; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Revised Determination on Reconsideration on May 5, 1998, applicable to all workers of Sangamon, Incorporated located in Taylorville, Illinois. The notice was published in the **Federal Register** on May 20, 1998 (63 FR 27750).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of everyday and seasonal cards. New information shows that worker separations occurred at the Moultrie, Georgia and Owensville, Missouri plants of Sangamon, Incorporated. The Moultrie, Georgia and Owensville, Missouri facilities processed customer orders, leafing, die-cutting and embossing for the Sangamon, Incorporated production facility in Taylorville, Illinois.

The intent of the Department's certification is to include all workers of Sangamon, Incorporated who were adversely affected by increased imports. Accordingly, the Department is amending the certification to cover the workers of Sangamon, Incorporated, Moultrie, Georgia and Owensville, Missouri.

The amended notice applicable to TA–W–34,199 is hereby issued as follows:

All workers of Sangamon, Incorporated, Taylorville, Illinois (TA–W–34,199), Moultrie, Georgia (TA–W–34,199A) and Owensville, Missouri (TA–W–34,199B) who became totally or partially separated from employment on or after January 22, 1997 through May 5, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 31st day of July, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–21485 Filed 8–10–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–1807]

Levi Strauss & Company; Amended Certification Regarding Eligibility To Apply for NAFTA–Transitional Adjustment Assistance

TEXAS
- NAFTA–1807AC, Wichita Falls Production Plant, 2720 Market Street, Wichita Falls, Texas 76303
- NAFTA–1807AD, McAllen Production Plant, 2200 Industrial Drive, McAllen, Texas 78504

GEORGIA
- NAFTA–1807AE, Atlanta CF Regional/ Sales Office, 1117 Perimeter Center West, Suite W–200, Atlanta, Georgia 30338

TENNESSEE
- NAFTA–1807AF, Johnson City Production Plant, 608 Rolling Hills Drive, P.O. Box 1236, Johnson City, Tennessee 37605

CALIFORNIA
- NAFTA–1807AG, San Francisco Office, 1155 Battery Street, San Francisco, California 94111

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), the Department of Labor issued a Certificate of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 17, 1997 (62 FR 48889). The certification was subsequently amended to include the subject firm workers at the El Paso Field Headquarters in El Paso, Texas. The amendment was issued on September 14, 1997 and published in the **Federal Register** on September 30, 1997 (62 FR 51161). The certification was subsequently amended to include the subject firm workers at facilities in Fayetteville and Harrison, Arkansas and the Dallas, Texas Regional Levi Strauss Office. This amendment was issued on December 9, 1997 and published in the **Federal Register** on December 19, 1997 (62 FR 66393). The certification was subsequently amended to include the subject firm workers at a facility in Miami Lakes, Florida and temporary and contract workers at various facilities where the subject firm's workers had been previously certified eligible to apply for assistance. This amendment was issued on April 15, 1998 and will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information received by the company shows that worker separations for those workers engaged in the manufacture of Levi Strauss denims and Dockers have also occurred. Based on this new information, the Department is amending the certification to cover additional workers at the subject firm.

The intent of the Department's certification is to include all workers of Levi Strauss and Company, including contract workers, who were adversely affected by increased imports from Mexico.

The amended notice applicable to NAFTA–01807 is hereby issued as follows:

All workers of Levi Strauss and Company at the Wichita Falls Production Plant in Wichita Falls, Texas, the McAllen Production Plant in McAllen, Texas, the Atlanta CF Regional/Sales Office in Atlanta, Georgia, the Johnson City Production Plant in Johnson City, Tennessee, and the San Francisco Office in San Francisco, California who became totally or partially separated from employment on or after July 9, 1996 through August 7, 1999 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed in Washington, DC this 30th day of July, 1998.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 98–21484 Filed 8–10–98; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–103]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before September 10, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Property Management and Controls, Grants.

OMB Number: 2700–0047.

Type of review: Extension.

Need and Uses: Collection is required to ensure proper accounting of Federal property provided under grants and cooperative agreements with institutions of higher education and to satisfy external requirements of internal control of property provided by NASA or acquired with NASA funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.

Responses Per Respondent: 4.

Annual Responses: 28,596.

Hours Per Request: 4½ hrs.

Annual Burden Hours: 128,682.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–21536 Filed 8–10–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–104]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before September 10, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Financial monitoring and control, grants.

OMB Number: 2700–0049.

Type of review: Extension.

Need and Uses: Information is used by NASA to effectively maintain an appropriate internal control system for grants and cooperative agreements with institutions of higher education and other non-profit organizations, and to comply with statutory requirments on the accountability of public funds.

Affected Public: Not-for-profit institutions.

Number of Respondents: 7,149.

Responses Per Respondent: 5.

Annual Responses: 37,696.

Hours Per Request: 7½ hrs.

Annual Burden Hours: 284,792.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–21537 Filed 8–10–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–105]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before September 10, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: Contract modifications, NASA FAR Supplement Part 18–43.

OMB Number: 2700–0054.

Type of review: Extension.

Need and Uses: NASA procurement and technical personnel use the information to manage the contract, incorporate more economical methods, and to ensure that the deliverable meet NASA's needs.

Affected Public: Business or other for-profit, not-for-profit institutions.

Number of Respondents: 88.

Responses Per Respondent: 2.

Annual Responses: 176.

Hours Per Request: 48.

Annual Burden Hours: 8,448.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–21538 Filed 8–10–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION AGENCY

[Notice 98–106]

Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of agency report forms under OMB review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before September 10, 1998.

ADDRESSES: All comments should be addressed to Mr. Richard Kall, Code HK,

National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: NASA Acquisition Process Reports required under contracts with a value less than 500k.

OMB Number: 2700–0088.

Type of Review: Extension.

Need and Uses: Information is used by NASA procurement and technical personnel in the management of contracts; evaluate contractor management systems; ensure compliance with mandatory public policy provisions; evaluate and control costs charged against contracts; detect and minimize conditions conductive to fraud, waste and abuse; to form a database for general overview reports to the Congressional and Executive Branches.

Affected Public: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Government.

Number of Respondents: 1,282.

Responses Per Respondent: 30.

Annual Responses: 38,460.

Hours Per Request: 27½ hrs.

Annual Burden Hours: 1,065,600.

Frequency of Report: On occasion.

Donald J. Andreotta,

Deputy Chief Information Officer (Operations), Office of the Administrator.

[FR Doc. 98–21539 Filed 8–10–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of currently approved information collections used by researchers for submitting requests for copies of pages of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records that are in the National Archives of the United States. The public is invited to comment on the proposed information collections pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collections and supporting statements should be directed to Tamee Fechhelm at telephone number 301–713–6730, ext. 226, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collections are necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collections; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collections:

Title: National Archives Order for Copies of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records.

OMB number: 3095–0032.

Agency form numbers: NATF Forms 85 and 86.

Type of review: Regular.

Affected public: Individuals who wish to order copies of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records in the National Archives of the United States.

Estimated number of respondents: 105,000.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent wishes to search for or order copies of Pension, Bounty Land Warrant Application files, and pre-WWI Military Service records).

Estimated total annual burden hours: 17,500.

Abstract: The NATF forms 85 and 86 replace the currently used NATF form 80, National Archives Order for Copies of Veterans Records. The NATF form 85 will be used by researchers to request that NARA search for and make copies of pages from pension and bounty land warrant application files in the custody of the National Archives. The NATF form 86 will be used by researchers to request that NARA search for and make copies of pages of military service records from the pre-WWI (pre-1917) time period. Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 52,000 per year for the NATF 85 and approximately 53,000 per year for the NATF 86 and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. NARA is working towards accepting electronic submission of requests and we intend to address security of financial information and other issues as we continue our efforts to increase electronic access to NARA and its holdings.

Dated: August 5, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–21544 Filed 8–10–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used by participants in training courses and workshops that the National Archives and Records Administration (NARA) conducts. NARA needs the information to assess customer satisfaction with course content and delivery and to ensure that the training meets the customer's needs. The public is invited to comment on the proposed

information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives and Records Administration Class Evaluation Forms.

OMB number: 3095–0023.

Agency form number: NA Forms 2019A, 2019B, 2019C, and 2019D.

Type of review: Regular.

Affected public: Individuals or households, Business or other for-profit, Nonprofit organizations and institutions, Federal, state, local, or tribal government agencies.

Estimated number of respondents: 6,744.

Estimated time per response: 5 minutes.

Frequency of response: On occasion (when respondent takes NARA sponsored training classes).

Estimated total annual burden hours: 562 hours.

Abstract: The information collection allows uniform measurement of customer satisfaction with NARA training. NARA distributes the approved forms to the course coordinators on diskette for customization of selected elements, shown as shaded areas on the forms submitted for clearance. NARA Form 2019A is used for courses having a single instructor; Form 2019B is used for courses with two instructors team-teaching, as is common in records management classes; and Form 2019C is used for one-day courses with several topics that are taught by different instructors or speakers, as is common with some archival and genealogical workshops. These forms are distributed at the end of the class for completion before the participant leaves. NARA Form 2019D is used for courses held on multiple days with a variety of speakers or instructors; this class format is used in the twice yearly Modern Archives Institute and some genealogical courses. For these courses, the daily evaluation form (NARA Form 2019D front) is distributed on a daily basis so the student may provide a rating while the experience with the material and instructor is fresh. The overall evaluation (NARA Form 2019D back) is distributed at the end of the class. The enclosed ''Use of NARA Class Evaluation Form'' instructions identify the degree of customization allowed on the forms.

Dated: August 5, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–21546 Filed 8–10–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency proposes to request extension of a currently approved information collection used by individuals applying for a research card which is needed to use original archival records in a National Archives and Records Administration (NARA) facility. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 3200, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740–6001; or faxed to 301–713–6913; or electronically mailed to tamee.fechhelm@arch2.nara.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730, or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Researcher Application

OMB number: 3095–0016

Agency form number: NA Forms 14003 and 14003A

Type of review: Regular.

Affected public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal, State, Local or Tribal Government.

Estimated number of respondents: 21,876.

Estimated time per response: 8 minutes.

Frequency of response: On occasion.

Estimated total annual burden hours: 2,917 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.6. The collection is an application for a research card. Respondents are individuals who wish to use original archival records in a NARA facility.

NARA uses the information to screen individuals, to identify which types of records they should use, and to allow further contact.

Dated: August 5, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–21547 Filed 8–10–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 10, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 27, 1998 (63 FR 29036 and 29037). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Archives Order for Copies of Ship Passenger Arrival Records, National Archives Order for Copies of Census Records, and National Archives Order for Copies of Eastern Cherokee Applications.

OMB number: 3095–0027.

Agency form numbers: NATF Forms 81, 82, and 83.

Type of review: Regular.

Affected public: Individuals who wish to order copies of Ship Passenger Arrival Records, Federal population census schedules through the 1920 census, and Eastern Cherokee Applications of the U.S. Court of Claims, 1906–1909, in the National Archives of the United States.

Estimated number of respondents: 12,000.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent wishes to search for or order copies of Ship Passenger Arrival Records, Federal population census schedules through the 1920 census, and Eastern Cherokee Applications from the U.S. Court of Claims, 1906–1909).

Estimated total annual burden hours: 2,000.

Abstract: The NATF form 81 will be used by researchers to request that NARA search for and make copies of pages from passenger arrival lists in the custody of the National Archives. The NATF form 82 will be used by researchers to request that NARA search for and make copies of pages of Federal population census schedules through the 1920 census. The NATF form 83 will be used by researchers to request that NARA search for and make copies of Eastern Cherokee applications of the U.S. Court of Claims, 1906–1909. Submission of requests on a form is necessary to handle in a timely fashion the volume of requests received for these records (approximately 10,000 per year for the NATF 81, approximately 1,400 per year for the NATF 82, and approximately 600 per year for the NATF 83) and the need to obtain specific information from the researcher to search for the records sought. The form will be printed on carbonless paper as a multi-part form to allow the researcher to retain a copy of his request and NARA to respond to the researcher on the results of the search or to bill for copies if the researcher wishes to order the copies. As a convenience, the form will allow researchers to provide credit card information to authorize billing and expedited mailing of the copies. NARA is not able at present to accept electronic submission of requests; however, we intend to address security of financial information and other issues as we continue our efforts to increase electronic access to NARA and its holdings.

Dated: August 5, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–21543 Filed 8–10–98; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA)

ACTION: Notice

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before September 10, 1998 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Ms. Maya Bernstein, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on May 26, 1998 (63 FR 28525). No comments were received. NARA has

submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: Item Approval Request List.

OMB number: 3095–0025

Agency form number: NA Form 14110 and 14110A

Type of review: Regular.

Affected public: Business or for-profit, nonprofit organizations and institutions, federal, state and local government agencies, and individuals or households.

Estimated number of respondents: 1,550.

Estimated time per response: 15 minutes.

Frequency of response: On occasion (when respondent requests copies of motion picture, audio, and video holdings from NARA).

Estimated total annual burden hours: 388 hours.

Abstract: The information collection is prescribed by 36 CFR 1254.72. The collection is prepared by researchers who cannot visit the appropriate NARA research room or who request copies of records as a result of visiting a research room. NARA offers limited provisions to obtain copies of records by mail and requires requests to be made on prescribed forms for certain bodies of records. NARA uses the Item Approval Request List form to track reproduction requests and to provide information for customers and vendors.

Dated: August 5, 1998.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 98–21545 Filed 8–10–98; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: 10 CFR Part 73—Physical Protection of Plants and Materials.

3. How often the collection is required: On occasion. Required reports are submitted and evaluated as events occur.

4. Who will be required or asked to report: Persons who possess, use, import, export, transport, or deliver to a carrier for transport, special nuclear material.

5. The number of annual responses: 68,641.

6. The number of hours needed annually to complete the requirement or request: The industry total burden is 410,494 hours annually (43,134.5 hours for reporting and 367,359.8 hours for recordkeeping).

7. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

8. Abstract: NRC regulations in 10 CFR Part 73 prescribe requirements for establishment and maintenance of a physical protection system with capabilities for protection of special nuclear material at fixed sites and in transit and of plants in which special nuclear material is used. The information in the reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of special nuclear material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by September 10, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150–0002), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 4th day of August, 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–21462 Filed 8–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation, Oconee Nuclear Station Units 1, 2, and 3; Notice of Acceptance for Docketing of the Application and Notice of Opportunity for a Hearing Regarding Renewal of Licenses Nos. DPR–38, DPR–47, and DPR–55 for an Additional 20-Year Period

The U.S. Nuclear Regulatory Commission (the Commission) is considering the renewal of operating license Nos. DPR–38, DPR–47 and DPR–55, which authorize the Duke Energy Corporation (Duke), the applicant, to operate its Oconee Nuclear Station (ONS) Units 1, 2, and 3 at 2568 megawatts thermal. The renewed licenses would authorize the applicant to operate ONS Units 1, 2, and, 3 for an additional 20 years beyond the current 40-year period. The current operating licenses for the ONS Units 1, 2, and 3 expire on February 6, 2013, October 6, 2013, and July 19, 2014, respectively.

Duke submitted an application to renew the operating licenses for its ONS units by letter dated July 6, 1998. A Notice of Receipt of Application, ''Duke Energy Corporation, Oconee Nuclear Station Units 1, 2, and 3, Notice of Receipt of Application for Renewal of Facility Operating Licenses Nos. DPR–38, DPR–47, and DPR–55, for an Additional 20 Year Period,'' was

published in the **Federal Register** on July 14, 1998, (63 FR 37909).

The Commission's staff has determined that Duke has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current docket nos. 50–269, 50–270, and 50–287 for License Nos. DPR–38, DPR–47, and DPR–55, respectively, will be retained. If the Commission determines that new license or docket numbers are necessary, any such changes will be published in a subsequent **Federal Register** notice. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Prior to issuance of the requested license renewals, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license based upon its review and findings that actions have been identified and have been or will be taken with respect to (1) Managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified to require aging management review and (2) time-limited aging analyses that have been identified to require review such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations. Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement which is a supplement to the Commission's NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants'' (May 1996). Pursuant to 10 CFR 51.26, as part of the environmental scoping process, the staff intends to hold a public scoping meeting. The details of the public scoping meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and schedule for conducting the review. The Commission will provide prior notice for these meetings. As discussed further below, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

By September 10, 1998, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the license renewals in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037 and at the Local Public Document Room for the ONS Units 1, 2, and 3 located in the Oconee County Library, 501 West South Broad Street, Walhalla, SC 29691. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Part 54 and Part 51, renew the licenses without further notice.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters which may be considered pursuant to 10 CFR Parts 54 and 51. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, 20037 by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Paul R. Newton, Esquire, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the

Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found under the nuclear reactors icon of the NRC's web page, http://www.nrc.gov.

A copy of the application to renew the ONS Units 1, 2, and 3 licenses is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037, and the Local Public Document Room for the ONS Units 1, 2, and 3 located in the Oconee County Library, 501 West South Broad Street, Walhalla, SC 29691.

Dated at Rockville, Maryland, this 5th day of August 1998.

For the Nuclear Regulatory Commission.

Christopher I. Grimes,

Director, License Renewal Project Directorate, Division of Reactor Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–21463 Filed 8–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681–MLA–4 ASLBP No. 98–748–03–MLA]

International Uranium (USA) Corporation Designation of Presiding Officer

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.1207 of the Commission's Regulations, a single member of the Atomic Safety and Licensing Board Panel is hereby designated to rule on petitions for leave to intervene and/or requests for hearing and, if necessary, to serve as the Presiding Officer to conduct an informal adjudicatory hearing in the following proceeding.

International Uranium (USA) Corporation (IUSA) (Request for Material License Amendment)

The hearing, if granted, will be conducted pursuant to 10 C.F.R. Subpart L of the Commission's Regulations, ''Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings.'' This proceeding concerns a request for hearing by Envirocare of Utah, Inc. and the State of Utah with respect to NRC's approval of a license amendment which allows IUSA to receive uranium bearing material from the Ashland 2 Formerly Utilized Sites Remedial Action Program site near Tonawanda, New York.

The Presiding Officer in this proceeding is Administrative Judge Peter B. Bloch. Pursuant to the provisions of 10 CFR § 2.722, Administrative Judge Richard F. Cole has been appointed to assist the Presiding Officer in taking evidence and in preparing a suitable record for review.

All correspondence, documents and other materials shall be filed with Judge Bloch and Judge Cole in accordance with CFR § 2.701. Their addresses are:

Administrative Judge Peter B. Bloch, Presiding Officer, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Administrative Judge Richard F. Cole Special Assistant, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555

Issued at Rockville, Maryland, this 4th day of August 1998.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 98–21461 Filed 8–10–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7002]

Notice of Amendment to Certificate of Compliance GDP–2 For The U.S. Enrichment Corporation, Portsmouth Gaseous Diffusion Plant; Portsmouth, OH

The Director, Office of Nuclear Material Safety and Safeguards, has made a determination that the following amendment request is not significant in accordance with 10 CFR 76.45. In making that determination, the staff concluded that: (1) there is no change in the types or significant increase in the amounts of any effluents that may be released offsite; (2) there is no significant increase in individual or cumulative occupational radiation exposure; (3) there is no significant construction impact; (4) there is no significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents; (5) the proposed changes do not result in the possibility of a new or different kind of accident; (6) there is no significant reduction in any margin of safety; and (7) the proposed changes will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs. The basis for this determination for the amendment request is described below.

The NRC staff has reviewed the certificate amendment application and concluded that it provides reasonable assurance of adequate safety, safeguards, and security and compliance with NRC requirements. Therefore, the Director, Office of Nuclear Material Safety and Safeguards, is prepared to issue an amendment to the Certificate of Compliance for the Portsmouth Gaseous Diffusion Plant (PORTS). The staff has prepared a Compliance Evaluation Report which provides details of the staff's evaluation. The NRC staff has determined that this amendment satisfies the criteria for a categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for this amendment.

USEC or any person whose interest may be affected may file a petition, not exceeding 30 pages, requesting review of the Director's Decision. The petition must be filed with the Commission not later than 15 days after publication of this **Federal Register** Notice. A petition for review of the Director's Decision shall set forth with particularity the interest of the petitioner and how that interest may be affected by the results of the decision. The petition should specifically explain the reasons why review of the Decision should be permitted with particular reference to the following factors: (1) the interest of the petitioner; (2) how that interest may be affected by the Decision, including the reasons why the petitioner should be permitted a review of the Decision; and (3) the petitioner's areas of concern about the activity that is the subject matter of the Decision. Any person described in this paragraph (USEC or any person who filed a petition) may file a response to any petition for review, not to exceed 30 pages, within 10 days after filing of the petition. If no petition is received within the designated 15-day period, the Director will issue the final amendment to the Certificate of Compliance without further delay. If a petition for review is received, the decision on the amendment application will become final in 60 days, unless the Commission grants the petition for review or otherwise acts within 60 days after publication of this **Federal Register** Notice.

A petition for review must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission,

Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, by the above date.

For further details with respect to the action see: (1) the application for amendment and (2) the Commission's Compliance Evaluation Report. These items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the Local Public Document Room.

Date of amendment request: June 11, 1998.

Brief description of amendment: The United States Enrichment Corporation (USEC) submitted a certificate amendment request for the Portsmouth Gaseous Diffusion Plant (PORTS) to delete the requirement in The Plan for Achieving Compliance with NRC Regulations at the Portsmouth Gaseous Diffusion Plant (Compliance Plan) Issue 11, Plan of Action and Schedule, to install evacuation horns/lights in the X–744H warehouse and to tie them to the X–744G warehouse Criticality Accident Alarm System (CAAS). Prior to requesting approval from the NRC for changes to the Plan of Action and Schedule section of the Compliance Plan, USEC is required to obtain the Department of Energy's (DOE's) approval. As such, USEC in a letter dated May 7, 1998, requested DOE approval of the change. DOE's approval was granted on May 29, 1998.

Issue 11 of the Compliance Plan was originally developed by DOE to ensure that workers in X–744H would be alerted immediately if an inadvertent criticality occurred in X–744H. The criticality in X–744H would be detected by the CAAS cluster of instruments located in X–744G which is about 300 feet from X–744H. However, recent operational changes, which includes the transfer of fissile material operations (FMOs) of concern from X–744H to another facility which is already covered by a CAAS, and the intrinsic nature of the residual contaminated material stored in X–744H, do not warrant CAAS coverage for X–744H, since a criticality accident in this facility is not credible.

Basis for Finding of No Significance

1. The proposed amendment will not result in a change in the types or significant increase in the amounts of any effluents that may be released offsite.

This amendment deletes the Compliance Plan requirement to install criticality alarms (horns/lights) in X–744H and to tie them to the existing X–744G CAAS. It does not involve systems that are used to prevent or mitigate effluents that may be released offsite. Therefore, this amendment will not result in a significant change in the types or significant increase in the amounts of any effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

This amendment deletes the Compliance Plan requirement to install criticality alarms (horns/lights) in X–744H and to tie them to the existing X–744G CAAS. This requirement was included in the Compliance Plan before certification to ensure that workers in X–744H would be alerted immediately if an inadvertent criticality occurred in X–744H. However, since that time, USEC has transferred the FMOs of concern to another facility covered by a CAAS thus reducing the likelihood of a criticality in X–744H to insignificant levels. In addition, the X–744H facility is more than 200 feet from the nearest FMO of concern which places it outside the range of significant criticality doses. Therefore, not requiring CAAS coverage for this amendment would not adversely affect criticality safety for X–744H. For these reasons, the proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposures.

3. The proposed amendment will not result in a significant construction impact.

The proposed amendment does not involve any construction, therefore, there will be no construction impacts.

4. The proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

For the reasons provided in the assessment of criterion 2, the proposed amendment will not result in a significant increase in the potential for, or radiological or chemical consequences from, previously analyzed accidents.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

For the reasons provided in the assessment of criterion 2, the proposed amendment will not result in new or different kinds of accidents.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

For the reasons provided in the assessment of criterion 2, the proposed amendment will not result in a significant reduction in any margin of safety.

7. The proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety, safeguards, or security programs.

For the reasons provided in the assessment of criterion 2, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safety program.

The staff has not identified any safeguards or security related implications from the proposed amendment. Therefore, the proposed amendment will not result in an overall decrease in the effectiveness of the plant's safeguards or security programs.

Effective date: The amendment to GDP–2 will become effective five (5) days after issuance by NRC.

Certificate of Compliance No. GDP–2: Amendment will revise PORTS Compliance Plan Issue 11.

Local Public Document Room location: Portsmouth Public Library, 1220 Gallia Street, Portsmouth, Ohio 45662.

Dated at Rockville, Maryland, this 31st day of July 1998.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Acting Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–21548 Filed 8–10–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Liability for Termination of Single-Employer Plans

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Employer Liability (29 CFR Part 4062) (OMB control number 1212–0017). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 10, 1998.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of

Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC, 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4062 of the Employee Retirement Income Security Act of 1974 provides that the contributing sponsor of a single-employer pension plan and members of the sponsor's controlled group (''the employer'') incur liability (''employer liability'') if the plan terminates with assets insufficient to pay benefit liabilities under the plan. The PBGC's statutory lien for employer liability and the payment terms for employer liability are affected by whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

Section 4062.6 of the PBGC's employer liability regulation (29 CFR 4062.6) requires a contributing sponsor or member of the contributing sponsor's controlled group who believes employer liability upon plan termination exceeds 30 percent of the employer's net worth to so notify the PBGC and to submit net worth information. This information is necessary to enable the PBGC to determine whether and to what extent employer liability exceeds 30 percent of the employer's net worth.

The collection of information under the regulation has been approved by OMB under control number 1212–0017. The PBGC is requesting that OMB extend its approval for three years.

The PBGC estimates that an average of 13 contributing sponsors or controlled group members per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 12 hours and $1,800 per respondent, with an average total annual burden of 156 hours and $23,400.

Issued in Washington, DC, this 5th day of August, 1998.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–21504 Filed 8–10–98; 8:45 am]

BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Disclosure to Participants

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (''PBGC'') is requesting that the Office of Management and Budget (''OMB'') extend approval, under the Paperwork Reduction Act, of a collection of information in its regulation on Disclosure to Participants (29 CFR Part 4011) (OMB control number 1212–0050). This notice informs the public of the PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by September 10, 1998.

ADDRESSES: Comments should be mailed to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, Washington, DC 20503. Copies of the request for extension (including the collection of information) are available from the Communications and Public Affairs Department of the Pension Benefit Guaranty Corporation, suite 240, 1200 K Street, NW., Washington, DC, 20005–4026, between 9 a.m. and 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: Section 4011 of the Employee Retirement Income Security Act of 1974 requires plan administrators of certain underfunded single-employer pension plans to provide an annual notice to plan participants and beneficiaries of the plan's funding status and the limits on the PBGC's guarantee.

The PBGC's regulation implementing this provision (29 CFR Part 4011) prescribes which plans are subject to the notice requirement, who is entitled to receive the notice, and the time, form, and manner of issuance of the notice. The notice provides recipients with meaningful, understandable, and timely information that will help them become better informed about their plans and assist them in their financial planning. (The regulation may be accessed on the PBGC's home page at http://www.pbgc.gov.)

The collection of information under the regulation has been approved by OMB under control number 1212–0050. The PBGC is requesting that OMB extend its approval for three years.

The PBGC estimates that an average of 3,500 plans per year will respond to this collection of information. The PBGC further estimates that the average annual burden of this collection of information will be 1.97 hours and $74 per plan, with an average total annual burden of 6,904 hours and $258,900.

Issued in Washington, DC, this 5th day of August, 1998.

Stuart A. Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 98–21505 Filed 8–10–98; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Thursday, August 12, 1998
Thursday, August 27, 1998

The meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing

Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: August 5, 1998.

Phyllis G. Heuerman,

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–21456 Filed 8–10–98; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, August 13, 1998 has been canceled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: August 4, 1998

Phyllis G. Heuerman.

Acting Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 98–21457 Filed 8–10–98; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and Purpose of information collection: Supplemental Information on Accident and Insurance; OMB 3220–0036 Under Section 12(o) of the Railroad Unemployment Insurance Act (RUIA), the Railroad Retirement Board is entitled to reimbursement of the sickness benefits paid to a railroad employee if the employee receives a sum or damages for the same infirmity for which the benefits are paid. Section 2(f) of the RUIA requires employers to reimburse the RRB for days in which salary, wages, pay for time lost or other renumeration is later determined to be payable. Reimbursements under section 2(f) generally result from the award of pay for time lost or the payment of guaranteed wages. The RUIA prescribes that the amount of benefits paid be deducted and held by the employer in a special fund for reimbursement to the RRB.

The RRB currently utilizes Form (s) SI–1c, *Supplemental Information on Accident and Insurance),* SI–5 (Report of payments to Employee Claiming Sickness Benefits Under the RUIA), ID–3s *(Request for Lien Information),* ID–3u *(Request for Section 2(f) Information),* ID–30k *(Form Letter Asking Claimant for Additional Information on Injury or Illness),* ID–30k–1 *(Request for Supplemental Information on Injury or Illness-3rd Party),* and ID–3-Q *(Insurance Inquiry)* to obtain the necessary information from claimants and railroad employers.

Minor formatting and editorial changes which include the addition of language required by the Paperwork Reduction Act of 1995 are proposed to Forms SI–1c and Form SI–5. Forms ID–3s and ID–3U are being revised to insert completion instructions and the Paperwork Reduction Act notice to the reverse side of the form. The RRB proposes the creation of a new form, Form ID–3s–1, *Request for Lien Information,* which is similar to Form ID–3s but has been designed for use by an attorney and/or insurer responsible for paying personal-injury damages to the railroad employee for third party liability cases. Enhancements are also being proposed to Forms ID–30k and ID–30k–1 which will, upon OMB approval, allow for the obsolescence of Form ID–3-0Q. Completion is required to obtain benefits. One response is requested of each respondent.

Estimate of Annual Respondent burden

The estimated annual respondent burden for this collection is as follows:

Form Nos.	Annual responses	Time (min)	Burden (hrs)
SI–1c	3,200	5	267
SI–5	2,500	5	208
ID–3s	18,500	3	925
ID–3s.1	500	3	25

Form Nos.	Annual responses	Time (min)	Burden (hrs)
ID–3u	1,500	3	75
ID–30k	2,500	5	208
ID–30k.1	2,000	5	167
Total	30,700		1,875

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 98–21396 Filed 8–10–98; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40306]

Alternative Dispute Resolution Policy Statement

AGENCY: Securities and Exchange Commission.

ACTION: Final statement of policy.

SUMMARY: Consistent with the Administrative Dispute Resolution Act of 1996, the recommendations of the National Performance Review, and Executive Order 12988, the Securities and Exchange Commission has adopted this Final Statement of Policy on the use of alternative dispute resolution (ADR) techniques to resolve appropriate disputes in a fair, timely, and cost efficient manner.

EFFECTIVE DATE: August 11, 1998.

FOR FURTHER INFORMATION CONTACT: D. Leah Meltzer, Senior ADR Specialist, Office of General Counsel, Securities and Exchange Commission, 450 Fifth Street, NW, Mail Stop 6–6, Washington, DC 20549, telephone (202) 942–0048; e-mail meltzerd@sec.gov.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1993, in response to the Administrative Dispute Resolution Act of 1990, the Commission published a notice in the **Federal Register** inviting interested persons to submit comments on the utility of application of ADR procedures in Commission programs and activities to assist the Commission in its effort to develop appropriate policies. All nine comments received related to the Commission's enforcement program and were considered in developing the Commission's final Statement of Policy.

Statement of Policy on Alternative Dispute Resolution

ADR is the resolution of disputes through informal, voluntary, consensual techniques such as mediation, early neutral evaluation, minitrials, the practice of ombuds, arbitration and other methods. The Commission is committed to the use of ADR as a management tool to resolve disputes at an early stage, in an expeditious, cost effective, and mutually acceptable manner. The Commission adopts this policy to express its full support for the appropriate use of ADR. This policy is intended to apply to the resolution of disputes in contract administration, disputes in litigation (except as noted below), and internal disputes, such as those between employees and management. It is not intended to apply to inspections and law enforcement investigations. In addition, a number of factors make litigation challenging enforcement of the federal securities laws generally unsuitable for ADR techniques (*i.e.,* the need to ensure that the law enforcement function is not compromised, the need to ensure uniform treatment, and the need for judicial resolution or precedent). This policy is also not intended to apply to situations where the Commission seeks a temporary retraining order.

Core Principles Governing the Commission's Use of ADR

Any use of ADR by the Commission will be governed by certain core principles. Foremost, any Commission ADR program must further the agency's mission of administering the federal securities laws and protecting investors. While the Commission will consider ADR in any dispute in which a negotiated solution is a potentially acceptable outcome, the Commission believes that not every dispute is suitable for settlement through ADR. Further, while ADR processes are an important option in the Commission's ability to resolve disputes, we believe the processes are supplementary to, not a displacement of, traditional adjudicative methods of resolving disputes. Therefore, the Commission will engage in ADR only after determining that ADR is appropriate in a particular instance. Moreover, the Commission recognizes that its ADR policies and programs must be flexible enough to respond to the diversity of disputes that the Commission handles, the evolving court-based ADR programs, and on-going statutory changes and programmatic concerns. To that end, the Commission believes that its ADR policy should be dynamic and continually developing.

Affirmative Steps To Promote the Use of ADR

In furtherance of its commitment to ADR, the Commission has taken and will continue to take several affirmative steps to promote the use of ADR. The Administrative Dispute Resolution Act requires that each agency appoint an agency Dispute Resolution Specialist. The Commission has appointed the General Counsel as the agency Dispute Resolution Specialist. The senior ADR specialist serves as the Deputy Dispute Resolution Specialist. The Dispute Resolution Specialist is authorized to develop dispute resolution policy and procedures; consult with the staff on individual disputes regarding the appropriate use of ADR; develop conflict management and prevention programs; monitor implementation and evaluate dispute resolution program execution and results; determine appropriate ADR-related training within the Commission to educate employees and disputants about ADR and conflict management options and processes; provide for access to neutral third parties; and assure that incentives are developed which reward the appropriate use of ADR.

Training

The Commission has begun and will continue to provide ADR training to managers, supervisors and other individuals identified as benefiting from the training, so that they will understand the appropriate use of ADR,

its potential benefits, and how to obtain assistance. The Commission will, as appropriate, also provide certain employees, including litigation and contract attorneys, with training in ADR advocacy techniques.

Confidentiality of ADR Processes

The Commission recognizes that the successful use of ADR procedures is dependent on reasonable assurances of confidentiality to protect the process. This principle is recognized and implemented by provisions of the ADR Act. Accordingly, in connection with the ADR policy adopted herein, the Commission adopts a policy of confidentiality consistent with provisions of the ADR Act. In addition, the Commission, except as it pertains to the Office of the Inspector General, agrees not to issue process against any participant in an ADR proceeding, including any neutral utilized by these ADR procedures, or to obtain information or documents received by the participants in connection with such proceedings. The Commission also directs that members of the staff, who may receive information or documents in connection with any matter submitted to ADR, not disclose such information and documents under any circumstances inconsistent with the confidentiality provisions set forth in Section 574 of the 1996 ADR Act. Section 574 provides that, except in certain limited situations, neither a neutral nor the parties to a dispute may voluntarily disclose or through compulsory process be required to disclose any oral or written communication prepared for the purpose of a dispute resolution proceeding. To the extent disclosure is permitted pursuant to an exception in Section 574, members of the staff may not disclose or use such information or documents for any purpose other than in connection with one's official duties or responsibilities. Violation of this policy may result in disciplinary action. This policy of confidentiality does not prevent the discovery or admissibility of otherwise discoverable evidence in any administrative or judicial forum merely because the evidence is presented in a proceeding utilizing ADR procedures.

Implementation

It is the responsibility of all Commission employees to implement this policy and to practice and promote cost-effective dispute resolution in Commission programs and other areas of Commission operation. All management and employees of the Commission are hereby directed to take the necessary steps to implement this policy and to cooperate to the fullest extent with the Dispute Resolution Specialist and his/her designee to promote effective and appropriate use of ADR at the Commission in furtherance of this policy. The determination to use ADR in any particular instance rests with the head of the Division or Office involved.

This policy statement is intended only to improve the internal management of the Commission in resolving disputes. It shall not be construed as creating any right or benefit, substantive or procedural, enforceable at law or in equity, by any person against the Commission or its employees. This policy statement shall not be construed to create any right to judicial review involving the compliance or noncompliance of the Commission or its employees with this statement. Nothing in this policy statement shall be construed to obligate the Commission to offer funds to settle any case, to accept a particular settlement or resolution of a dispute, to alter its standards for accepting settlements, to submit to binding arbitration, or to alter any existing delegation of settlement or litigating authority.

Dated: August 5, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21476 Filed 8–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40303; File No. SR–NYSE–98–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing and Trading Broad InDex Guarded Equity-linked Securities on the Dow Jones Euro STOXX 50 Index

August 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 24, 1998, the New York Stock Exchange, Inc. (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the NYSE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to he proposed rule change.

I. Self-Regulatory Organization's Statement of the Term of Substance of the Proposed Rule Change

The Exchange proposes to list for trading BRoad InDex Guarded Equity-linked Securities (''BRIDGES''),[3] the return on which is based upon the performance of a 50-company index (the ''Dow Jones Euro STOXX 50'' or ''DJES50'') that an affiliate of Dow Jones & Co.,Inc. Publishes. The companies comprising the DJES5O are highly-capitalized, ''blue chip'' European companies.[4]

The text of the proposed rule change is available at the Office of the Secretary, NYSE and at Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it receive on the proposed rule change. The NYSE 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

Pursuant to the listing criteria set forth in Section 703.19 of the Exchange's *Listed Company Manual,* the Exchange lists and trades BRIDGES.[5] BRIDGES are securities that entitle the holder to receive from the issue upon maturity pre-established percentage of the principal amount of the BRIDGES plus an amount based upon the increase

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19–4.

[3] ''BRoad InDex Guarded Equity-linked Security'' and ''BRIDGES'' are service marks of Morgan Stanley Dean Witter & Co. (''MSDW'').

[4] Appendix A to the NYSE's proposal, which is available at the Office of the Secretary, NYSE and at the Commission, lists he 50 component companies of the DJES50 and identifies the home country and industry sector for each company, each company's relative weighting within the DJES50, each component company's price and capitalization average daily share volume over the past 12 months for each company.

[5] Currently, the Exchanged lists and trades BRIDGES on the S&P 500 and the Dow Jones Industrial Average.

in the market value of a stock index or portfolio.[6]

The Exchange is submitting the proposed rule change specifically to enable the Exchange to list for trading BRIDGES on the DJES50[7] issued by MSD BRIDGES on the DJES50 will allow inventors to combine protection of a pre-established portion of the principal amount of the BRIDGES with potential additional payments based on an index of securities of selected companies. The first issue of BRIDGES on the DJES50 will provide that 100 percent of the principal amount thereof will be repaid at maturity. The Exchange will not list an issue of BRIDGES on the DJES50 with a pre-established repayment percentage of less than 90 percent without first consulting with the Commission.

The Security

BRIDGES on the DJES50 will be denominated in U.S. dollars[8] and will entitle the owner at maturity to receive the pre-established percentage of the issue's principal amount plus an additional amount (the ''Supplemental Redemption Amount'') that is based upon the percentage increase, if any, between the ''Initial Index Value'' and the ''Final Index Value,'' The Initial Index Value is the value of the DJES50 on the date on which the issuer prices the BRIDGES issue for the initial offering to the public. The Final Index Value will equal the arithmetic average of the closing values of the DJES50 on each of multiple determination dates spread out over the period prior to the maturity of the BRIDGES issue. For instance, the first issuance of BRIDGES on the DJES50 will have three determination dates spread out over the two years prior to the issue's maturity date. Thus, the Supplemental Redemption Amount requires the following calculation:

$$\text{Supplemental Redemption Amount} = \text{Principal Amount} \times \frac{\left(\text{Final Index Value}\right) - \left(\text{Initial Index Value}\right)}{\text{Initial Index Value}}$$

If the Final Index Value of the DJES50 is below the Initial Index Value of the DJES50, the owner will receive not less than the specified percentage of the principal amount of the security. For instance, if the market value of the DJES50 used to calculate the amount payable at maturity has declined, the owners of the first issue of BRIDGES on the DJES50 will still receive 100 percent of the principal amount of the securities.[9] The additional payment at maturity is based on changes in the value of the DJES50.

As with other BRIDGES, BRIDGES on the DJES50 may not be redeemed prior to maturity and are not callable by the issuer. Owners may sell the security on the Exchange. The Exchange anticipates that the trading value of the security in the secondary market will depend in large part on the value of the DJES50 and also on other factors, including the level of interest rates, the volatility of the value of the DJES50, the time remaining to maturity, dividend rates and the creditworthiness of the issuer.

In accordance with Section 703.19 of the Exchange's *Listed Company Manual*, the Exchange only will list for trading BRIDGES on the DJES50 if there are at least one million outstanding securities, at least 400 shareholders, the issue has a minimum life of one year and at least a $4 million market value and if the BRIDGES otherwise comply with the Exchange's initial listing criteria.[10] In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.[11]

MSDW will deposit registered global securities representing BRIDGES on the DJES50 with its depositary, The Depository Trust Company, so as to permit book-entry settlement of transactions by participants in The Depository Trust Company.

BRIDGES on the DJES50 will trade on the Exchange's equity floor, subject to the margin and other trading rules that apply to equity trading on the Exchange. Specifically, pursuant to NYSE Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to

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[6] The Commission has previously approved the listing and trading of hybrid securities similar to BRIDGES based upon portfolios of securities or stock indices. *See e.g.,* Securities Exchange Act Release No 32840 (September 2, 1993), 58 FR 47485 (September 9, 1993); 33368 (December 22, 1993), 58 FR 68975 (December 29, 1993); 33495 (January 19, 1994), 59 FR 3883 (January 27, 1994); 34692 (September 20, 1994), 59 FR 49267 (September 27, 1994); 37533 (August 7. 1996), 61 FR 42075 (August 13, 1996); and 37744 (September 27, 1996), 61 FR 52480 (October 7, 1996) (''Term Notes Approval Orders'').

[7] The component stocks of the DOW Jones Euro STOXX 50 are: ABN–AMRO Hdlg NV, Aegon NV, Ahold NV, Air Liquide SA, Akzo Nobel, Alcatel Alsthom SA, Allianz, Allied Irish Bank, Assicurazioni Generali S.p.A., AXA–UAP SA, Banco Bilbao Vicaya, Bayer AG, Carrefour, Cie de St-Gobain, Credito Italiano, Dalmer-Benz AG, Deutsche Bank, Deutsche Lufthansa, Deutsche Telecom, Electrabel SA, ELF Aquitane, Elsevier NV, Endesa SA, ENI S.p.A., Fiat S.p.A., Fortis AG, France Telecom, ING Groep NV, Koninklijke PTT NV, LVMH Moet-Hennesey Louis Vuitton, L'Oreal, Mannesmann AG, Meto AG, Nokia AB Oy A, Parisbas,Petrofina SA, Philips Electronics, Portugal Telecom SA, Repsol SA, Rhone-Poulenc A, Royal Dutch Petroelum, RWE AG, Schneider SA, Siemens AG, Societe Generale, Telecom Italia, Telefonica de Espana, Unilever NV, Veba AG, and Vivendi.

[8] The prices of the securities underlying the DJES50 are quoted in currencies other than U.S. dollars. Therefore, investments in securities indexed to the value of non-U.S. securities may involve greater risks, subject to fluctuations of foreign exchange rates, future foreign political and economic developments, and the possible imposition of exchange controls or other foreign governmental laws or restrictions applicable to such investments.

[9] As noted above, the NYSE has stated that the first issue of BRIDGES on the DJES50 will provide 100% principal guarantee. The Commission notes that subsequent issues must guarantee at least 90% of the principal unless a lesser amount is permitted after consultation with Commission staff.

[10] The hybrid listing standards in Section 703.19 of the *Listed Company Manual* are intended to accommodate listed companies in good standing, their subsidiaries and affiliates, and non-listed companies which meet the Exchange's original listing standards. Issuers must also meet the earnings and net tangible assets criteria set forth in Sections 102.01–102.03 of the *Listed Company Manual.* Specifically, the minimum original listing criteria requires that issuers have: (1) 2,000 shareholders holding 100 shares or more, or have 2,200 shareholders and an average monthly trading volume of 100,000 shares for the most recent 6 months, or 500 shareholders and an average monthly trading volume of 1,000,000 shares for the most recent 12 months; (2) a public float of 1.1 million shares; (3) an aggregate public market value of $40 million or total net tangible assets of $40 million; and (4) earnings before taxes of $2.5 million in the latest fiscal year and earnings before taxes of $2 million in each of the preceding two fiscal years, or earnings before taxes of $6.5 million in the aggregate for the last three fiscal years with a $4.5 million minimum in the most recent fiscal year (all three years are required to be profitable). *See* NYSE *Listed Company Manual* § 102.01.

[11] The continued listing standards for Specialized Securities provide that the NYSE will consider delisting a security when: (1) the number of publicly-held shares is less than 100,000; (2) the number of holders is less than 100; (3) the aggregate market value of the securities outstanding is less than $1,000,000; or (4) in the case of specialized securities which are debt, the issuer is not able to meet its obligations on such debt. *See* NYSE *Listed Company Manual* § 802.00.

trading BRIDGES on the DJES50.[12]

The Index

The DJES50 was launched by STOXX Ltd., a company jointly founded by Schweizer Borse, SBF-Bourse de Paris, Deutsche Borse, and Dow Jones & Co., Inc. (''STOXX'') on February 26, 1998, to create, distribute and market European indexes and to market Dow Jones indexes. STOXX is not a broker/dealer.

STOXX constructed the DJES50 to have an initial value of 1000 at December 31, 1991 and designed it to measure the stock market performance of highly-capitalized companies of countries that are expected to participate in the European Economic and Monetary Union (the ''EMU''), which is scheduled to commence on January 1, 1999. The index is calculated and disseminated on a real-time basis every 15 seconds and is published daily in The Wall Street Journal.

The NYSE represents that the DJES50 consists of the common stock of companies that are leaders in their industry sectors and are among the largest in market capitalization, and the highest in liquidity, among the companies of the eleven countries that are likely to be the initial member states of the EMU. Currently, nine of those eleven countries are represented in the DJES50. Each component company is a major factor in its industry and its securities are widely held by individuals and institutional investors.

The Exchange believes that adequate surveillance exists for the component stocks as a result of ''Surveillance Information Sharing Arrangements'' with appropriate entities in component stocks' home countries. Surveillance Information Sharing Arrangements include surveillance information-sharing agreements that the Exchange has entered into with foreign markets, memoranda of understanding that the SEC has entered into with foreign securities regulatory agencies and similar agreements and arrangements between the United States or the SEC and their counterparts in the home countries for companies whose securities are components of the DJES50.

At present, in excess of 95 percent of the capitalization of the DJES50 is subject to Surveillance Information Sharing Arrangements. The Exchange will not list a new issue of BRIDGES on the DJES50 if either:

(i) The home countries of component securities representing more than 50 percent of the capitalization of the DJES50 are not subject to Surveillance Information Sharing Arrangements;

(ii) A home country of component securities representing more than 20 percent of the capitalization of the DJES50 is not subject to Surveillance Information Sharing Arrangements; or

(iii) Two home countries of component securities representing more than 33⅓ percent of the capitalization of the DJES50 are not subject to Surveillance Information Sharing Arrangements.

Companies are selected for inclusion in the calculation of the DJES50 by its proprietor, STOXX. The companies that are included in the DJES50 are representative of the broad market in the EMU and of a wide array of European industries within the following industry sectors: automobile; food and beverage; banking; industrial; chemical; insurance; conglomerates; media; consumer goods; cyclical; pharmaceutical; non-cyclical; retail; construction; technology; energy; telecommunications; financial services; and utility.

The Supervisory Board of STOXX is responsible for adding and deleting companies from the DJES50. That board selects stocks that they believe, in their subjective discretion, to be representative of highly-capitalized, highly-liquid blue chip companies that are representative of a variety of industry sectors in the EMU countries. Neither STOXX nor any of its founders is affiliated with MSDW.

The DJES50 is a capitalization-weighted index. The number of shares outstanding and the share price for each class of stock are used to determine each component company's market capitalization. No company may comprise more than 10 percent of the value of the index. Currently, Royal Dutch Shell represents 7.76 percent of the DJES50, more than any other company. If any company exceeds 10 percent of the value of the index, STOXX will cap that company's representation in the index at 10 percent and adjust the relative representation of the remaining component stocks so that they represent the remaining 90 percent. In order to avoid distortions, changes in the index for dividends, stock splits, rights offerings, spin-offs, repurchases and the like are made on a quarterly basis, unless the number of outstanding shares of a component company changes by more than 10 percent, in which case the adjustment is made immediately.

The market capitalization of the 50 companies that currently represent the DJES50 differs significantly from a high of $180 billion (Bayer AG) to a low of $7.7 billion (RWE AG), as do the market prices of their common stock from a high of $591.64 (Carrefour) to a low of $4.58 (Fiat Spa).[13] The ten companies with the highest weighting in the DJES50 represent 40.43 percent of the DJES50.[14] The ten companies with the smallest weighting in the DJES50 calculation represent 7.75 percent of the DJES50.

Also as of June 1, 1998, the nine countries that are represented in the Index accounted for the following percentages of the Index: Germany (27.28 percent); The Netherlands (26.22 percent); France (23.41 percent); Italy (10.06 percent); Spain (7.70 percent); Belgium (2.23 percent); Finland (1.77 percent); Ireland (0.70 percent); and Portugal (0.63 percent).

Real-time prices from the primary market for each company in its home country will be used to calculate DJES50 index values.[15] Until January 1, 1999, the value of the index will be determined in European currency units (''ECU's''). The Telerate Reporting Service, at 11:45 a.m., New York time, will be used to convert the prices of component stocks (initially reported in the currency of the company's primary market) into ECU values. After the EMU introduces the euro currency on January 1, 1999, the index will be calculated in euros, with currency conversions made at the exchange rates prescribed by EMU law. As a result, changes in exchange rates between the U.S. dollar and ECU's or euros will not affect the percentage increase or decrease in the value of the DJES50 over the life of the BRIDGES.

DJES50 index values will be disseminated every 15 seconds. Insofar as a component security trades on its home country's primary market during NYSE trading hours, each index calculation will use the last sale price from that market for the security, the value of which will be converted into ECUs or euros, as discussed above. Otherwise, the most recent closing price on that primary market will be used. Prior to trading BRIDGES on the DJES50, the Exchange will distribute a circular to its membership highlighting the special risks associated with the trading the product.[16]

[12] NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

[13] These values are as of June 1, 1998.

[14] As noted above, the highest weighted component of the DJES50 represents 7.76 percent of the weight of the index. In addition, the top 5 highest weighted securities in the index represent 24.55 percent of the weight of the index.

[15] Appendix A identifies those primary markets for all component companies. *See supra* note 4.

[16] Telephone conversation between Vincent F. Patten, Assistant Vice President, Investment Banking Division and New Products, NYSE: James

The Issuer

The Exchange has determined that the issuer of the BRIDGES on the DJES50, MSDW, meets the listing criteria set forth in Section 703.19 of the Exchange's *Listed Company Manual*.[17] It is an Exchange-listed company in good standing and has sufficient assets to justify the issuance of BRIDGES offerings of the size contemplated by the proposed rule change.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[18] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street N.W., Washington, D.C. 20549. 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 at 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office at the NYSE. All submissions should refer to File No. SR–NYSE–98–22 and should be submitted by September 1, 1998.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) of the Act.[19] Specifically, the Commission believes that providing for exchange-trading of BRIDGES on the DJES50[20] will offer a new and innovative means of participating in the market for securities of companies from countries that are expected to participate in the EMU. In particular, the Commission believes that BRIDGES on the DJES50 will permit investors to gain equity exposure in such companies, while, at the same time, limiting the downside risk of the original investment. Accordingly, for the same reasons as discussed in the Term Notes Approval Orders,[21] the Commission finds that the listing and trading of BRIDGES on the DJES50 is consistent with the Act.[22]

As with other derivative products similar to BRIDGES, BRIDGES on the DJES50 are not leveraged instruments, however, their price will still be derived from the based upon the underlying linked security. Accordingly, the level of risk involved in the purchase or sale of BRIDGES on the DJES50 is similar to the risk involved in the purchase or sale of traditional common stock. Nonetheless, because the final rte of return of BRIDGES is derivatively priced, based on the performance of a portfolio of securities, there are several issues regarding the trading of this type of product.

The Commission believes that the Exchange has adequately addressed these issues. First, the Commission notes that the Exchange's rules and procedures that address the special concerns attendant to the trading of hybrid securities will be applicable to BRIDGES on the DJES50. In particular, by imposing the hybrid listing standards, and the suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of BRIDGES on the DJES50. Moreover, the Exchange will distribute a circular to its membership calling attention to the specific risks associated with BRIDGES on the DJES50. In particular, the circular will highlight, among other things, that the BRIDGES on the DJES50 allow investors to participate in appreciation only to the extent that the DJES50 outperforms the initial index value based on the average of 3 pre-selected separate dates that occur throughout the life of the BRIDGES.

Second, BRIDGES on the DJES50 remain a non-leveraged product with the issuer guaranteeing no less than 90 percent of principal return.[23] The Commission realizes that the final payout on the BRIDGES on the DJES50 is dependent in part upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 703.19 of the NYSE's Listed Company Manual which provide that only issuers satisfying substantial asset and equity requirements may issue securities such as BRIDGES.[24] In addition, the Exchange's hybrid listing standards further require that the proposed indexed term notes have at least $4 million in market value.[25] In any event, financial information regarding the issuer, in addition to information on the underlying securities, will be publicly available to investors.

Third, the component securities in the Index are highly-capitalized, actively-traded European stocks. In addition, the components are all publicly traded on the home country's primary market.[26] Accordingly, both the history and performance of these securities, as well as current pricing trends, should be

T. McHale, Special Counsel, Division of Market Regulation (''Division''), SEC and David Sieradzki, Attorney, Division, SEC on July 31, 1998.

[17] *See supra* note 9.

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b)(5).

[20] The Commission notes that this approval order is limited to the BRIDGES product; separate Commission approval would be required for the Exchange to list and trade any option or warrant product based on the DJES50.

[21] *See* Term Notes Approval orders, *supra* note 6

[22] In approving this rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] As noted above, the NYSE may not list for trading BRIDGES with less than a 90% principal guarantee without first consulting with the Commission. For example, the Commission may determine that BRIDGES with less than a 90% principal guarantee should only be sold to customers meeting certain heightened account approval and suitability requirements.

[24] *See supra* note 9 and accompanying text.

[25] *See* NYSE Listed Company Manual § 703.19.

[26] *See* Appendix A.

readily available through a variety of public sources.

Further, the Commission notes that the value of the DJES50 will be disseminated on a real time basis at least once every 15 seconds throughout the trading day. The Commission believes that this information will be extremely useful and beneficial for investors in DJES50 BRIDGES. Although the BRIDGES are denominated in U.S. dollars, as noted above, the index value, until January 1, 1999, will be derived from converting the value of each security from its home currency into ECUs. After the EMU introduces the euro currency on January 1, 1999, the index will be calculated in euros, with currency conversions made at the exchange rates prescribed by EMU law. The Commission believes that valuing all the index components using the ECU or euros, as appropriate, is permissible since the same methodology for valuing the index will be used throughout the life of the BRIDGES. Nevertheless, the fact that the index value does not reflect U.S. dollars and contains currency risk will be highlighted in the circular to members.[27]

Fourth, while the Commission has a systematic concern that a broker-dealer or a subsidiary providing a hedge for the issuer will incur position exposure, the Commission believes this concern is minimal given the size of the proposed BRIDGES issuance in relation to the net worth of the issuer.[28]

Finally, the Exchange's surveillance procedures will serve to deter as well as detect any potential manipulation. As noted above, NYSE represents that it has in place surveillance sharing arrangements with the appropriate regulatory organizations in countries representing over 95 percent of the capitalization of the DJES50. Further, if the surveillance coverage should fall below certain levels, as discussed above, no new BRIDGES will be listed. This should help to ensure that adequate surveillance mechanisms exist in the future.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** Specifically, the Commission believes that the proposal does not raise any regulatory issues that were not addressed by the Term Notes Approval Orders. In addition, to the extent that the DJES50 has certain characteristics that differ from the previous Term Notes Approval Orders, the Commission believes that the NYSE has adequately addressed those issues. Accordingly, the Commission believes that good cause exists, consistent with Section 6(b)(5) and Section 19(b)(2) of the Act, to grant accelerated approval to the proposed rule change.[29]

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, [30] that the proposed rule change (SR–NYSE–98–22) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21478 Filed 8–6–98; 8:45 am]

BILLING CODE 8010–01–M

[27] Telephone conversation between Vincent F. Patten, Assistant Vice President, Investment Banking Division and New Products, NYSE; James T. McHale, Special Counsel, Division, SEC and David Sieradzki, Attorney, Division, SEC on July 31, 1998.

[28] *See* Term Notes Approval Orders, *supra* note 6.

[29] 15 u.S.C. 78f(b)(5) and 78s(b)(2).

[30] 15 u.S.C. 78s(b)(2).

[31] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40293; File No. SR–PCX–98–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Telephone Fees

July 31, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 26, 1998, the Pacific Exchange, Inc. (''PCX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to modify its Schedule of Rates for Exchange Services to include various charges for the use of telephones and telephone equipment on the trading floors.

The text of the proposed rule change is available at the Office of the Secretary, PCX and AT the Commission.

[1] 15 U.S.C. 78s(b)(1).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to adopt new telephone fees and charges to cover the cost of a new telephone system and telephones (MX Digital Turrets). The PCX currently provides the telephone system used by members on the Options Floor and Equities Floor in Los Angeles. To set pricing to cover the cost of this new technology, the PCX is proposing to establish the following fees:

PCX Options Floor Telephone Fees: $60 per month for each MX phone; $30 per month for each non-MX phone; $14 per month for each line; $50 per month for each cordless phone; and $110 per month for each drop phone.

PCX Equities Floor Telephone Fees (Los Angeles only): [2] $60 per month for each 32-button phone; $45 per month for each 16-button phone; $9 per month for each line; and $1 per month for each line appearance.

These fees are designed to cover the cost of the new MX telephone system and telephones.

2. Statutory Basis

The Exchange represents that the proposed rule changes are consistent with Section 6(b) [3] of the Act in general and further the objectives of Section 6(b)(4) [4] in particular because it provides for the equitable allocation of reasonable dues, fees and other charges among its members.[5]

[2] Fees for telephones and related equipment for the Equities Floor in San Francisco are passed through to Member Firms. Direct monthly billing for telephone and equipment leasing has not been implemented in San Francisco.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(4).

[5] In approving these rules, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and subparagraph (e)(2) of Rule 19b–4 thereunder.[7]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing; including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange.

All submissions should refer to File No. SR–PCX–98–34 and should be submitted by September 1, 1998.

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(e)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21479 Filed 8–10–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40304; File No. SR–PTC–98–03]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing of a Proposed Rule Change Regarding PTC's Pricing and Margining Methodology for Newly Issued Collateralized Mortgage Obligation Securities

August 4, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on June 15, 1998, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by PTC. The Commission is publishing this notice to solicit comments from interested persons on the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change will modify PTC's pricing and margining methodology with respect to newly issued collateralized mortgage obligation (''CMO'') securities to more accurately reflect the value of CMOs.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, PTC 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. PTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[8] 17 CFR 200.30–(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by PTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In general, PTC values a participant's securities for the purpose of assuring that sufficient collateral will be available for PTC to borrow against or liquidate in the event the participant's debit balance is not satisfied at end of day settlement. Securities in a participant's account are valued by applying a margin to the assigned market value of the securities. The purpose of margin is to limit the risk caused by fluctuations in the market value of the securities.

CMOs that are currently on deposit at PTC are CMO securities issued or guaranteed by the Government National Mortgage Association (''GNMA'') and the Department of Veteran's Affairs (''VA'') and certain issues guaranteed by the Federal Home Loan Mortgage Association (''FHLMA'') and the Federal National Mortgage Association (''FNMA'') that are collateralized by GNMA securities.

PTC assigns a market value to a CMO security by selecting the lower of the two prices for the security as supplied by two nationally recognized pricing sources. To establish a margin for a CMO, PTC subjects each CMO tranche to a ''stress test'' to project the largest percentage price decrease resultant of a 50 basis point upward movement in Treasury yields and a 100 basis point downward movement in Treasury yields.[3]

CMO tranches for which prices are not available from PTC's pricing vendors are margined at 100% (*i.e.*, are given no value in PTC's system), and the minimum margin for any CMO tranche is 5%. Margins are reevaluated at least quarterly and in response to certain defined market or price shifts. PTC currently prices and margins new issue CMO securities in the same manner in which secondary or seasoned CMO securities are priced and margined (*i.e.*, based upon the lower of two prices received from PTC's two vendors and application of the standard stress test).

In the case of newly issued CMO securities, however, the information on the security that the vendor uses to establish its price is generally not available to the vendor until after issuance. The release of information after issuance does not allow the vendor sufficient time to model and price a new

[3] PTC's current CMO margin and pricing methodology was approved by the Commission on April 30, 1996. Securities Exchange Act Release No. 37152 (April 30, 1996), 61 FR 20304 [File No. SR–PTC–96–02].

issue security until several days or weeks after the issuance. As a result of PTC's pricing and margining methodology, new issue CMOs are given a value of zero for this initial period because they are unpriced by PTC's pricing vendors. Although PTC makes every effort to have the underwriters provide PTC's pricing vendors with the prospectus supplements prior to initial settlement, the information is generally not available in sufficient time to permit the vendors to model and price the new issue securities prior to settlement.

PTC proposes to modify its pricing and margining methodology for newly issued CMO securities to more accurately reflect their value for this initial period during which pricing vendors are generally unable to provide prices. Prior to the issuance of a CMO security, PTC will seek to obtain indicative bid side prices for each class of the issue from the deal underwriter prior to the closing. PTC will establish margins on new issue CMO securities (that it has priced by reference to underwriter supplies prices) based on larger interest rate shifts, +100 or −200 basis points, than are applied to vendor priced CMO issues, +50 or −100 basis points. Interest only, principal only, and inverse floater classes will be given no value.

Underwriter supplied values will be used for a maximum of three weeks after the issuance. Any CMO issue not priced by both vendors at three weeks from issuance will be given a value of zero by increasing the margin to 100%, as is currently the case with all CMO issues, and will continue to be the case with respect to all but new CMO issues for this three week period.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[4] and the rules and regulations promulgated thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PTC does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

PTC has discussed the proposed methodology with its Risk Management Committee, which is comprised of participant representatives that are knowledgeable in this area. PTC has not solicited or received any unsolicited written comments from participants or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which PTC consents, the Commission will:

(A) By order approve such proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing also will be available for inspection and copying at the principal office of PTC. All submissions should refer to File No. SR–PTC–98–03 and should be submitted by September 1, 1998.

For the Commission by the Division of Market Regulations, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 98–21477 Filed 8–10–98; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78q–1(b)(3)(F).

[5] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3104]

State of Florida (Amendment #1)

In accordance with a notice from the Federal Emergency Management Agency dated July 22, 1998, the above-numbered Declaration is hereby amended to establish the incident period for this disaster as beginning on May 25, 1998 and continuing through July 22, 1998.

All other information remains the same, i.e., the deadline for filing applications for physical damage is September 1, 1998 and for economic injury the termination date is April 5, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–21469 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3117; State of Indiana

Howard and Marion Counties and the contiguous counties of Boone, Carroll, Cass, Clinton, Grant, Hamilton, Hancock, Hendricks, Johnson, Miami, Morgan, Shelby, and Tipton in the State of Indiana constitute a disaster area as a result of damages caused by severe storms, tornadoes, and flooding that occurred June 11 through July 7, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on October 1, 1998 and for economic injury until the close of business on April 30, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.000
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.500
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

	Percent
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 311711 for physical damage and 996000 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 31, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–21507 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3103]

State of Iowa (Amendment #2)

In accordance with a notice from the Federal Emergency Management Agency dated July 20, 1998, the above-numbered Declaration is hereby amended to include the following counties in the State of Iowa as a disaster area due to damages caused by severe storms, tornadoes, and flooding beginning on June 13, 1998 and continuing: Allamakee, Benton, Black Hawk, Buchanan, Butler, Calhoun, Clarke, Crawford, Davis, Fayette, Harrison, Jefferson, Linn, Madison, Mahaska, Monona, Ringgold, Sac, Story, Warren, and Winneshiek.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Buena Vista, Cerro Gordo, Cherokee, Clayton, Decatur, Delaware, Ida, Jones, Pocahontas, Wayne, and Woodbury Counties in Iowa; Burt and Thurston Counties in Nebraska; Houston County, Minnesota; Crawford and Vernon Counties in Wisconsin; and Harrison, Schuyler, and Scotland Counties in Missouri. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

All other information remains the same, i.e., the deadline for filing applications for physical damage is August 31, 1998 and for economic injury the termination date is April 2, 1999.

The economic injury number for the State of Wisconsin is 995900.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 28, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–21467 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3119; State of Minnesota, (And Contiguous Counties in Wisconsin)

Goodhue County and the contiguous counties of Dakota, Dodge, Olmstead, Rice, Steele, and Wabasha in the State of Minnesota, and Pepin and Pierce Counties in the State of Wisconsin constitute a disaster area as a result of damages caused by flooding that occurred June 24–28, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on October 1, 1998 and for economic injury until the close of business on April 30, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.000
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.500
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damage are 311906 for Minnesota and 312006 for Wisconsin. For economic injury the numbers are 996300 for Minnesota and 996400 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 31, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–21509 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3112)]

State of North Dakota

As a result of the President's major disaster declaration on June 15, 1998 for Public Assistance, and amendments thereto one of which, dated July 21, added Individual Assistance, I find that the following counties in the State of North Dakota constitute a disaster area due to damages caused by severe storms, flooding, and ground saturation beginning on March 2, 1998 and continuing through July 18, 1998: Barnes, Benson, Cass, Dickey, LaMoure, Nelson, Pembina, Pierce, Ramsey, Ransom, Richland, Rolette, Sargent, Stutsman, Towner, and Walsh, and the Indian Reservations of the Spirit Lake Sioux Tribe and the Turtle Mountain Band of Chippewa. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 19, 1998, and for loans for economic injury until the close of business on April 21, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bottineau, Cavalier, Eddy, Foster, Grand Forks, Griggs, Kidder, Logan, McHenry, McIntosh, Sheridan, Steele, Traill, and Wells Counties in North Dakota; Clay, Kittson, Marshall, Norman, Polk, Traverse, and Wilkin Counties in Minnesota; and Brown, Marshall, McPherson, and Roberts Counties in South Dakota.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 311206. For economic injury the numbers are 994600 for North Dakota; 994700 for Minnesota; and 994800 for South Dakota.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 29, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–21466 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3113]

State of Ohio (and Contiguous Counties in Indiana)

Butler County and the contiguous Counties of Hamilton, Montgomery, Preble, and Warren in Ohio, and Dearborn, Franklin, and Union Counties in Indiana constitute a disaster area as a result of damages caused by severe storms and flooding that occurred on July 19, 1998. Applications for loans for physical damages from this disaster may be filed until the close of business on September 28, 1998 and for economic injury until the close of business on April 28, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damages are 311306 for Ohio and 311406 for Indiana. For economic injury the numbers are 994900 for Ohio and 995000 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: July 28, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–21468 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Declaration of Economic Injury Disaster #9846; State of Oregon (Amendment #1)

The above-numbered Declaration is hereby amended to include Clatsop, Lane, Lincoln, and Tillamook Counties in the State of Oregon as an economic injury disaster area due to the effects of the warm water current known as El Nino beginning in August of 1997.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Benton, Columbia, Deschutes, Klamath, Linn, Polk, Washington, and Yamhill in the State of Oregon may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the deadline for filing applications for economic injury is January 28, 1999.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Date: July 31, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–21510 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3118; State of Tennessee

As a result of the President's major disaster declaration on July 23, 1998 for Public Assistance, and an amendment thereto on July 28, 1998 adding Individual Assistance, I find that Lawrence and Lewis Counties in the State of Tennessee constitute a disaster area due to damages caused by severe storms and flooding beginning on July 13, 1998 and continuing through July 28, 1998. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on September 26, 1998, and for loans for economic injury until the close of business on April 28, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Giles, Hickman, Maury, Perry, and Wayne Counties in Tennessee, and Lauderdale and Limestone Counties in Alabama.

The interest rates are:

	Percent
Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The number assigned to this disaster for physical damage is 311806. For economic injury the numbers are 996100 for Tennessee and 996200 for Alabama.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 4, 1998.

Herbert L. Mitchell,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–21508 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Declaration of Disaster #3115; State of Washington

Cowlitz County and the contiguous counties of Clark, Skamania, Lewis, and Wahkiakum in the State of Washington, and Columbia County in the State of Oregon constitute a disaster area as a result of landslides begining on April 23, 1998 and continuing through July 24, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on October 1, 1998 and for economic injury until the close of business on April 30, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P. O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	7.000
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.500
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.125
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL CO-OPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster for physical damages are 311509 for Washington and 311609 for Oregon. For economic injury the numbers are 995600 for Washington and 995700 for Oregon.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: July 31, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–21506 Filed 8–10–98; 8:45 am]

BILLING CODE 8025–01–P

SOCIAL SECURITY ADMINISTRATION

Statement of Organization, Functions and Delegations of Authority

This statement amends Part S of the Statement of the Organization, Functions and Delegations of Authority which covers the Social Security Administration (SSA). Chapter S4 covers the Deputy Commissioner for Systems. Notice is given that Subchapter S4G, the Office of Systems Design and Development (OSDD), is being amended to reflect the establishment of eight new divisions and one new staff. The revised chapter reads as follows:

Section S4G.10 The Office of Systems Design and Development—(Organization):

Establish:

D. The Software Technology and Engineering Center Staff (S4GE).

E. The Division of Data Gathering and Architecture Software (S4GG).

F. The Division of Title II Processing (S4GH).

G. The Division of Notices (S4GJ).

H. The Division of Transaction Systems (S4GK).

I. The Division of Data Systems (S4GL).

J. The Division of Earnings/Enumeration Systems (S4GM).

K. The Division of SSI Systems (S4GN).

L. The Division of Data Base Systems (S4GP).

Section S4G.20 The Office of Systems Design and Development—(Functions):

C. The Immediate Office of the Associate Commissioner for Systems Design and Development (S4G).

Delete 1–3 in their entirety.

Establish:

D. The Software Technology and Engineering Center Staff (S4GE).

1. Manages the Software Engineering Facility (SEF) mainframe and OSDD LAN/workstation configurations to provide an integrated set of automated tools, techniques and services in support of SSA's application development and validation community.

2. Provides support for both programmatic and management information applications throughout each phase of the systems development life cycle including analysis, design, development, validation, testing, production and maintenance.

3. Plans, designs, develops, selects and implements automation methods and standards for the design and development stages of the Software Engineering Technology.

4. Provides automated software configuration management, quality control and library migration.

5. Provides technical assistance to SEF users with specific emphasis on software tools used by the programming community.

6. Serves as liaison between the SEF user community and the computer center to ensure that user needs are being met.

7. Monitors SEF performance to ensure that appropriate service levels are continuously maintained.

8. Performs impact analyses and validation of proposed software development tools before they are installed on the SEF.

9. Manages the SEF Direct Access Storage Device pool.

10. Manages a security program for the SEF which includes administration of SSA's security software, control of system access, and coordination of OSDD component security officer activities.

11. Manages the Distributed Software Engineering Laboratory (DSEL) which provides a wide range of IWS/LAN based hardware and software for developers and validators of client/server applications. DSEL provides a test site for client/server ideas, concepts and code without interfering with production client/server systems.

E. The Division of Data Gathering and Architecture Software (S4GG).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs by exploiting the use of Client/Server and Internet technology.

2. Designs specific business applications to enhance the productivity of the field user and provide electronic access for SSA's public customers.

3. Designs software integral to SSA's Client/Server infrastructure.

4. Designs systems such as the Customer Help and Information Program, the Reengineered Disability System, the Field Office Notice System, various Internet applications, etc.

5. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

F. The Division of Title II Processing (S4GH).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad area of Title II (Retirement, Survivors, Disability) programmatic processes for such areas as earnings eligibility/entitlement, pay/computations and debt management.

2. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

G. The Division of Notices (S4GJ).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad area of specialized support for Notices.

2. Provides support for notice language development and maintenance, notice generation and formatting, manual notice processing and notice storage and retrieval.

3. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

H. The Division of Transaction Systems (S4GK).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad area of RSDI processing including batch transaction processing, PSC Action Control and data exchange for other SSA and non-SSA systems.

2. Designs software to edit incoming new records and transactions; control in-process transactions including PSC Action Control and OHA Case Control.

3. Develops queries and extracts software to retrieve and display transactions and Master Beneficiary Record-related data both in on-line and off-line environments.

4. Develops software to suspend benefits and produce alerts and notices for prisoners and pay bounties to prisons.

5. Develops software to update and maintain a variety of records which provide management, statistical and actuarial study data including epidemiological information.

6. Conducts liaison with other SSA components and Federal and State agencies to determine the feasibility and to plan the development of RSDI data base establishment and maintenance systems applications.

7. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

I. The Division of Data Systems (S4GL).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad areas of data gathering, data base establishment and maintenance for programmatic processes for initial claims, postentitlement, debt management, representative payee, audit, integrity review and Treasury operations.

2. Designs software to edit incoming transactions, control in-process and stored transactions; produce monthly benefit payment information and yearly benefit payment statements; provide audit, continuing disability review, integrity review and Treasury data.

3. Conducts liaison with other SSA components and Federal agencies to determine feasibility and to plan development/implementation activities.

4. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

J. The Division of Earnings/Enumeration Systems (S4GM).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs in the broad areas of enumeration, entitlement and earnings.

2. Designs systems to establish, correct and maintain social security number records; update and maintain records of new and duplicate social security cards; establish and maintain master earnings records; process earnings and adjustments; investigate incorrectly reported earnings items and identify the proper account; provide earnings record information to employers, employees and self-employed individuals; and establish, correct and maintain vested pension rights and notification records.

3. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

K. The Division of SSI Systems (S4GN).

1. Designs, develops, coordinates and implements new or redesigned software to meet SSA's automated data processing needs to support the Title XVI Supplemental Security Income (SSI) Program.

2. Designs systems to edit new records and transactions; maintain and revise the SSI master file to reflect changes, compute both the Federal SSI benefit and State supplementary payments and produce payment information for the Treasury Department; account for disbursement of Federal and State funds; prepare recipient notices of claims decisions and changes in status and payment; identify and control overpayment activity; select and control cases requiring redetermination; exchange data with government record systems to verify recipient income; generate data for State use in determining supplementation amounts and Medicaid eligibility provide record query and response capability control folder location and movement; produce statistical, management and actuarial data; and control exception processing and diary control mechanisms.

3. Defines specific systems needs through functional specifications provided by the Office of Systems Requirements.

L. The Division of Data Base Systems (S4GP).

1. Responsible for data base administration and data base related design and development activities for all of SSA's systems.

2. Responsible for SSA's major programmatic and administrative master files.

3. Develops Data Base Architecture to modernize the way SSA performs its data processing functions for SSA's major programmatic and administrative master files.

4. Develops and maintains Data Resource Management System which is the official repository of data and metadata for SSA.

5. Develops and maintains Master Data Access Method (MADAM) software to maintain the major programmatic master files on direct access storage devices.

6. Provides overall management and development of access to SSA's major master files.

7. Performs data base administration of the major master files and data base design and technical support for auxiliary programmatic applications files and data bases using IDMS, DB2 and ORACLE.

Dated: July 23, 1998.

Paul D. Barnes,

Deputy Commissioner for Human Resources.

[FR Doc. 98–21425 Filed 8–10–98; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice 2867]

Bureau of Political Military Affairs; Emergency Review of Information Collection; Maintenance of Records by Registrants

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995. Emergency review and approval of this collection has been requested from OMB by August 1, 1998. If granted, the emergency approval is only valid for 180 days.

The following summarizes the information collection proposal submitted to OMB:

Originating Office: Bureau of Political Military Affairs

Title of Information Collection: Maintenance of Records by Registrants

Frequency: On occasion

Form Number: None

Respondents: Persons or business applying for defense trade export licenses or services

Estimated Number of Respondents: 5,000

Average Hours Per Response: 20 hours per person or business

Total Estimated Burden: 100,000

Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology.

FOR ADDITIONAL INFORMATION: Comments regarding the collection listed in this notice or requests for copies of the proposed collection and supporting documents should be directed to Charles S. Cunningham, Directives Management, U.S. Department of State, Washington, DC 20520, (202) 647–0596. General comments and questions should be directed to Ms. Victoria Wassmer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: August 4, 1998.

Fernando Burbano,

Chief Information Officer.

[FR Doc. 98–21529 Filed 8–10–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Executive Committee of the Aviation Rulemaking Advisory Committee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the August 12 meeting of the Executive Committee of the Federal Aviation Administration Aviation Rulemaking Advisory Committee (63 FR 40331, July 28, 1998) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Miss Jean Casciano, Federal Aviation Administration (ARM–25), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9683; fax (202) 267–5075; e-mail Jean.Casciano@faa.dot.gov.

Issued in Washington, DC, on August 7, 1998.

Joseph A. Hawkins,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 98–21604 Filed 8–7–98; 1:05 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Searsport, Waldo County, ME

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of notice of intent to prepare an environmental impact statement, Sears Island Dry Cargo Port.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will not be prepared for a dry cargo port at Sears Island, Searsport, Maine.

FOR FURTHER INFORMATION CONTACT: James: F. Linker, Manager of Right of Way and Environmental Programs, FHWA, Room 614 Edmund S. Muskie Federal Building, 40 Western Avenue, Augusta, Maine 04330, (207) 622–8355 ext. 23.

SUPPLEMENTARY INFORMATION: On September 4, 1985 at 50 FR 35900 and on August 1, 1991 at 56 FR 36866, the FHWA issued notices of intent for a two-berth dry cargo port project proposed by the Maine Department of Transportation (MDOT) to be located on Sears Island, Maine. The FHWA was the lead Federal agency in the preparation of an environmental impact statement for this project. The port was intended to augment the existing petroleum and cargo port at nearby Mack Point with container and break-bulk capacity. It would primarily service Maine's northern hinterland, which produces forest, paper and agricultural products for the most part.

The MDOT constructed a causeway and highway connecting the port site to the mainland in 1982 with Federal-aid highway funds. The FHWA accepted the lead agency role for the subsequent port project because of this earlier association with the port access project, the agency's on-going working relationship with the MDOT, and the fact that, of the affected Federal agencies, it had a local presence in Maine.

Litigation over environmental issues resulted in a series of delays during the 1980's. Finally, in July 1995 the FHWA issued a Draft Supplemental Environmental Impact Statement for the project.

Environmental concerns, primarily involving issues of wetland and eelgrass disturbance could not be resolved in an economically feasible manner. In February, 1996 Maine's Governor terminated the project.

A series of alternatives presented in the SEIS, though not the preferred alternative, involved constructing a portion of the new port at Mack Point in addition to the existing two piers. For this reason and because of a continuing interest by MDOT in port improvements at Mack Point, the FHWA did not withdraw the EIS at the time of the Governor's decision.

Subsequently, Maine has raised funding by State referendum to reconstruct and expand the existing piers at Mack Point and is entering into agreement with the private operators at Mack Point to reimburse the State for the construction cost of the piers at some point in the future.

Since the project now proposed for Mack Point is substantially different from the project originally proposed at Sears Island, no reason remains for the FHWA to complete the EIS for a new dry cargo port in Searsport, Maine.

Authority: 23 U.S.C. 315; 49 CFR 1.48

Issued on August 4, 1998.

Paul L. Lariviere,

Division Administrator, Federal Highway Administration, Augusta, Maine.

[FR Doc. 98–21397 Filed 8–10–98; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33557]

Application of Ventura County Transportation Commission

For an Order Requiring Joint Use of Terminal Facilities in Ventura County, CA

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10502, the Board is granting the joint petition for exemption filed by Ventura County Transportation Commission (VCTC) and Union Pacific Railroad Company (UP) that this proceeding be exempted from the statutory requirement that it be completed within 180 days. The Board is extending the time limit to 270 days pursuant to the request of the parties.

DATES: The exemption is effective on August 11, 1998.

ADDRESSES: An original and 10 copies of all pleadings referring to the exemption

granted in STB Finance Docket No. 33557 must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on the parties' representatives: (1) for VCTC, Charles A. Spitulnik, Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006; and (2) for UP, J. Michael Hemmer, Covington & Burling, 1201 Pennsylvania Avenue, N.W., P.O. Box 7566, Washington, DC 20044–7566.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: This proceeding involves an application for use of certain terminal facilities and trackage by VCTC pursuant to 49 U.S.C. 11102(a). Under section 11102(d), the Board must complete the proceeding within 180 days after the filing of the application. As VCTC filed its application on February 12, 1998, the deadline for completion of the proceeding is August 11, 1998. Both VCTC and UP filed a joint petition for exemption from section 11102(d) to extend the deadline for a 90-day period until November 9, 1998. Acting under 49 U.S.C. 10502, the Board has granted an exemption from the statutory deadline.

Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC News & Data, Inc., 1925 K Street, N.W., Suite 210, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services at (202) 565–1695.]

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 29, 1998.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 98–21214 Filed 8–10–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[PS–106–91]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, PS–106–91 (TD 8563), State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit (§ 1.42–14).

DATES: Written comments should be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: State Housing Credit Ceiling and Other Rules Relating to the Low-Income Housing Credit.

OMB Number: 1545–1423.

Regulation Project Number: PS–106–91.

Abstract: The regulations concern the low-income housing credit under section 42 of the Internal Revenue Code. The regulations provide rules relating to the order in which housing credit dollar amounts are allocated from each State's housing credit ceiling under section 42(h)(3)(C) and the determination of which States qualify to receive credit from a national pool of credit under section 42(h)(3)(D). The regulations affect State and local housing credit agencies and taxpayers receiving credit allocations, and provide them with guidance for complying with section 42.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, individuals or households, and state, local or tribal governments.

Estimated Number of Respondents: 110.

Estimated Time Per Respondent: 2 hours, 30 minutes.

Estimated Total Annual Burden Hours: 275.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 3, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 98–21383 Filed 8–10–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[IA–44–94]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995,

Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, IA–44–94 (TD 8690), Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions (§§ 1.170A–13(f) and 1.6115–1).

DATES: Written comments should be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Deductibility, Substantiation, and Disclosure of Certain Charitable Contributions.

OMB Number: 1545–1464.

Regulation Project Number: IA–44–94.

Abstract: This regulation provides guidance regarding the allowance of certain charitable contribution deductions, the substantiation requirements for charitable contributions of $250 or more, and the disclosure requirements for quid pro quo contributions in excess of $75. The regulations affect donee organizations described in Internal Revenue Code section 170(c) and individuals and entities that make payments to these organizations.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 1,750,000.

Estimated Time Per Respondent: 1 hour, 8 minutes.

Estimated Total Annual Burden Hours: 1,975,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–21384 Filed 8–10–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–209626–93]

Proposed Collection; Comment Request For Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing notice of proposed rulemaking and temporary regulation, REG–209626–93 (TD 8620), Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417 (§§ 1.411(a)–11T and 1.417(e)–1T).

DATES: Written comments should be received on or before October 13, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Notice, Consent, and Election Requirements Under Sections 411(a)(11) and 417.

OMB Number: 1545–1471.

Regulation Project Number: REG–209626–93 (formerly EE–24–93).

Abstract: These regulations provide guidance concerning the notice and consent requirements under Code section 411(a)(11) and the notice and election requirements of Code section 417. Regulation section 417(a)–11(c) provides that a participant's consent to a distribution under Code section 411(a)(11) is not valid unless the participant receives a notice of his or her rights under the plan no more than 90 and no less than 30 days prior to the annuity starting date. Regulation section 1.417(e)–1 sets forth the same 90/30-day time period for providing the notice explaining the qualified joint and survivor annuity and waiver rights required under Code section 417(a)(3).

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals, business or other for-profit organizations, not-for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Respondents: 750,000.

Estimated Time Per Respondent: .011 hr.

Estimated Total Annual Burden Hours: 8,333.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or

included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 4, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer

[FR Doc. 98–21385 Filed 8–10–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 1998.

Last name	First name	Middle name
AHLUWALIA	PAVAN	SINGH.
ALEXANDER	MYOUNG	SUK.
ARDIE	AGUSTINA	DOROTHEA.
BAUMEISTER	ERICH..	
BENDER	JUERGEN	EDWARD.
BERRY	YON	HWA.
BREWBAKER JR.	HAROLD	KEITH.
BROOK	SLIVE	LYNDON.
BROWN-SOUDER	MARIE	ELISE.
BRUCKER	KATHERINE	A.
CAGNINA	MICHELE	JOSEE.
CAMILLERI	RITA	ANNA.
CAMILLERI	JENNIFER	MARCIA.
CARSWELL	ANDREW	GORDON.
CASSAR	MARK	ANTONY.
CATHERWOOD	WEBSTER..	
CAZIER	NICOLE	LEILANI.
CHAN	CHI	STEVE.
CHANG	AIJA	LEE.
CHANG	MIGUEL	YEN-SHEE.
CHANG	HEATHER	ANN.
CHENK-YAU	THOMAS	PAK.
CHO	HEECHAN..	
CHOI	STEVE	JAEWON.
CHOW	WILLIAMS	WAILAP.
CHU	CHUNG	KIT-PHILIP.
CLARK	JONATAN	EARL-WILLIAM.
CLUTTERBUCK	ALAN	RALPH.
CORSO	OK	SUN.
CROSS-MEADOWS	PATRICIA	AMME.
DAVIS	ALICE	NOREEN-SOPHIE.
DE LONG	MARJA	GRIETJE.
DEBONO	RUTH	LOUISE.
DEFRIEST	VIRGINIA	ANN.
DEHNE	ACHIM	HERBERT.
DITLEVSEN	TRINE..	
ECKEL	CARIN	DENISE.
FANSHAWE	SABLE	MELANIE.
FARSTAD	MARGARET	HAUGEN.
FEDORA	SHARON	KAY.
FEDORA	ORESTES..	
FINNICUM	ROBERT	MANUAL.
FONG	ANTHONY	CHUNG-KAU.
FRENI	STAN	CONSTANT.
GENSING	SONJA..	
HIOE	TONY	TSUN-CHAO.
HOLLEY	ROBERT	BRADLEY.
HOLLY	MARGARET	A.
HONG	BOONG	HEE.
HONG	CHUN	BOK.
HUANG	TSONG	JEN.
HUBER	HANS	FREIDRICH.

Last name	First name	Middle name
HUO	REN	WAI-CHIU.
ISAACSON	BRIGITTE	MICHELLE.
JEDINAK	RUSSELL	MICHAEL.
JEDINAK	REBECCA	MANLEY.
JOHN	CARLES..	
JOHNSON	TAE	SUK.
JUHON	KUMBOK..	
JUNCO-ABARCA	ALDA	MARGARITA.
JUNCO-ABARCA	ANGEL	LUIS.
KIM	BUMMAN	RUSSELL.
KIM	YOUNGSOOK	ROSA.
KIM	YOUNG	MI.
KIM	CHUNG	JA.
KING	WALTER	WING-KEUNG.
KLIEN	PAUL	RICHARD.
KOOMSON	KOBENA	ARTHUR.
KUNSMANN	MICHAEL	RAJ.
KWAK	KWANG	JA.
LAI	MARGARET	MEI-YEE.
LAMB	CHARLES	WILSON.
LAWSON JR.	DALE	LOUIS.
LEE	WOODROW	WOONG-MOO.
LEE	ME YOUNG	KO.
LEE	CHUL..	
LEE	MESANG..	
LEVY	EDWIN..	
LIGHTBOURN	HELEN	MAE.
LIOK	VANESSA	MARIE.
LOHR	SIGRID	GISELA.
LOZOWY	IVAN..	
MAAS	CHRISTEL	MARIA.
MEDITZ	THOMAS	JOERG.
MELLO	JOSE	BARBOSA.
NAMKAD	DHWANI	NARENDRA.
NEICHIN	STEVEN	MICHAEL.
NOCODEMUS	SUN	CHA (YI).
OSTERFELT-NEE WEINSTEIN	FRANCES	MIRIAM.
PARR	EDITH	HEIDI.
PASLEY	MAX	WARREN.
PASLEY-NEE GUESSFORD	HELEN	IRENE.
PETTERSON	GORDON	ANDREW.
PHILLSBURY	FREDERICK	STEPHEN.
PISANI	SYLVIA..	
PROTELLI	KEVIN	MARIO.
PYE	HARVEY	GEORGE.
RELECOM	BERANGERE	MARIE.
RIEB-SHOULDICE	TERRY	ELIZABETH.
RUSSELL	CHONG	MI.
SCHAEFER	JOANNES	MAX.
SCOTT	WILLIAM	DAVID.
SHAPIRO	ROBERT	K.
SHAPIRO	STANLEY	JACK.
SHOULDICE	CYNTHIA	JANE.
SINCLAIR	ANDREA	MARGARET.
STASIUK	JOSEPH	WILLIAM.
SUZUKI	TAKAKO	TRICIA.
SWANBERG	KARL	DAVID.
TALBOT-ANDERSEN	SANDRA	MARY.
VESEY	THOMAS	WINTHROP-PENISTON.
WAGNER	TAMARA	LAKECIA.
WALVICK	BRENDA	EDITH.
WHEATLEY	JOHN	PAUL.
WONG	WILLAM	WEN-YUAN.
YANG	EUN	AE.

Approved: July 24, 1998.

Doug Rogers,

Project Manager, International District Operations.

[FR Doc. 98–21382 Filed 8–10–98; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Computer Matching Program

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice.

SUMMARY: Pursuant to section 552a(e)(12) of the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given of the conduct of Internal Revenue Service computer matching programs.

In accordance with pertinent provisions of section 6103 of the Internal Revenue Code (IRC) of 1986, the computer matching programs provide Federal, State, and local agencies with tax information from IRS records to assist them in administering the programs and activities described hereafter. The purpose of these programs is to prevent or reduce fraud and abuse in certain Federally assisted benefit programs and facilitate the settlement of government claims while protecting the privacy interest of the subjects of the match. The matches are conducted on an on-going basis in accordance with the terms of the Computer Matching Agreement in effect with each participant as approved by the Data Integrity Boards of both agencies, and for the period of time specified in such agreement. Members of the public desiring specific information concerning an on-going matching activity may request a copy of the agreement at the address provided below.

EFFECTIVE DATES: This notice will be effective September 10, 1998.

ADDRESSES: Inquiries may be mailed to the National Director, Office of Governmental Liaison and Disclosure, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: M. R. Taylor, Program Manager, Office of FedState Relations, Internal Revenue Service, 202–622–5145.

SUPPLEMENTARY INFORMATION: The nature, purposes and authorities for IRS computer matching programs are as follows:

Matches Conducted Pursuant to IRC 6103(l)(7).

The Service is required, upon written request, to disclose current return information from returns with respect to unearned income from the Internal Revenue Service files to any Federal, State, or local agency administering a program listed below:

(i) A State program funded under part A of title IV of the Social Security Act;

(ii) Medical assistance provided under a State plan approved under title XIX of the Social Security Act;

(iii) Supplemental security income benefits under title XVI of the Social Security Act, and federally administered supplementary payments of the type described in section 1616(a) of such Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(iv) Any benefits provided under a State plan approved under title I, X, XIV, or XVI of the Social Security Act (as those titles apply to Puerto Rico, Guam, and the Virgin Islands);

(v) Unemployment compensation provided under a State law described in section 3304 of the Internal Revenue Code;

(vi) Assistance provided under the Food Stamp Act of 1977;

(vii) State-administered supplementary payments of the type described in section 1616(a) of the Social Security Act (including payments pursuant to an agreement entered into under section 212(a) of Pub. L. 93–66);

(viii)(I) Any needs-based pension provided under Chapter 15 of title 38, United States Code, or under any other law administered by the Secretary of Veterans Affairs;

(II) Parents' dependency and indemnity compensation provided under section 1315 of title 38, United States Code;

(III) Health-care services furnished under sections 1710(a)(1)(I), 1710(a)(2), 1710(b) and 1712(a)(2)(B) of U.S.C. title 38;

(IV) Compensation paid under chapter 11 of title 38, United States Code, at the 100 percent rate based solely on unemployability and without regard to the fact that the disability or disabilities are not rated as 100 percent disabling under the rating schedule. Only return information from returns with respect to net earnings from self-employment and wages may be disclosed under this paragraph for use with respect to any program described in (viii)(IV); and

(ix) Any housing assistance program administered by the Department of Housing and Urban Development that involves initial and periodic review of an applicant's or participant's income, except that return information may be disclosed under this clause only on written request by the Secretary of Housing and Urban Development and only for use by officers and employees of the Department of Housing and Urban Development with respect to applicants for and participants in such programs.

Public Law 105–34, section 1023(a) (August 5, 1997) extended the termination date for clause (viii) from September 30, 1998 to September 30, 2003. Public Law 105–65, section 542(b) (October 27, 1997) repealed the termination clause for clause (ix).

Information is disclosed by the IRS only for the purpose of, and to the extent necessary in, determining eligibility for, or the correct amount of, benefits under the aforementioned programs.

The return information is extracted on a monthly basis from the Internal Revenue Service Wage and Information Returns Processing File (Treasury/IRS 22.061 (IRP)) for the latest tax year. This file contains information returns (e.g., Forms 1099–DIV, 1099–INT and W–2G) filed by payers of income.

Federal agencies expected to participate in (l)(7) matches and their Privacy Act systems of records are:

1. Department of Housing and Urban Development, Office of Public and Indian Housing (Tenant Assistance and Contract Verification Data System, HUD/H–11);

2. Department of Veterans Affairs, Veterans Benefits Administration (Compensation, Pension, Education and Rehabilitation Records, 58 VA 21/22;

3. Department of Veterans Affairs, Veterans Health Administration (Patient Medical Records–VA, 24VA136); and

4. Social Security Administration, Office of Program Benefits Policy (Supplemental Security Record (SSR), HHS/SSA/OSR 90–60–0103).

State agencies expected to participate using non—federal systems of records are:

1. Alabama Department of Human Resources
2. Alabama Medicaid Agency
3. Alaska Department of Health and Social Services
4. Arizona Department of Economic Security
5. Arizona Health Care Cost Containment System
6. Arkansas Department of Human Services
7. California Department of Social Services
8. Colorado Department of Human Services

9. Connecticut Department of Social Services
10. Delaware Health and Social Services
11. District of Columbia Department of Human Services
12. Florida Department of Children and Families
13. Georgia Department of Human Resources
14. Guam Department of Public Health and Social Services
15. Hawaii Department of Human Services
16. Idaho Department of Health and Welfare
17. Illinois Department of Human Services
18. Indiana Family and Social Services Administration
19. Iowa Department of Human Services
20. Kansas Department of Social and Rehabilitative Services
21. Kentucky Cabinet for Families and Children
22. Louisiana Department of Health and Hospitals
23. Louisiana Department of Social Services
24. Maine Department of Human Services
25. Maryland Department of Human Resources
26. Massachusetts Department of Transitional Assistance
27. Massachusetts Division of Medical Assistance
28. Michigan Family Independence Agency
29. Minnesota Department of Human Services
30. Mississippi Division of Medicaid
31. Mississippi Department of Human Services
32. Missouri Department of Social Services
33. Montana Department of Public Health and Human Services
34. Nebraska Department of Health and Human Services
35. Nevada Department of Human Resources
36. New Hampshire Department of Health and Human Services
37. New Jersey Department of Human Services
38. New Mexico Human Services Department
39. New York Office of Temporary and Disability Assistance
40. North Carolina Department of Health and Human Services
41. North Dakota Department of Human Services
42. Ohio Department of Human Services
43. Oklahoma Department of Human Services
44. Oregon Department of Human Resources
45. Pennsylvania Department of Public Welfare
46. Puerto Rico Department of the Family
47. Puerto Rico Department of Health
48. Rhode Island Department of Human Services
49. South Carolina Department of Social Services
50. South Dakota Department of Social Services
51. Tennessee Department of Human Services
52. Texas Department of Human Services
53. Utah Department of Health
54. Utah Department of Workforce Services
55. Vermont Department of Social Welfare
56. Virgin Islands Bureau of Health Insurance and Medical Assistance
57. Virgin Islands Department of Human Services
58. Virginia Department of Social Services
59. Washington Department of Social and Health Services
60. West Virginia Department of Human Services
61. Wisconsin Department of Workforce Development
62. Wyoming Department of Family Services

Matches Conducted Pursuant to IRC 6103(m)(2).

(A) In general, except as provided in subparagraph (B), the Service may, upon written request, disclose the mailing address of a taxpayer for use by officers, employees, or agents of a Federal agency for purposes of locating such taxpayer to collect or compromise a Federal claim against the taxpayer in accordance with sections 3711, 3717, and 3718 of title 31.

(B) In the case of an agent of a Federal agency which is a consumer reporting agency (within the meaning of section 603(f) of the Fair Credit Reporting Act, 15 U.S.C. 1681a(f)), the mailing address of a taxpayer may be disclosed to such agent under subparagraph (A) only for the purpose of allowing such agent to prepare a commercial credit report on the taxpayer for use by such Federal agency in accordance with sections 3711, 3717, and 3718 of title 31.

The IRS information provided is extracted weekly from the Individual Master File (IMF) (Treasury/IRS 24.030).

Federal agencies expected to participate in (m)(2) matches and their Privacy Act systems of records are:

1. Department of Housing and Urban Development (Accounting Records (HUD/DEPT–2));

2. National Institutes of Health (IRS Address Request System (116841));

3. Social Security Administration (Supplemental Security Income Record (HHS/SSA/OSR 09–60–0103); and Master Beneficiary Record (HHS/SSA/OSR 09–60–0090));

4. Department of Education Federal Family Education Loans Division, title IV Program File (18–40–0024); and

5. Department of Veterans Affairs, Accounts Receivable Records—VA (88VA244).

Matches Conducted Pursuant to IRC 6103(m)(4).

In general, upon written request from the Secretary of Education, the Service may disclose the mailing address of any taxpayer who owes an overpayment of a grant awarded to such taxpayer under subpart 1 of part A of title IV of the Higher Education Act of 1965, or who has defaulted on a loan made under part B, D, or E of title IV of the Higher Education Act of 1965 or made pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962 to a student at an institution of higher education. This section further provides for the redisclosure by the Secretary of Education of a taxpayer's mailing address to any lender, or any State or nonprofit guarantee agency, participating under part (B) or (D) of title IV of the Higher Education Act of 1965, or any educational institution with which the Secretary of Education has an agreement under subpart 1 of part A, or part D, or E, of title IV of such Act. Redisclosure is made by the Secretary of Education for use only by officers, employees, or agents of such lender, guarantee agency, or institution whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such program for purposes of collecting such overpayment or loan.

The IRS information provided is extracted from the IMF (Treasury/IRS 24.030). The U.S. Department of Education matches the title IV Program File [18–40–0024] with the IMF.

Matches Conducted Pursuant to IRC 6103(m)(5).

Upon written request from the Secretary of Health and Human Services (HHS), the Service may disclose the mailing address of any taxpayer who has defaulted on a loan made under part C of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act, for use only by officers, employees, or agents of the Department of Health and Human Services for purposes of locating such taxpayer for purposes of collecting such loan. This section also provides for the redisclosure by the Secretary of HHS of a taxpayer's mailing address to any

school with which the Secretary has an agreement under subpart II of part C of title VII of the Public Health Service Act, or subpart II of part B of title VIII of such Act, or any eligible lender (within the meaning of section 737(4) of such Act) participating under subpart I of part C of title VII of such Act. Redisclosure is made by the Secretary of HHS for use only by officers, employees, or agents of such school or eligible lender whose duties relate to the collection of student loans for purposes of locating individuals who have defaulted on student loans made under such subparts for the purposes of collecting such loans.

The IRS information provided is extracted from the IMF (Treasury/IRS 24.030). The Department of Health and Human Services matches the Public Health Service and National Health Service Corps Provider Records System (HHS/HRSA/BHCDA 09–15–0037) with the IMF.

Dated: August 4, 1998.

Shelia Y. McCann,

Deputy Assistant Secretary (Administration).

[FR Doc. 98–21401 Filed 8–10–98; 8:45 am]

BILLING CODE: 4810–30–P

federal register

Tuesday
August 11, 1998

Part II

Department of Health and Human Services

Health Care Financing Administration

Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1035–NC]

Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice with comment period.

SUMMARY: This notice with comment period sets forth revised schedules of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1998. These limitations replace the limitations that were set forth in our January 2, 1998 notice with comment period (63 FR 89) and our March 31, 1998 final rule with comment period (63 FR 15718).

DATES: *Effective Date:* These schedules of limitations are effective for cost reporting periods beginning on or after October 1, 1998.

Comment Date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p. m. on October 13, 1998.

ADDRESSES: Mail written comments (one original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1035–NC, P.O. Box 7517, Baltimore, Maryland 21207–0517.

If you prefer, you may deliver your written comments (one original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room C5–09–26, Central Building, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following E-mail address: HCFA1035NC@hcfa.gov. E-mail comments must include the full name and address of the sender and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the E-mail message because we may not be able to access attachments.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1035NC. 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 offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Michael Bussacca, (410) 786–4602.

SUPPLEMENTARY INFORMATION: Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your VISA or MasterCard number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you may view and photocopy the **Federal Register** document at most libraries designated as Federal Deposit Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limitations on allowable costs incurred by a provider of services that may be paid under the Medicare program, based on estimates of the costs necessary for the efficient delivery of needed health services. Under this authority, we have maintained limitations on home health agency (HHA) costs since 1979. Additional statutory provisions specifically governing the limitations applicable to HHAs are contained at section 1861(v)(1)(L) of the Act.

Section 1861(v)(1)(L)(i)(IV) of the Act specifies that the per-visit limits shall not exceed 105 percent of the median of the labor-related and nonlabor per-visit costs for freestanding HHAs. The reasonable costs used in the per-visit calculations will be updated by the home health market basket excluding any change in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996.

Section 1861(v)(1)(L)(v)(I) of the Act requires the per-beneficiary annual limitation be a blend of: (1), an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during Federal fiscal year (FY) 1994, and (2), a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of such costs for the agency's census division for cost reporting periods ending during FY 1994, standardized by the hospital wage index. The reasonable costs used in the per-beneficiary limitation calculations in 1 and 2 above will be updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then be multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's aggregate per-beneficiary limitation for the cost reporting period subject to the limitation.

For new providers and providers without a 12-month cost reporting period ending in fiscal 1994, the per-beneficiary limitation will be a national per-beneficiary limitation which will be equal to the median of these limitations applied to other HHAs as determined under section 1861(v)(1)(L)(v) of the Act.

Payments by Medicare under this system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate.

This notice with comment period sets forth cost limitations for cost reporting periods beginning on or after October 1, 1998. As required by section 1861(v)(1)(L)(iii) of the Act, we are

using the area wage index applicable under section 1886(d)(3)(E) of the Act determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is rendered. For purposes of this notice, the HHA wage index is based on the most recent published final hospital wage index, that is, the preclassified hospital wage index effective for hospital discharges on or after October 1, 1997, which uses FY 1994 wage data. As the statute also specifies, in applying the hospital wage index to HHAs, no adjustments are to be made to account for hospital reclassifications under section 1886(d)(8)(B) of the Act, decisions of the Medicare Geographic Classification Board (MGCRB) under section 1886(d)(10) of the Act, or decisions by the Secretary.

II. Analysis of and Responses to Public Comments to the January 2, 1998 Per-Visit Limitation Notice

We received 24 items of timely correspondence on the January 2, 1998 notice with comment period. A large percentage of the commenters also expressed concern over various aspects of the BBA '97 including the per-beneficiary limitations and the surety bond requirement which are not pertinent to the January 2, 1998 notice. Nonetheless, we will address the comments regarding the per-beneficiary limitations under section IV. of this notice. The issues not related to the limitations will be taken into account under separate notices specific to those issues. The comments pertaining to the per-visit limitations and our responses are discussed below.

Comment: The hospital wage indices do not include wages and wage-related data for home health services. The most appropriate measure would be a home health agency specific wage index by geographic area.

Response: The use of the hospital wage indices is required by statute. Section 1861(v)(1)(L)(iii) of the Act specifically states, in part, ''the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1886 (d)(3)(E) and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished * * * '' Furthermore, in 1989 we published a schedule of per-visit limitations using a home health agency-specific wage index in the **Federal Register** (54 FR 27742). Even though we placed a limit of 20 percent on the amount that HHAs cost limitation may increase or decrease when compared to the prior year's cost limitation which applied the hospital wage indices, the HHA industry questioned the validity of the data used in developing the HHA-specific wage indices. A change in legislation was pursued to prohibit the use of a HHA-specific wage index. In 1991 we had to republish the 1989 per-visit limitations in the **Federal Register** at 56 FR 12934 using the hospital wage indices as required by section 6222 of the Budget Reconciliation Act of 1989, Pub. L. 99–239. From that time forward we have been required to use the hospital wage indices in developing the per-visit limitations.

Comment: Agencies may be forced into more stringent evaluations of what patients are suitable for home care, rejecting those whose needs are going to make them candidates for lengthy and expensive visits. Overall quality of care to patients will fall as field staff are placed under greater pressure to perform more visits in a given time at a lower cost.

Response: We recognize that there will be valid circumstances not anticipated by the per-visit limitation methodology that will cause an agency to incur cost in excess of that allowed by the per-visit limitation. We provide for those unique situations through the exceptions process as ''atypical'' home health services at 42 CFR 413.30(f)(1). It is desirable for all agencies to monitor continually the cost of providing each discipline and to take steps to control the cost of any discipline as soon as there are indications that costs are increasing. We believe that a per-visit limitation of 105 percent of the median will give all agencies an added incentive to improve their management controls with immediate and ongoing benefit to the Medicare program and its beneficiaries through a reduction in cost and a moderation in the future rate of increase in costs.

Comment: There are additional costs which the home health industry must bear in order to meet new HCFA requirements such as implementation of the home health patient Outcome and Assessment Information Set (OASIS). There should be an add-on to the per-visit limitations in recognition of the costs associated with implementing OASIS requirements.

Response: We recognize that when agencies are required to implement OASIS, the agencies will incur training costs that they would not have otherwise incurred for this activity. These costs are almost exclusively associated with training staff in the disciplines (skilled nursing, physical, speech pathology, and occupational therapy) that will be performing OASIS assessments at the start of care and on a continuing basis. Accordingly, we have calculated for these disciplines an adjustment factor to be applied to the labor portion of the per-visit limitations applicable to these disciplines. This adjustment is intended as an offset to foregone patient care time that will be required for the necessary OASIS training and for gaining experience in performing assessments during the year of implementation. This offset is applied as an adjustment factor to be applied to the labor portion of the affected disciplines. See section III.G. for a discussion of the methodology used to calculate the adjustment factor.

Comment: The rise in utilization of home health has been due, in part, to the implementation of the hospital prospective payment system by hospitals which now discharge the patient quicker and sicker knowing that the patient can be treated adequately at home and the realization by physicians that home health care is useful, desirable, and economical alternative to institutionalization.

Response: There are several reasons why home health utilization has grown. Although it has been said that the hospital prospective payment system has resulted in patients being discharged sicker and quicker, and transferred to the home health setting, this is not the case overall. A study published in The New England Journal of Medicine in August 1996 found, ''less than a quarter of home health visits (22 percent) were preceded by a hospital stay within 30 days. Nearly half the visits (43 percent.) were unassociated with an inpatient stay in the previous six months.'' Also, the hospital prospective payment system has been in existence since October 1983. Any impact on the costs of services of providing home health care should have already been reflected in our data base which is approximately ten years after the implementation of the hospital prospective payment system.

Comment: The per-visit limitations should not be published and applied on a retroactive basis.

Response: The statute is quite explicit in establishing both the effective date of the per-beneficiary limitation, as well as the date by which the per-visit limitations were to be published. As much information as possible was disseminated to the home health trade organizations regarding the impact of the limitations without jeopardizing our rulemaking process. We were aware that

these home health trade organizations had been forwarding this information to their home health care members as quickly as possible so that agencies could estimate the effect of the per-visit on their financial operations. To the extent possible we made as much information available to the home health industry as we could for preparation to the revised per-visit limitations.

Comment: The update factors proposed by HCFA appear to be understated by approximately 4.5 percent.

Response: The update factors displayed in the notice which are applied to the data used in developing the per-visit limitations are reduced update factors as mandated by the statute. Section 1861(v)(1)(L)(iv) of the Act specifically prohibits the Secretary from taking into account any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, the update factors displayed in the notice do not include the changes for this period of time.

Comment: A seventh discipline should be established to set out chronic illness (such as insulin dependent diabetic and wound care) skilled nursing services from other skilled nursing visits. This would assist the definition of patient acuity and would create significant savings to the Medicare program by developing a lower level of skilled nursing visit category that would account for reduced time and effort associated with chronic illness.

Response: The home health benefit as set forth in 1861(m) of the Act sets forth the disciplines covered for home health services and does not provide for a seventh discipline along the lines suggested by the commenter.

Comment: The total impact on home health agencies of the reduction in per-visit cost limitations has been understated due to HCFA's separate analysis of the per-visit and the per-beneficiary limitations.

Response: The impact analysis on the revised per-visit limitation notice is correct in that the analysis can only address the limitations addressed in that notice. At the time the notice was published, the per-beneficiary limitations were not calculated and the impact of both the per-visit and the per-beneficiary limitations was unknown. We did, however, address the dual impact of the revised per-visit limitations and the new per-beneficiary limitations in the final rule with comment for the per-beneficiary limitation which was published on March 31, 1998. This impact is addressed in the **Federal Register** published on March 31, 1998 at 63 FR 15736.

Comment: After the adjustment of the labor and nonlabor portions from 112 percent of the mean to 105 percent of the median, the amount that would be paid under the labor portion is significantly smaller than what the 1982 wage-index would indicate. Therefore, in order to remain budget neutral, it would appear that a significantly larger budget neutrality factor should be applied to raise the labor-related portion back up to be in line with the 1982 wage-index base.

Response: Budget neutrality with respect to the wage index requires that aggregate Medicare payments to home health agencies be equal to the payments that would have been made had the 1982 wage index been used. Because the level of the per-visit limitations was adjusted downward from the previous per-visit limitations that were in effect, a different distribution of HHAs are under the revised per-visit limitations. These are the HHAs that largely affect the budget neutrality adjustment factor. These HHAs would have been only slightly better off using the 1982 wage index. Therefore, the adjustment factor reflects the slight increase in payments to obtain budget neutrality.

Comment: HCFA has stated that fiscal year 1994 is the most current information available for computation of the home health per-visit limitations. Excluding the results of cost reports finalized after October 10, 1995 from the data base seriously skews the cost per-visit limitation calculations with older cost and per-visit data, artificially lowering the median.

Response: Unlike the per-beneficiary limitations which require the use of Federal FY 1994 as the base period for establishing the limitations, neither the statute nor the Medicare regulations dictate the data base to be used in establishing the per-visit limitations. Moreover, we update the data base by rates of increase in the home health market basket from the end of the FYs of the cost report data used in the data base to the FY end to which the per-visit limitations apply. In keeping with past practices, we updated the data base used for the July 1997 notice in establishing the per-visit limitations. We believe the per-visit limitations reflect the per-visit costs reported by HHAs and these per-visit limitations have been updated appropriately in accordance with the statute.

Comment: The home health market-basket index does not measure specific costs.

Response: The home health market-basket is a measurement of costs and inflation overall and is not a measurement of increase in agency-specific costs.

III. Update of Per-Visit Limitations

The methodology used to develop the schedule of per-visit limitations in this notice is the same as that used in setting the limitations effective October 1, 1997. We are using the latest settled cost report data from freestanding HHAs to develop the per-visit cost limitations. We have updated the per-visit cost limitations to reflect the expected cost increases between the cost reporting periods in the data base and September 30, 1999 excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996.

A. Data Used

To develop the schedule of per-visit limitations effective for cost reporting periods beginning on or after October 1, 1998, we extracted actual cost per-visit data from the most recent settled Medicare cost reports for periods beginning on or after January 1, 1994 and settled by May 1998. The majority of the cost reports were from Federal fiscal year 1996. We then adjusted the data using the latest available market basket indexes to reflect expected cost increases occurring between the cost reporting periods contained in our data base and September 30, 1999, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, we excluded this time period when we adjusted the database for the market basket increases.

B. Wage Index

A wage index is used to adjust the labor-related portion of the per-visit limitation to reflect differing wage levels among areas. In establishing the per-visit limitation, we used the FY 1998 hospital wage index, which is based on 1994 hospital wage data.

Each HHA's labor market area is determined based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the most recently published hospital wage index (that is, the FY 1998 hospital wage index, which was published in the **Federal Register** on August 29, 1997 (62

FR 46070)) without regard to whether such hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedule of per-visit limitations reflects the MSA definitions that are currently in effect under the hospital prospective payment system.

We are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–11). Section 601(g) of Public Law 98–21 requires that any hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA
- Newport County, RI in the Providence Fall-Warwick, RI MSA

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA per-visit limitations. These exceptions result in the same New England County Metropolitan Area definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, New England County Metropolitan Area or MSA.

Section 1861(v)(1)(L)(iii) requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recently published wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B) of the Act. The wage-index, as applied to the labor portion of the per-visit limitation, must be based on the geographic location in which the home health service is actually furnished rather than the physical location of the HHA itself.

C. Updating the Wage Index on a Budget-Neutral Basis

Section 4207(d)(2) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Public Law 101–508) requires that, in updating the wage index, aggregate payments to HHAs will remain the same as they would have been if the wage index had not been updated. Therefore, overall payments to HHAs are not affected by changes in the wage index values.

To comply with the requirements of section 4207(d)(2) of OBRA '90 that updating the wage index be budget neutral, we determined that it is necessary to apply a budget neutrality adjustment factor of 1.03 to the labor-related portion of the per-visit limitations effective for cost reporting periods beginning on or after October 1, 1998. This adjustment ensures that aggregate payments to HHAs are not affected by the change to a wage index based on the hospital wage index published on August 29, 1997.

To determine the adjustment factor, we analyzed both the data obtained from the freestanding agencies used to determine the per-visit limitations and the settled cost report data covering the same time period for the provider-based agencies. For each agency in this data base, we replaced their current wage index with the one corresponding to the 1982 hospital wage index. Some Metropolitan Statistical Areas (MSAs) that currently exist did not exist at the time this index was created and therefore have no matching 1982 wage index. In the data base we are currently using, these unmatchable MSAs represented 1.3 percent of the total visits. Since this percentage was small, we deleted these agencies from the analysis. We then determined what Medicare program payments would be using the 1982 wage index. Next, we determined payments using the new wage index and adjusted the labor portion of the payment by the factor necessary to match program payments if the 1982 wage index was used. (See the example in section VIII.B. of this notice regarding the adjustment of per-visit limitations by the wage index and the budget neutrality factor.)

D. Standardization for Wage Levels

After adjustment by the market basket index, we divided each HHA's per-visit costs into labor and nonlabor portions. The labor portion of cost (77.668 percent as determined by the market basket) represents the employee wage and benefit factor plus the contract services factor from the market basket. We then divided the labor portion of per-visit cost by the wage index applicable to the HHA's location to arrive at an adjusted labor cost.

E. Adjustment for ''Outliers'

We transformed all per-visit cost data into their natural logarithms and grouped them by type of service and MSA, NECMA, or non-MSA location, in order to determine the median cost and standard deviation for each group. We then eliminated all ''outlier'' costs which were all per-visit costs less than 10 dollars and per-visit costs more than 800 dollars, retaining only those per-visit costs within two standard deviations of the median in each service.

F. Basic Service Limitation

We calculate a basic service limitation to 105 percent of the median labor and nonlabor portions of the per-visit costs of freestanding HHAs for each type of service. (See Table 3a in section VIII.)

G. Offset Adjustment for the Implementation of the Home Health Outcome Assessment Information (OASIS)

When HHAs are required to use an assessment tool, such as OASIS, for ongoing collection of quality of care data, they will incur costs associated with this requirement. Any costs associated with a new type of reporting system are not reflected in the database used to calculate the per-visit limitations. We have, therefore, decided to provide an offset adjustment factor to be applied to the labor-related component of the per-visit limitations for skilled nursing, physical therapy, speech pathology, and occupational therapy which should be the only disciplines affected by this new requirement.

Since any new assessment performance tool will replace or be integrated into an agency's existing assessment activities, we believe that there will be no permanent ongoing incremental costs associated with these types of assessment systems. This has been shown through data derived from the ongoing Medicare Quality and Improvement Demonstration using OASIS as an assessment tool. This demonstration shows that the OASIS assessment requires either the same amount of time or less time than the

patient assessment methods currently in use.

Absent other types of data, we are using the information from this demonstration to derive an offset adjustment for any new assessment tool that may be imposed on the HHAs effective during the per-visit limitations effective for cost reporting periods beginning on or after October 1, 1998. Data from the OASIS demonstration show that OASIS implementation burden consists of foregone staff time that would otherwise be devoted to patient care activities. There are three types of costs associated with staff time for a typical 18-person staff. The first would be training time for an agency coordinator who conducts training or supervision of the clinical staff. This individual would probably need to spend four hours reading the assessment tool training manual and eight hours attending an assessment tool training session. Training would also be necessary for staff who will be performing the assessment process. The affected disciplines are skilled nursing, physical therapy, speech pathology, and occupational therapy. Each member of these disciplines would probably require four to six hours of training. Since agencies currently conduct inservices for clinical staff, usually on a monthly basis, the training for a new assessment tool would replace at least one of these sessions. The incremental training costs would be approximately half of the total costs, or two to three hours per trained staff member.

The second type of costs would be increases in assessment time during initial implementation. Experience from the demonstration indicates that total visit time increases by approximately 15 minutes during the first six to seven visits when newly trained staff have begun to perform OASIS assessments. After this initial period of becoming familiar with and acquiring experience with the new assessment tool, there is no net increase in visit duration.

The third type of costs would be the costs associated with the staff time to revise assessment forms and integrate OASIS elements. For a typical 18-person professional staff this is estimated to require sixteen hours of staff time: twelve hours of professional staff time (skill nursing, physical therapy, etc. * * *) and 4 hours of clerical time.

The adjustment factor is calculated in terms of per-FTE foregone staff time spent on these training and form revision activities as follows: (a) One hour for the agency coordinator—based on twelve hours total training time allocated over an 18-person professional staff, (b) three hours per staff for training, (c) two hours for increased assessment time during the initial implementation—based on fifteen minutes additional time for each of the first eight visits (rounded up from 7) during which the assessments are performed, and (d) one hour of supervisory time—based on sixteen hours of time spent revising assessment forms allocated over an 18-person professional staff. These four items total seven hours of time per-FTE during the year of OASIS implementation. Using a normal work year of 2000 hours (50 weeks times 40 hours) less the seven hours for additional training time for a new assessment program, the offset adjustment for foregone patient care would be .35 percent (2000 hours divided by 1993 hours less one equals .003513). This offset factor will be applied to the labor portion of the skilled nursing, physical therapy, speech pathology and occupational therapy per-visit limitations for both urban and nonurban areas. This factor will only be applied to the labor portion of these per-visit limitations for cost reporting periods beginning on or after October 1, 1998 if HHAs are required to implement OASIS.

In addition to training and forms revision, agencies will incur printing costs for the revised assessment forms. Data from the OASIS demonstration show that for the typical HHA, i.e., one that has 486 admissions per year and an 18-person professional staff, printing the new assessment forms will cost $280. Cost report data for 1994 and 1995 show that an HHA with 486, plus or minus 50, admissions, provides a total of thirty thousand visits of all types annually to patients. Allocating the $280 over 30 thousand visit yields an incremental cost of .93 cents per visit, which for estimation purposes is rounded up to one cent per visit for all disciplines.

The total offset adjustment is applied by first multiplying the labor portion of the per-visit limitation for skill nursing, physical therapy, speech pathology, and occupational therapy by the factor of 1.003513 for training and forms revision (the labor-portion is also adjusted by the appropriate wage index and budget neutrality factor), second, the non-labor portion is added to the adjusted labor-portion, and third, one cent is added for printing costs. The OASIS adjustment is only done after the implementation of OASIS is effective.

Because we believe that there will be no ongoing incremental costs to perform assessments under a new protocol, this adjustment offset will only apply to the labor component of the specified per-visit limitations in the first year of implementation of a new assessment tool.

While we have based this adjustment on the best data we have available to us, we are concerned that we may not have captured all relevant costs, particularly ongoing and automation costs. In part, this is because our data is based on agencies whose costs in this regard may not have been fully representative of agency costs generally. Therefore, we are asking for specific comments, including documented data, which would inform future decision making on this issue.

IV. Analysis of and Responses to Public Comments to the March 31, 1998 Per-Beneficiary Final Rule

We received 125 comments with respect to the March 31, 1998 **Federal Register** final rule with comment addressing the implementation of the per-beneficiary limitations. A number of comments were on the statutory requirements for which we do not have discretionary authority to change or not implement. These included comments such as: do not apply the per-beneficiary limitations for cost reporting periods beginning on or after October 1, 1997, delay implementation of the per-beneficiary limitations to October 1, 1998, repeal the statutory provisions requiring the application of the per-beneficiary limitations, and the use of fiscal year 1994 as a base year for establishing the per-beneficiary limitations is inadequate and should not be used in establishing the per-beneficiary limitations. These comments cannot be adopted without legislative amendments to the Act pertaining to the per-beneficiary limitations. The remaining comments are given below.

Comment: Agencies that have a per-beneficiary limitation lower than the national per-beneficiary limitation should be allowed to have the higher national per-beneficiary limitation apply.

Response: The statute is very specific with respect to how the per-beneficiary limitations are to be calculated for agencies that have a 12-month cost reporting period ending in Federal fiscal year 1994 (''clause v'' agencies) and new agencies (''clause vi'' agencies). Once the agency is classified as either a ''clause v'' or ''clause vi'' provider, the per-beneficiary limitation is established by statute. We have no discretion to apply a most beneficial test.

Comment: The requirement to prorate the unduplicated census count of Medicare beneficiaries when a beneficiary is serviced by more than one HHA for cost reporting periods beginning on or after October 1, 1997

should also apply in determining the unduplicated census count of Medicare beneficiaries for the base year, i.e., cost reporting periods ending during Federal FY 1994.

Response: The statute does not provide for this. Section 1861(v)(1)(L)(vi)(II) of the Act, as added by section 4602(c) of the BBA '97, states, ''For beneficiaries who use services furnished by more than one home health agency, the per-beneficiary limitation shall be prorated among the agencies.'' This provision is specific for services furnished by HHAs for cost reporting periods beginning on or after October 1, 1997. It applies to the application of the per-beneficiary limitation and not the calculation of the per-beneficiary limitation.

Comment: Many agencies were required to operate under a new system of reimbursement for a full six months before being told precisely what the system was. HCFA should provide some form of leniency for those agencies which have large overpayments due to the delay in publishing the new limitations.

Response: We recognize that providers with cost reporting periods that began prior to the publication of the per-beneficiary limitations may have experienced some uncertainty in budgeting their costs. Nonetheless, the BBA '97 is quite explicit in establishing both the effective date of these provisions and the date by which these limitations needed to be established. We made as much information as possible available to the home health industry prior to the publication of the limitations. We tried to make a smooth transition into the interim payment system (IPS) for HHAs by providing such information through major home health trade organizations. The IPS was highly publicized through home health trade news articles such that the effect of the IPS should have been anticipated by the home health industry. While there were certain technical issues which could only be addressed through the publication of the limitations, agencies could, to a large degree, estimate the effect of the new limitations on the financial operations. In fact, a trade organization developed computer software packages for estimating the impact of the IPS. Even though the limitations were not available prior to publication, we believe the home health industry had sufficient advanced knowledge to properly react to an estimated impact of the limitations on their operations. If an agency had suspected that overpayments might result from the interim payments received prior to the publication of the limitations, a prudent agency would set the estimated overpayment aside as a potential liability. This way, the agency would not put itself in a financial hardship to pay back any overpayments resulting from the newly published limitations.

Comment: The 1994 base period is not reflective of the sicker patients being released from the hospitals due to the hospital prospective payment system.

Response: As stated in the comments addressing the per-visit limitations, although it has been said that the hospital prospective payment system has resulted in patients being discharged quicker and sicker and transferred to a home health setting, this is not the case overall. A study published in The New England Journal of Medicine in August 1996 found , ''less than a quarter of home health visits (22 percent) were preceded by a hospital stay within 30 days. Nearly half the visits (43 percent) were unassociated with an inpatient stay in the previous six months.'' Also, the hospital prospective payment system has been in existence since October 1983. Any impact on the costs of services of providing home health care should have already been reflected in our data base which is approximately ten years after the implementation of the hospital prospective payment system.

Comment: The IPS per-beneficiary limitation puts a cap on the expenses a beneficiary can receive in one year.

Response: We cannot stress enough that the per-beneficiary limitation is not a cap on an individual beneficiary's amount of services or the costs of services. The per-beneficiary limitation is an aggregate limitation on each agency's total costs. Agencies now have a global budget that increases with the number of beneficiaries served and promotes efficiency in planning and delivering total services to all patients throughout the entire home health episodes. Applying the per-beneficiary limitation in the aggregate, not just to an individual patient, allows HHAs to balance the costs of caring for one patient against the cost of caring for other patients. HHAs have the flexibility to provide the appropriate amount of care (duration of visits, number of visits, and skill level of care given) for all patients within the aggregate per-beneficiary limitation.

Comment: Do not apply the freeze to inflation for the 1994–1996 period. This freeze should only apply to the per-visit limitations.

Response: The statute applies the freeze to both the per-visit and the per-beneficiary limitations. Section 1861(v)(1)(L)(iv) of the Act states, ''In establishing limits under this subparagraph for cost reporting periods beginning after September 30,1997, the Secretary shall not take into account any changes in the home health market basket, as determined by the Secretary, with respect to cost reporting periods which began on or after July 1, 1994, and before July 1, 1996.'' The amendment in section 4601 of the B.B.A. '97 to amend section 1861(v)(1)(L) of the Act encompasses all limits established under section 1861(v)(1)(L) of the Act, including the per-beneficiary limitations. Therefore, the application of the freeze in the market basket increases to both the per-visit limitations and the per-beneficary limitations is in accordance with the statutory language.

Comment: The requirement to apply the wage-index based on the location of the service furnished rather than the location of the HHA should only apply to the per-visit limitations.

Response: Again the statute requires the wage index based upon the location of the service furnished be applied to both the per-visit and the per-beneficiary limitations. Section 1861(v)(1)(L) of the Act, states in part, ''* * * the Secretary shall establish limits under this subparagraph for cost reporting periods beginning on or after such date by utilizing the area wage index applicable under section 1886(d)(3)(E) and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished * * *'' This language encompasses all the limitations noted under section 1861(v)(1)(L) of the Act, which includes both the per-visit and the per-beneficiary limitations.

Comment: HCFA should utilize the median amount for each census region for new providers. This will be the best reflection of both wages and utilization for agencies in a given area.

Response: Section 1861(v)(1)(L)(vi) of the Act as added by section 4602(c) of the B.B.A. '97, states, ''For new providers and those providers without a 12-month cost reporting period ending in fiscal year 1994, the per beneficiary limitation shall be equal to the median of these limits (or the Secretary's best estimates thereof) applied to other home health agencies as determined by the Secretary.'' The statute clearly contemplates the use of a single, and therefore national, median as the basis for the new provider limitation. The statute requires the per-beneficiary limitation to be ''the median'' of all the per-beneficiary limitations applied to the other HHAs, i.e., the per-beneficiary

limitations of the old providers. The statutory language refers to a single median and not several medians, which would be the case if the statute required a regional system suggested by commenters. Moreover, in direct contrast to the language governing the per-beneficiary limitation for old providers, section 1861(v)(1)(L)(vi) does not contain any reference to a calculation based upon the home health agency's census division.

Comment: The base year for the surviving provider number should be utilized in computing the per-beneficiary limitation. Because the agency still carries assets and liabilities of the agency it purchased, the base year and resulting per-beneficiary limitation should be considered an asset or a liability, as applicable.

Response: The per-beneficiary limitation is neither an asset nor a liability for an HHA. The per-beneficiary limitation is a limit on the amount of payments made by Medicare. The limitations are not intended to be used as bargaining tools for selling or buying agencies.

Comment: Extend authorizations for exceptions to the new interim payment system per-beneficiary limitations as well as the per-visit limitations.

Response: As we stated in the March 31, 1998 **Federal Register**, we do not believe that Congress intended the general rules at 42 CFR 413.30 to apply to the establishment of the per-beneficiary limitations. The statute does not provide any such exceptions or exemptions to the per-beneficiary limitations.

Comment: On page 15725 of the **Federal Register** the example references index levels for the period of July 1998 through December 1998 from Table 6 for calculating the market basket increase. Table 6 in the March 31, 1998 **Federal Register** stops at November 1997.

Response: We apologize for the inadvertent omission of the index levels for the months of December 1997 through September 1999. Table 6 at 63 FR 103 published on January 2, 1998 contains the same index levels that are appropriate in calculating the applicable market basket increase and the index levels for the months of December 1997 through September 1999 can be obtained from that table.

Comment: Under section 112 of the Provider Reimbursement Manual, Part I, State health department home health agencies with subunits or branches are permitted to file a combined cost report under the 7800 series of provider numbers. (1) How will those subunits and branches that have separate provider numbers and separately bill that previously filed a combined cost report be treated if some decide to no longer file with the combined cost report? (2) How will the remaining agencies that wish to file a combined report be treated? As clause ''v'' or clause ''vi'', and will there be any adjustment to costs for the agency-specific portion? (3) If combined State department home health agencies that file a combined cost report has subunits, and a beneficiary moves from one subunit to another, is that beneficiary counted as one beneficiary in each of the subunits, or is it prorated?

Response: (1) State health departments with subunits are allowed to file a combined Medicare cost report because of the administrative and financial burden in filing separate Medicare cost reports for all the agencies within the department. The State health departments were allowed to obtain subunit provider numbers for the purposes of tracking revenue and claims processing. Also, it is our understanding that the State health departments did have the capability to segregate the costs for each individual agency within the department. If State health departments decide to start submitting individual Medicare cost reports for the agencies within their department, they will not be allowed to pick and choose individual agencies for which they would like to report separately. The State agency health would have to rescind the 7800 series number and submit separate cost reports for all the agencies.

(2) Since the State health department filed a single cost report for all the agencies under a 7800 number series, and the individual subunits did not file a separate Medicare cost report for which an agency-specific per-beneficiary limitation can be calculated, if the units start filing separate Medicare cost reports under their own numbers, they will be considered clause ''vi'' type providers. Therefore, they will be subject to the national per-beneficiary limitation.

(3) State health departments that file a single cost report under the 7800 number for all its units will count a single beneficiary in its unduplicated census count for the cost reporting period regardless of the number of units that service that beneficiary. However, if the subunits report separately and the beneficiary is serviced by more than one subunit, the beneficiary must be prorated among the subunits servicing the beneficiary.

Comment: How do you determine prorating between agencies when you have one agency that was working hard and saw a patient on a limited basis versus the other agency who maximized visits to reach the ceiling of the beneficiary limitation and then discharged the patient?

Response: We cannot emphasize enough that the per-beneficiary limitation is not a limitation on the amount of services a beneficiary may receive or a limitation on the costs of an individual beneficiary. The per-beneficiary limitation is applied to the total unduplicated census count of the agency and compared to the lesser of the agency's actual costs or per-visit limitation in the aggregate plus nonroutine medical supplies. If an agency discharges a beneficiary with the assumption that the beneficiary has exhausted its per-beneficiary limitation and that beneficiary receives services from another agency, each agency will have less than one beneficiary in its unduplicated census count. For example, if agency ''A'' treats a Medicare beneficiary and after 60 visits, discharges the patient and subsequently the patient receives 40 visits from agency ''B'', agency ''A'' will count the beneficiary as .60 in its unduplicated census count and agency ''B'' will count the beneficiary as .40 in its unduplicated census count. Under a system based on medians and averages, such as the per-beneficiary limitations, it should be expected that some patients' costs and amount of services will be under the average and some patients' costs and amounts of services will be above the average.

Comment: The blend of an agency-specific component and a regional census division component rewards agencies that had high costs in Federal FY 1994 and penalizes agencies that had low costs in Federal FY 1994.

Response: By basing the per-beneficiary limitation on the HHA's own cost experience, the per-beneficiary limitation should reflect the mix of patients that the agency has been caring for in the past. This mix of patients should not change drastically as compared to the mix of patients for whom the HHA is currently providing care. While variation does exist between agencies, it is a reflection of their actual cost experience. All agencies were subject to the lower of their actual costs or the aggregate per-visit limitation in FY 1994. It is the lower of these amounts that is incorporated into the calculation of the per-beneficiary limitations. If two agencies existing in the same area with 1994 base periods did not have a competitive advantage over each other in 1994, it does not follow that one would have a competitive advantage due to the application of a per-beneficiary

limitation. As stated before, the average per-beneficiary cost is a reflection of the mix of patients that the HHA serviced in the base period.

Comment: Home health agencies that have reclassified branches to subunits should be allowed to use the parent agency's FY 1994 cost report as the base for establishing the per-beneficiary limitation for the new subunit.

Response: Branches within home health agencies are not providers as recognized under Medicare principles of reimbursement. Branches within home health agencies are part of and under the administrative control of the parent home health agency. The branch itself does not have its own administrative function or control. They are not independently certified by Medicare as a provider nor are they required to file a Medicare cost report. Because branches are not providers of service but an intricate part of a provider, they will be considered new providers if they become certified by Medicare as an independent provider of home health services subsequent to Federal FY 1994.

Comment: HCFA should allow agencies which filed more than one cost report during Federal FY 1994 to combine the cost reporting periods when they equal or exceed a 12-month cost reporting period for establishing the agency-specific per-beneficiary limitation.

Response: We do not agree. Medicare has always applied the terminology of a 12-month cost reporting period as being twelve consecutive months as reported in the Medicare cost report.

Comment: The impact analysis seems almost entirely focused on total Medicare expenditures. It gives short shrift to the problems that will be experienced by patients, HHAs, and other payers such as Medicaid. In order to maintain costs below the per-beneficiary limitation, HHAs will need to reduce the average number of visits provided to Medicare beneficiaries below the levels patients received in 1997. The size of this reduction was not estimated or its impact on Medicare beneficiaries.

Response: The impact analysis did not discuss the impact on beneficiaries because this payment system does not limit the amount of services a beneficiary may receive from an agency. It is designed to provide more efficient delivery of services. No beneficiary should be denied services as a result of this payment system. These beneficiaries continue to be eligible for Medicare home health benefits without a specific day limit.

Comment: The use of a two-thirds offset in estimating the impact of the aggregate per-beneficiary limitation on HHAs was not explained adequately. What analysis was performed to justify such an offset?

Response: An impact analysis requires that we estimate the impact of a change in policy. While there are questions about whether such an impact analysis is needed for a notice that announces rates for a statutorily mandated policy for which there is virtually no discretion, if we are to estimate the impact of the home health policy, we need to consider not just changes in Medicare payments that would be involved, but also the incentives created by the new policy and how providers are likely to react to the change in policy.

Home health is the highest cost Medicare service category which has no cost-sharing. As a result, there is no direct financial consequences to beneficiaries for use of home health services. Combined with the fact that home health services are non-invasive and the patient does not have to leave home to receive them, there are not the same kinds of constraints on their use as with other medical services.

We believe that it is prudent to assume that because of the incentives created by the B.B.A. '97 policy and the demonstrated ability of the industry to respond, that there would be a response. This does not necessarily mean that agencies will go out of business or substitute care of Medicare beneficiaries from other payers or sources of funds. It does mean that there would be changes in behavior to recoup some of the financial effects that would otherwise occur with the policy, such as an increase in users serving particularly low users, or reducing the intensity of care in marginal cases, or reducing services that should not be covered by Medicare. For the purposes of this impact analysis, it is our judgement that a 50 percent offset for the per-visit limitations and a 66 percent offset for the per-beneficiary limitations is reasonable. To the extent that actual expenditures differ from projections, after adjusting for other factors affecting expenditure growth, we will review the offsets used for future impact analysis.

Comment: Using HCFA's own analysis it is clear that agencies will either have to go out of business or subsidize care of Medicare beneficiaries from other payers or sources of funds. Layoffs of staff and closures of HHAs will have a direct impact on access to care that HCFA did not address.

Response: We did not address the impact on access to care due to agency closures because we were not expecting this to be a necessary reaction to the limitations as stated in the above response. We are currently receiving many new applications from agencies wanting to become Medicare certified. If there are any closures as a result of this payment system, it is expected other new agencies or agency expansions will offset these closures.

Comment: HCFA mentions that 15 percent of the Medicare savings are attributable to payments to managed care plans in FY 1998 and 20 percent in FY 1999. It is unclear what this means. Are home health services to managed care enrollees included in projected expenditures? Does HCFA expect managed care organizations to reduce home health services even though it is far below fee-for-service utilization?

Response: The impact notice mentions that some of the savings from this system are attributable to payments to managed care plans. Payments to Medicare managed care plans are based on fee-for-service Medicare benefits. If we expect to pay less to home health agencies on a fee-for-service basis, then the managed care rates will decrease. Managed care payments, in total, are included as part of our cost projections. Since payments to managed care plans are based on fee-for-service use, there is no need to project managed care payments by type. Since the B.B.A. '97 is directed toward changes in fee-for-service, managed care plans are not expected to reduce home health services as a result of this notice.

Comment: The impact section did not address the impact on per-visit costs of reducing the average number of visits provided per patient. It would seem logical that agencies' per-visit costs would increase as the average reimbursed cost per patient decreases. This impact on per-visit costs will drive agency per-visit costs higher which will result in a greater proportion of agencies exceeding the per-visit cost limitations than HCFA anticipates in its analysis.

Response: We believe that this system was implemented, in part, because the number of visits per beneficiary had been increasing at double-digit growth rate until 1996. However, the cost per-visit was not increasing at a similar level. The impact of these limitations was not expected to reduce the cost per-visit significantly.

Comment: The impact analysis is incomplete for two reasons. First, the Regulatory Flexibility Act is insufficient since it does not consider alternative interpretations of the HHA Interim Payment System provision. Second, section 202 of the Unfunded Mandates Reform Act requires its own assessment of costs and benefits.

Response: The HHA Interim Payment System provision, generally section 4602 of the Balanced Budget Act of 1997, is narrowly constructed such that it does not provide for exceptions or consideration of options that reduce the burden on small entities. We did not prepare a separate assessment of costs and benefits for purposes of Section 202 of the Unfunded Mandates Reform Act because we believe that this regulation did not meet the threshold requirement of an annual expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation).

Comment: HCFA describes 1,158 new providers on the database as those with December 1994 or December 1995 FY ends. These agencies may not be representative of all new agencies and thus the database may be limited in its use as a measure of the impact on new agencies.

Response: In order to meet the statutory dates for establishing the limitation, we had a very limited time in which to collect data, but obtained the most recent data available to assess the impact on new agencies. Because of how new providers are defined, we are limited by our resources in identifying all types of new providers. We believe that the data base was sufficient to conduct a valid impact analysis.

Comment: We see no justification for the additional two percent reduction to the per-beneficiary limitation for new agencies when determining a specific agency's per-beneficiary limitation as shown on page 15726 of the notice.

Response: The national per-beneficiary calculations at 63 FR 15726 should not be multiplied by 98 percent. The two percent reduction to the per-beneficiary limitations has already been taken into account in the calculations of the national per-beneficiary limitation. The examples of the national per-beneficiary calculations at 63 FR 15726 should be $3,279.26 for the Dallas MSA and $2,679.89 for rural Texas. We apologize for any inconveniences this may have caused.

Comment: The example of two merged agencies at 63 FR 15721 does not explain the new November 1, 1997 beginning cost reporting period. The date does not match either the agencies' previous cost reporting periods or the merger date.

Response: The date in the example of the two merged agencies should state that the weighted per-beneficiary limitation applies to the cost reporting period which began December 1, 1997.

Comment: The counties listed for MSA region 8840—Washington, DC in the March 31, 1998 **Federal Register** includes Charles County but those in the January 2, 1998 **Federal Register** do not. Is Charles County, Maryland in the Washington, DC region for the wage index for both the per-beneficiary limitations and the per-visit limitations?

Response: Both **Federal Register**s at 63 FR 102 and 63 FR 15733 show Charles, MD as part of the Washington, DC MSA.

Comment: Step 2 of the example at 63 FR 15725 depicts a divisor of seven instead of six. Shouldn't the divisor be six?

Response: Yes, the divisor at step 2 of the example at 63 FR 15725 should be six.

Comment: HCFA should have made the database available when the notice was published and should do so for all future cost limit or payment rate notices. The database should be available for the full comment period.

Response: We made every attempt to make the data available shortly after the notice was published. Due to the limited time available after finalizing the limits, we were unable to post the data to the Internet until one month after the notice was published. We believe this allowed sufficient time for analysis.

Comment: HCFA should make provider numbers and other requested data available immediately.

Response: We believe it is not necessary to identify individual providers in order to calculate the per-beneficiary limitations and therefore did not include this information in our data base on the public use file.

Comment: HCFA should provide a detailed explanation of how the database was constructed. The discussion should include the method for choosing agencies to include/exclude, the editing and verification process, and an explanation of how denied claims were matched to claims-based unduplicated census counts.

Response: We believe the calculations were explained fully in the notice. Because the statute is very explicit about how the per-beneficiary limitations are determined, we believe the explanations provided in the notice are adequate.

Comment: All outlying areas, such as Guam, Puerto Rico, and the Virgin Islands, should be combined into one category for purposes of calculating the census division components.

Response: The statute did not refer specifically to Guam, Puerto Rico, or the Virgin Islands in establishing per-beneficiary limitations. These areas do not fall within any of the existing census region divisions which are required by statute in establishing the regional per-beneficiary limitations. In order to avoid advantaging or disadvantaging any of the census division regions, we treated these areas as separate areas in establishing the regional per-beneficiary limitations. Puerto Rico and the Virgin Islands were combined as one area and Guam as a separate area. We note that the wage indices for the Virgin Islands and Guam were inadvertently omitted from the notice. The wage index for the Virgin Islands is .4588 and the wage index for Guam is .6516.

Comment: The standardization of the census division average per-beneficiary costs by the appropriate wage indices should only be applied to the labor-related component of the per-beneficiary rates.

Response: The standardization of the per-beneficiary limitations was applied to the labor-related component of the average costs per beneficiary. This adjustment methodology is explained on page 15723 of the notice with respect to how the adjusted unduplicated census counts of Medicare beneficiaries are used in the calculation of the per-beneficiary limitations. We applied the labor-related component percentage before calculating the wage-index weighted unduplicated beneficiary counts.

Comment: Unless HCFA can provide a reasonable explanation for including nonroutine supplies in the costs that were standardized by the wage index, the cost of nonroutine supplies should have been excluded from the standardization of these costs.

Response: When doing the standardization of the per-beneficiary limitations, we do not separate out each individual component of costs to determine the labor and nonlabor components. The labor-related and nonlabor percentages are determined with respect to all costs incurred by an HHA, and are applied to total costs accordingly.

Comment: HCFA should explain the reasons for not computing urban and rural costs separately and weighting by patient rather than agency.

Response: The statute does not provide for establishing urban and rural per-beneficiary limitations. Since the wage-index is applied based on the location of the services rendered to the beneficiaries, the standardization was done through a weighting of the beneficiaries rather than the location of the HHA.

Comment: HCFA should ensure that HHAs are reimbursed for additional costs associated with new regulatory requirements, such as OASIS costs.

Response: The statute requires the per-beneficiary limitations to be based

upon the costs incurred during a particular base year, the Federal FY 1994, and does not contemplate adjustments due to costs incurred subsequent to the base year.

Comment: We received numerous comments concerning the definition of new providers under the IPS. In particular, there are concerns over the application of national per-beneficiary limitations when there are mergers and consolidations of unlike agencies, i.e. provider-based and freestanding or agencies without a FY ending during Federal year 1994 with agencies with a FY ending during Federal FY 1994. Various scenarios were written in with respect to whether HCFA would find if such scenarios constituted a merger or consolidation which took place since Federal FY 1994. It was recommended that HCFA limit new provider status to those agencies without a 12-month cost reporting ending during Federal FY 1994 and providers that did not exist at the time of passage of the B.B.A. '97.

Response: We do not believe the policies set forth in the **Federal Register** were unreasonable with respect to new provider status under the interim payment system. The policies are not intended to redefine or impose new policies regarding HCFA's long standing policies regarding mergers and consolidations. With respect to provider-based agencies or freestanding agencies, we have always made a distinction between the two types of providers. In May 1998 we issued a Program Memorandum (Transmittal No. A–98–15) which clarified our policies regarding provider-based and freestanding designation. In that memorandum we state that the main purpose of provider or facility-based designation is to accommodate the appropriate accounting and allocation of costs where there is more than one type of provider activity taking place within the same facility/organization. This cost allocation and cost reimbursement more often than not results in Medicare program payments that exceed what would have been paid for if the same services were rendered by a free-standing entity.

Even though we believe our policies as stated in the March 31, 1998 **Federal Register** with respect to what is a ''clause vi'' agency are reasonable, we have reevaluated our position based on comments and are revising our interpretation as to what constitutes a new provider by adding an alternative reading. In determining whether an agency is a new or old provider, we will consider whether the agency's provider number existed with a 12-month cost reporting period ending during Federal FY 1994. In such a case, that agency can be considered an old provider/clause v provider regardless of any changes that took place in subsequent years. However, those agencies that did not have a 12-month cost reporting period ending during Federal FY 1994 and those agencies that were certified under Medicare with provider numbers that did not exist with a 12-month cost reporting period ending during Federal FY 1994 will continue to be considered new providers/clause vi providers. For greater detail on new providers, see section V.C. ''New Providers.''

V. Update of the Per-Beneficiary Limitations

The methodologies and data used to develop the schedule of per-beneficiary limitations set forth in this notice are the same as that used in setting the per-beneficiary limitations that were effective for cost reporting periods beginning on or after October 1, 1997. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods ended during Federal FY 1994 and September 30, 1999, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, we excluded this time period when we adjusted the database for the market basket increases.

A. Data Used

The cost report data used to develop the schedule of per-beneficiary limitations set forth in this notice are for cost reporting periods ending in Federal FY 1994, as required by section 1861(v)(1)(L) of the Act. We have updated the per-beneficiary limitations to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1999 (excluding, as required by statute, any changes in the home health market basket for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996).

The interim payment system sets limitations according to two different methodologies. For agencies with cost reporting periods ending during Federal FY 1994, the limitation is based on 75 percent of 98 percent of the agencies' own reasonable costs and 25 percent of 98 percent of the average census region division costs. At the end of the agency's cost reporting period subject to the per-beneficiary limitations, the labor component of the census region division per-beneficiary limitation is adjusted by a wage index based on where the home health services are rendered.

For new providers and providers without a cost reporting period ending during Federal FY 1994, the per-beneficiary limitation is based on the standardized national median of the blended agency-specific and census region division per-beneficiary limitations described above. This is done by simply arraying the agencies' per-beneficiary limitations and selecting the median case. This national per-beneficiary limitation is then standardized for the effect of the wage index. The wage index is applied to the labor component of the national per-beneficiary limitation at the end of the cost reporting period beginning on or after October 1, 1998, and is based on where the home health services are rendered.

B. Wage Index

A wage index is used to adjust the labor-related portion of the standardized regional average per-beneficiary limitation and the national per-beneficiary limitation to reflect differing wage levels among areas. In establishing the regional average per-beneficiary limitation and national per-beneficiary limitation, we used the FY 1998 hospital wage index, which is based on 1994 hospital wage data.

Each HHA's labor market area is determined based on the definitions of Metropolitan Statistical Areas (MSAs) issued by the Office of Management and Budget (OMB). Section 1861(v)(1)(L)(iii) of the Act requires us to use the current hospital wage index (that is, the FY 1998 hospital wage index, which was published in the **Federal Register** on August 29, 1997 (62 FR 46070)) without regard to whether such hospitals have been reclassified to a new geographic area, to establish the HHA cost limitations. Therefore, the schedules of standardized regional average per-beneficiary limitations and the national per-beneficiary limitation reflects the MSA definitions that are currently in effect under the hospital prospective payment system.

As we did for the per-visit limitations, we are continuing to incorporate exceptions to the MSA classification system for certain New England counties that were identified in the July 1, 1992 notice (57 FR 29410). These exceptions have been recognized in setting hospital cost limitations for cost reporting periods beginning on and after July 1, 1979 (45 FR 41218), and were authorized under section 601(g) of the Social Security Amendments of 1983 (Public Law 98–11). Section 601(g) of Public Law 98–21 requires that any

hospital in New England that was classified as being in an urban area under the classification system in effect in 1979 will be considered urban for purposes of the hospital prospective payment system. This provision is intended to ensure equitable treatment under the hospital prospective payment system. Under this authority, the following counties have been deemed to be urban areas for purposes of payment under the inpatient hospital prospective system:

- Litchfield County, CT in the Hartford, CT MSA
- York County, ME and Sagadahoc County, ME in the Portland, ME MSA.
- Merrimack County, NH in the Boston-Brockton-Nashua, MA–NH MSA
- Newport County, RI in the Providence Fall-Warwick, RI MSA

We are continuing to grant these urban exceptions for the purpose of applying the Medicare hospital wage index to the HHA standardized regional average per-beneficiary limitations and the national per-beneficiary limitation. These exceptions result in the same New England County Metropolitan Area definitions for hospitals, skilled nursing facilities, and HHAs. In New England, MSAs are defined on town boundaries rather than on county lines but exclude parts of the four counties cited above that would be considered urban under the MSA definition. Under this notice, these four counties are urban under either definition, New England County Metropolitan Area or MSA.

Section 1861(v)(1)(L)(iii) requires the use of the area wage index applicable under section 1886(d)(3)(E) of the Act and determined using the survey of the most recent available wages and wage-related costs of hospitals located in the geographic area in which the home health service is furnished without regard to whether such hospitals have been reclassified to a new geographic area pursuant to section 1886(d)(8)(B) of the Act. The wage-index, as applied to the labor portion of the regional per-beneficiary limitation and the labor portion of the national per-beneficiary limitation, must be based on the geographic location in which the home health service is actually furnished.

C. New Providers

Section III. C. at 63 FR 15721 through 15722 provides the policy with respect to the determination of whether an agency is a new agency or an old agency for applying the per-beneficiary limitations. Considering the number of comments and inquiries we have received concerning the policies set forth in this section, particularly with respect to what a ''clause vi'' provider is under the IPS, we have reevaluated our position on this issue and are modifying some of the policies.

In considering this policy we recognize there are many changes an HHA may undergo including changes due to mergers, consolidations, and changes in ownership. Regardless of what constitutes the change there will be a surviving entity resulting from the change and the status of the surviving entity will dictate how the agency will be treated under the per-beneficiary limitations. We believe that providers fall within the following groupings: (a) An HHA with an existing provider number with a provider agreement with HCFA, (b) an HHA accepts assignment of the provider agreement and provider number which had a FY 1994 base year through a change in ownership after the FY 1994 base year, or, (c) an HHA has gone through the certification process since the FY 1994 base period as a new provider and has a new provider number assigned after the applicable FY 1994 base year. Under (a) or (b), if the provider number existed as an HHA with a 12-month cost reporting period ending during Federal FY 1994, that 12-month cost reporting period will be the cost reporting period for calculating the agency-specific component of the per-beneficiary limitation and considered an old provider with an agency-specific per-beneficiary limitation. Under (c), the agency will be a new provider and subject to the national per-beneficiary limitation.

We are permitting providers that would be determined to be new providers under the policies set forth in the March 31, 1998 final notice, to elect to be considered an old provider under the policies set forth above. Furthermore, providers that were determined to be new providers under the March 31, 1998 policies may likewise choose to continue to be considered new providers. These choices must be made and conveyed to the agency's fiscal intermediary by October 1, 1998. We note these designations of provider status is solely for purposes of determining the per-beneficiary limitation. However, those providers that elect to continue to be new providers pursuant to the March 31, 1998 final notice are subject to that continued new provider status for so long as there are no changes after their October 1, 1998 election that would affect their elected new provider option.

Our policy addressing HHA branches that become subunits set forth at 63 FR 15722 is not affected by the change addressed above.

VI. Market Basket

The 1993-based cost categories and weights are listed in Table 1 below.

TABLE 1.—1993-BASED COST CATEGORIES, BASKET WEIGHTS, AND PRICE PROXIES

Compensation including allocated Contract Services' Labor	77.668	
Wages and Salaries including allocated Contract Services' Labor	64.226	HHA Occupational Wage Index.
Employee benefits, including allocated Contract Services' Labor	13.442	HHA Occupational Benefits Index.
Operations & Maintenance	0.832	CPI–U Fuel & Other Utilities.
Administrative & General, including allocated Contract Services' Non-labor.	9.569	
Telephone	0.725	CPI–U Telephone.
Paper & Printing	0.529	CPI–U Household Paper, Paper Products & Stationary Supplies.
Postage	0.724	CPI–U Postage.
Other Administrative & General, including allocated Contract Services Non-Labor.	7.591	CPI–Services.
Transportation	3.405	CPI–U Private Transportation.
Capital-Related	3.204	
Insurance	0.560	CPI–U Household Insurance.
Fixed Capital	1.764	CPI–U Owner's Equivalent.
Movable Capital	0.880	PPI Machinery & Equipment.
Other Expenses, including allocated Contract Services' Non-Labor	5.322	CPI–U All Items Less Food & Energy.
Total	100.000	

VII. Update of Data Base

The data used to develop the cost per-visit limitations, the census region per-beneficiary limitations and the national per-beneficiary limitation were adjusted using the latest available market basket factors to reflect expected cost increases occurring between the cost reporting periods contained in our database and September 30, 1999, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. The following inflation factors were used in calculating the per-visit, the census region per-beneficiary limitations, and national per-beneficiary limitations:

TABLE 2.—FACTORS FOR INFLATING DATABASE DOLLARS TO SEPTEMBER 30,1999

[Inflation Adjustment Factors [1]]

FY end	1993	1994	1995	1996	1997
October 31	1.11846	1.08387	1.08361	1.08169	1.05773
November 30	1.11568	1.08773	1.08361	1.08073	1.05507
December 31	1.11291	1.08650	1.08361	1.07955	1.05241
January 31	.....	1.11015	1.08553	1.08361	1.07816
February 28	.....	1.10741	1.08483	1.08361	1.07656
March 31	.....	1.10475	1.08428	1.08361	1.07477
April 30	.....	1.10215	1.08387	1.08361	1.07279
May 31	.....	1.09963	1.08361	1.08361	1.07064
June 30	.....	1.09709	1.08361	1.08361	1.06820
July 31	.....	1.09480	1.08361	1.08342	1.06566
August 31	.....	1.09276	1.08361	1.08304	1.06303
September 30	.....	1.09090	1.08361	1.08246	1.06039

[1] Source: The Home Health Agency Price Index, produced by HCFA. The forecasts are from Standard and Poor's DRI 1st QTR 1998; @USSIM/TREND25YR0298@CISSIM/Control981 forecast exercise which has historical data through 1998:1.

Multiplying nominal dollars for a given FY end by their respective inflation adjustment factor will express those dollars in the dollar levels for the FY ending September 30, 1998.

The procedure followed to develop these tables, based on requirements from BBA '97, was to hold the June 1994 level for input price index constant through June 1996. From July 1996 forward, we trended the revised index forward using the percentage gain each month from the HCFA Home Health Agency Input Price Index.

Thus, the monthly trend of the revised index is the same as that of the HCFA market basket for the period from July 1996 forward.

A. Short Period Adjustment Factors for Cost Reporting Periods Consisting of Fewer Than 12 Months

HHAs with cost reporting periods beginning on or after October 1, 1998 may have cost reporting periods that are less than 12 months in length. This may happen, for example, when a new provider enters the Medicare program after its selected FY has already begun, or when a provider experiences a change of ownership before the end of the cost reporting period. The data used in calculating the limitations were updated to September 30, 1999. Therefore, the cost limitations published in this notice are for a 12-month cost reporting period beginning October 1, 1998 and ending September 30, 1999. For 12-month cost reporting periods beginning after October 1, 1998 and before October 1, 1999, cost reporting period adjustment factors are provided in Table 5. However, when a cost reporting period consists of fewer than 12 months, adjustments must be made to the data that have been developed for use with 12-month cost reporting periods. To promote the efficient dissemination of cost limitations to agencies with cost reporting periods of fewer than 12 months, we are publishing an example and tables to enable intermediaries to calculate the applicable adjustment factors.

Cost reporting periods of fewer than 12 months may not necessarily begin on the first of the month or end on the last day of the month. In order to simplify the process in calculating ''short period'' adjustment factors, if the short cost reporting period begins before the sixteenth of the month, we will consider the period to have begun on the first of that month. If the start of the cost reporting period begins on or after the sixteenth of the month, it will be considered to have begun at the beginning of the next month. Also, if the short period ends before the sixteenth of the month, we will consider the period to have ended at the end of the preceding month; if the short period ends on or after the sixteenth of the month, it will be considered to have ended at the end of that month.

Example:

1. After approval by its intermediary, an HHA that had a 1994 base year changed its FY end from June 30 to December 31. Therefore, the HHA had a short cost reporting period beginning on July 1, 1999 and ending on December 31, 1999. The cost reporting period ending during Federal FY 1994 would have been the cost reporting period ending on June 30, 1994. The limitations that apply to this short period must be adjusted as follows:

Step 1—From Table 6, sum the index levels for the months of July 1999 through December 1999: 6.82716.

Step 2—Divide the results from Step 1 by the number of months in short period:

6.82716÷6=1.13787.

Step 3—From Table 6, sum the index levels for the months in the common period of October 1998 through September 1999: 13.45836.

Step 4—Divide the results in Step 3 by the number of months in the common period:

13.45836÷12=1.12153.

Step 5—Divide the results from Step 2 by the results from Step 4. This is the adjustment factor to be applied to the published per-visit and per-beneficiary limitations:

1.13787÷1.12153=1.0145693.

Step 6—Apply the results from Step 5 to the published limitations.

For example:

a. Urban skilled nursing per-visit labor portion

$88.44×1.0145693=$89.73.

b. Urban skilled nursing per-visit nonlabor portion

$19.73×.0145693=$20.02.

c. West South Central Census region division labor portion per-beneficiary limitation
$4,588.26×1.0145693=$4,655.11.

d. West South Central Census region division nonlabor portion per-beneficiary limitation
$1,319.27×1.0145693=$1,338.49.

Step 7. Also apply the results from Step 5 to the calculated agency-specific per-beneficiary amount which has been updated to September 30, 1999 using Table 2.

B. Adjustment Factor for Reporting Year Beginning After October 1, 1998 and Before October 1, 1999

If an HHA has a 12-month cost reporting period beginning on or after November 1, 1998, the per-visit limitation and the adjusted census region division per-beneficiary limitation and the agency-specific per-beneficiary limitation or the adjusted national per-beneficiary limitations are again revised by an adjustment factor from Table 5 that corresponds to the month and year in which the cost reporting period begins. Each factor represents the compounded rate of monthly increase derived from the projected annual increase in the market basket index, and is used to account for inflation in costs that will occur after the date on which the per-beneficiary limitations become effective.

In adjusting the agency-specific per-beneficiary limitation for the market basket increases since the end of the cost reporting period ending during Federal year 1994, the intermediary will increase the agency-specific per-beneficiary limitation to September 30, 1999. That way when the limitations need to be further adjusted for the cost reporting period, all elements of the limitation calculations can be adjusted by the same factor. For example, if an HHA providing services in the Dallas MSA only and has a cost reporting period beginning January 1, 1999, its occupational therapy per-visit limitation and its per-beneficiary limitation would be further adjusted as follows:

COMPUTATION OF REVISED PER-VISIT FOR OCCUPATIONAL THERAPY

Adjusted per-visit limitation	$123.05 [1]
Adjustment from Table 5	1.00720
Revised per-visit limitation	$123.94

[1] Adjusted by appropriate wage index applicable to the Dallas MSA and the budget neutrality adjustment factor of 1.03.

COMPUTATION OF REVISED PER-BENEFICIARY LIMITATIONS FOR AN HHA WITH A 1994 BASE PERIOD

Agency-specific component inflated through December 31, 1999:	
$5400.00 × .98 × .75	$3,969.00
West south central division component adjusted by the Dallas MSA wage index:	
$5,771.26 × .98 × .25	1,413.96
Blended per-beneficiary limitation for Dallas-MSA	$5,382.96
Adjustment factor from Table 5	1.00720
Adjusted blended per-beneficiary limitation for Dallas MSA	$5,521.72

COMPUTATION OF REVISED PER-BENEFICIARY LIMITATION FOR A NEW PROVIDER IN THE DALLAS MSA

National per-beneficiary limitation for Dallas MSA	$3,376.61 [1]
Adjustment factor from Table 5	1.00720
Adjusted national per-beneficiary limitation	$3,400.92

[1] Published limitation reflects 98 percent factor.

VIII. Schedules of Per-visit and Per-beneficiary Limitations

The schedules of limitations set forth below apply to cost reporting periods beginning on or after October 1, 1998. The intermediaries will compute the adjusted limitations using the wage index(s) published in Tables 4a and 4b of section X. for each MSA and/or non MSA for which the HHA provides services to Medicare beneficiaries. The intermediary will notify each HHA it services of its applicable limitations for the area(s) where the HHA furnishes HHA services to Medicare beneficiaries. Each HHA's aggregate limitations cannot be determined prospectively, but depends on each HHA's Medicare utilization (visits and unduplicated census count) by location of the HHA services furnished for the cost reporting periods subject to this document.

Section 1861(v)(1)(L)(vi)(II) of the Act, requires the per-beneficiary limitations to be prorated among HHAs for Medicare beneficiaries who use services furnished by more than one HHA. The per-beneficiary limitation will be prorated based on a ratio of the number of visits furnished to the individual beneficiary by the HHA during its cost reporting period to the total number of visits furnished by all HHAs to that individual beneficiary during the same period.

The proration of the per-beneficiary limitation will be done based on the fraction of services the beneficiary received from the HHA. For example, if an HHA furnished 100 visits to an individual beneficiary during its cost reporting period ending September 30, 1999, and that same individual received a total of 400 visits during that same period, the HHA would count the beneficiary as a .25 unduplicated census count of Medicare patient for the cost reporting period ending September 30, 1999.

The HHA costs that are subject to the per-visit limitations include the cost of medical supplies routinely furnished in conjunction with patient care. Durable medical equipment orthotic, prosthetic, and other medical supplies directly identifiable as services to an individual patient are excluded from the per-visit costs and are paid without regard to the per-visit schedule of limitations. (See Chapter IV of the Home Health Agency Manual (HCFA Pub. II).) The HHA costs that are subject to the per-beneficiary limitations include the costs of medical supplies routinely furnished and nonroutine medical supplies furnished in conjunction with patient care. Durable medical equipment directly identifiable as services to an individual

patient are excluded from the per-beneficiary limitations and are paid without regard to this schedule of per-beneficiary limitations.

The intermediary will determine the aggregate limitations for each HHA according to the location where the services are furnished by the HHA. Medicare payment is based on the lower of the HHA's total allowable Medicare costs plus the allowable Medicare costs of nonroutine medical supplies, the aggregate per-visit limitation plus the allowable Medicare costs of nonroutine medical supplies, or the aggregate per-beneficiary limitation. An example of how the aggregate limitations are computed for an HHA providing HHA service to Medicare beneficiaries in both Dallas, Texas and rural Texas are as follows:

Example: HHA X, an HHA located in Dallas, TX, has 11,500 skilled nursing visits, 4,300 physical therapy visits, 8,900 home health aide visits and an unduplicated census count of 400 Medicare beneficiaries in the Dallas MSA and 5,000 skilled nursing visits, 2,300 physical therapy visits, 4,300 home health aide visits and an unduplicated census count of 200 Medicare beneficiaries in rural Texas during its 12-month cost reporting period ending September 30, 1999. The unadjusted agency-specific per-beneficiary amount for the base period (cost reporting period ending September 30, 1994) is $4,825.00. The aggregate limitations are calculated as follows:

DETERMINING THE AGGREGATE PER-BENEFICIARY LIMITATION

MSA/Non-MSA area	Per beneficiary limitation	Unduplicated census count of Medicare beneficiaries	Total per beneficiary limitation
Dallas, TX	(4,825.00 × 1.09090 × .98 × .75) plus ((4,588.36 × .9703) plus 1,319.21)) × .98 × .25	400	2,113,080
Rural, TX	(4,825.00 × 1.09090 × .98 × .75) plus ((4,588.36 × .7404) plus 1,319.21)) × .98 × .25	200	1,004,852
Aggregate Limitation			3,117,932

DETERMINING THE AGGREGATE PER-VISIT LIMITATION

Area/type of visit	Number of visits	Per-visit limit [1]	Total limit
Dallas-MSA:.			
Skilled nursing	11,550	108.12	1,248,786
Physical therapy	4,300	121.08	520,644
Home health aide	8,900	45.14	401,746
Rural Texas:			
Skilled nursing	5,000	77.37	386,850
Physical therapy	2,300	88.95	204.585
Home health aide	4,300	43.06	185,158
Aggregate limitation			2,947,769

[1] The per-visit has been adjusted by the appropriate wage-index and the budget neutrality adjustment factor of 1.03.

For the cost reporting period ending September 30, 1999, the HHA incurred $2,850,000 in Medicare costs for the discipline services and $325,000 for the costs of Medicare nonroutine medical supplies. Medicare reimbursement for this HHA would be $3,117,932, which is the lesser of the actual costs of $2,850,000 plus the costs of nonroutine medical supplies of $325,000 ($3,175,000) or the aggregate per-visit limitation of $2,947,769 plus the costs of nonroutine medical supplies of $325,000 ($3,272,769) or the aggregate per-beneficiary limitation of $3,117,932.

Before the limitations are applied during settlement of the cost report, the HHA's actual costs are reduced by the amount of individual items of costs (for example, administrative compensation and contract services) that are found to be excessive under the Medicare principles of provider payment. That is, the intermediary reviews the various reported costs, taking into account all the Medicare payment principles, for example, the cost guidelines for physical therapy furnished under arrangements (see 42 CFR 413.106) and the limitation on costs that are substantially out of line with those of comparable HHAs (see 42 CFR 413.9).

TABLE 3A.—PER-VISIT LIMITATIONS

Type of Visit	Per-visit limitation	Labor portion	Nonlabor portion [1]
MSA(NECMA) location:			
Skilled nursing care	108.17	$88.4	$19.73
Physical therapy	$121.14	98.82	22.32
Speech therapy	126.52	103.01	23.51
Occupational therapy	123.10	99.81	23.29
Medical social services	167.78	136.78	31.00
Home health aide	45.16	36.88	8.28
NonMSA location:			
Skilled nursing care	94.97	74.13	20.84
Physical therapy	107.26	83.56	23.70
Speech therapy	107.97	83.99	23.98
Occupational therapy	108.15	84.05	24.10

TABLE 3A.—PER-VISIT LIMITATIONS—Continued

Type of Visit	Per-visit limitation	Labor portion	Nonlabor portion [1]
Medical social services	130.69	101.38	29.31
Home health aides	43.84	34.21	9.63

[1] Nonlabor portion of per-visit limitations for HHAs located in Alaska, Hawaii, Puerto Rico, and the Virgin Islands are increased by multiplying them by the following cost-of-living adjustment factors.

Location	Adjustment factor
Alaska	1.150
Hawaii:	
County of Hawaii	1.225
County of Hawaii	1.150
County of Kauai	1.200
County of Maui	1.2225
County of Kalawao	1.225
Puerto Rico	1.100
Virgin Islands	1.125

TABLE 3B.—STANDARDIZED PER-BENEFICIARY LIMITATION BY CENSUS REGION DIVISION, LABOR/NONLABOR

Census region division	Labor component	Nonlabor component
New England (CT, ME, MA, NH, RI, VT)	$2,749.52	$790.58
Middle Atlantic (NJ, NY, PA)	2,037.88	585.96
South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	3,073.90	883.84
East North Central (IL, IN, MI, OH, WI)	2,492.70	716.73
East South Central (AL, KY, MS, TN)	4,726.25	1,358.95
West North Central (IA, KS, MN, MO, NE, ND, SD)	2,394.14	688.39
West South Central (AR, LA, OK, TX)	4,588.26	1,319.27
Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	3,023.85	869.45
Pacific (AK, CA, HI, OR, WA)	2,342.45	673.53

TABLE 3C.—STANDARDIZED PER-BENEFICIARY LIMITATION FOR NEW AGENCIES AND AGENCIES WITHOUT A 12–MONTH COST REPORT ENDING DURING FEDERAL FY 1994

	Labor component	Nonlabor component
National	$2,684.47	$771.87

TABLE 3D.—STANDARDIZED PER-BENEFICIARY LIMITATIONS FOR PUERTO RICO AND GUAM

	Labor component	Nonlabor component
Puerto Rico	$1,996.22	$573.97
Guam	1,929.22	554.71

IX. Wage Indexes

TABLE 4a.—WAGE INDEX FOR URBAN AREAS

Urban area (Constituent counties or county equivalents)	Wage index
0040 Abilene, TX	0.8287
Taylor, TX	
0060 Aguadilla, PR	0.4188
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9772

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Portage, OH	
Summit, OH	
0120 Albany, GA	0.7914
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8480
Albany, NY	
Montgomery, NY	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9309
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.8162

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	1.0086
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9137
Blair, PA	
0320 Amarillo, TX	0.9425
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2842
Anchorage, AK	
0440 Ann Arbor, MI	1.1785
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8266
Calhoun, AL	
0460 Appleton-Oshkosh-Neenah, WI	0.8996
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4218
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9072
Buncombe, NC	
Madison, NC	
0500 Athens, GA	0.9087
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	0.9823
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic City-Cape May, NJ	1.1155
Atlantic City, NJ	
Cape May, NJ	
0600 Augusta-Aiken, GA–SC	0.9333
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9133
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0014
Kern, CA	
0720 Baltimore, MD	0.9689
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne, MD	
0733 Bangor, ME	0.9478
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.4291
Barnstable, MA	
0760 Baton Rouge, LA	0.8382
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8593
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.1221
Whatcom, WA	
0870 Benton Harbor, MI	0.8634
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2156
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9783
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8415
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8914
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9005
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7695
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.9128
Monroe, IN	
1040 Bloomington-Normal, IL	0.8733
McLean, IL	
1080 Boise City, ID	0.8856
Ada, ID	
Canyon, ID	
1123 Boston-Worcester Lawrence-Lowell-Brockton, MA–NH	1.1506
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	1.0015
Boulder, CO	
1145 Brazoria, TX	0.9341
Brazoria, TX	
1150 Bremerton, WA	1.0999
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8740
Cameron, TX	
1260 Bryan-College Station, TX	0.8571
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9272
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0142
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4459
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.8961
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9013
Natrona, WY	
1360 Cedar Rapids, IA	0.8529
Linn, IA	
1400 Champaign-Urbana, IL	0.8824
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8807
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1450 Charleston, WV	0.9142
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC–SC	0.9710
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	0.9051
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN–GA	0.8658
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.7555
Laramie, WY	
1600 Chicago, IL	1.0860
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	1.0429
Butte, CA	
1640 Cincinnati, OH–KY–IN	0.9474
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN–KY	0.7852
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9804
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9316
El Paso, CO	
1740 Columbia, MO	0.9001
Boone, MO	
1760 Columbia, SC	0.9192
Lexington, SC	
Richland, SC	
1800 Columbus, GA–AL	0.8288
Russell, AL	
Chattanoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9793
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8945
Nueces, TX	
San Patricio, TX	
1900 Cumberland, MD–WV	0.8822
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9703
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8146
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Rock Island-Moline, IA–IL	0.8405
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9584
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.8375
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.8286
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.7915
Macon, IL	
2080 Denver, CO	1.0386
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8837
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0825
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.8070
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9303
Kent, DE	
2200 Dubuque, IA	0.8088
Dubuque, IA	
2240 Duluth-Superior, MN–WI	0.9779
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0632
Dutchess, NY	
2290 Eau Claire, WI	0.8764
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	1.0123
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9081
Elkhart, IN	
2335 Elmira, NY	0.8247
Chemung, NY	
2340 Enid, OK	0.7962
Garfield, OK	
2360 Erie, PA	0.8862
Erie, PA	
2400 Eugene-Springfield, OR	1.1435
Lane, OR	
2440 Evansville-Henderson, IN–KY	0.8641
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND–MN	0.8837
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8734
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.7461
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ–UT	0.9115
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1171
Genesee, MI	
2650 Florence, AL	0.7551
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8711
Florence, SC	
2670 Fort Collins-Loveland, CO	1.0248
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0448
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.8788
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	1.0257
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR–OK	0.7769
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.8765
Okaloosa, FL	
2760 Fort Wayne, IN	0.8901
Adams, IN	
Allen, IN	
DeKalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9979
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0607
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8815
Etowah, AL	
2900 Gainesville, FL	0.9616
Alachua, FL	
2920 Galveston-Texas City, TX	1.0564
Galveston, TX	
2960 Gary, IN	0.9633
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8386
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8443
Wayne, NC	
2985 Grand Forks, ND–MN	0.8745
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9090
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	1.0147
Allegan, MI	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.8803
Cascade, MT	
3060 Greeley, CO	1.0097
Weld, CO	
3080 Green Bay, WI	0.9097
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9351
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	
Stokes, NC	
Yadkin, NC	
3150 Greenville, NC	0.9064
Pitt, NC	
3160 Greenville-Spartanburg-Anderson, SC	0.9059
Anderson, SC	
Cherokee, SC	
Greenville, SC	
Pickens, SC	
Spartanburg, SC	
3180 Hagerstown, MD	0.9681
Washington, MD	
3200 Hamilton-Middletown, OH	0.8767
Butler, OH	
3240 Harrisburg-Lebanon-Carlisle, PA	1.0187
Cumberland, PA	
Dauphin, PA	
Lebanon, PA	
Perry, PA	
3283 Hartford, CT	1.2562
Hartford, CT	
Litchfield, CT	
Middlesex, CT	
Tolland, CT	
3285 Hattiesburg, MS	0.7192
Forrest, MS	
Lamar, MS	
3290 Hickory-Morganton-Lenoir, NC	0.8686
Alexander, NC	
Burke, NC	
Caldwell, NC	
Catawba, NC	
3320 Honolulu, HI	1.1816
Honolulu, HI	
3350 Houma, LA	0.7854
Lafourche, LA	
Terrebonne, LA	
3360 Houston, TX	0.9855
Chambers, TX	
Fort Bend, TX	
Harris, TX	
Liberty, TX	
Montgomery, TX	
Waller, TX	
3400 Huntington-Ashland, WV–KY–OH	0.9160
Boyd, KY	
Carter, KY	
Greenup, KY	
Lawrence, OH	
Cabell, WV	
Wayne, WV	
3440 Huntsville, AL	0.8485
Limestone, AL	
Madison, AL	
3480 Indianapolis, IN	0.9848
Boone, IN	
Hamilton, IN	
Hancock, IN	
Hendricks, IN	
Johnson, IN	
Madison, IN	
Marion, IN	
Morgan, IN	
Shelby, IN	
3500 Iowa City, IA	0.9413
Johnson, IA	
3520 Jackson, MI	0.9052
Jackson, MI	
3560 Jackson, MS	0.7760
Hinds, MS	
Madison, MS	
Rankin, MS	
3580 Jackson, TN	0.8522
Madison, TN	
Chester, TN	
3600 Jacksonville, FL	0.8969
Clay, FL	
Duval, FL	
Nassau, FL	
St. Johns, FL	
3605 Jacksonville, NC	0.6973
Onslow, NC	
3610 Jamestown, NY	0.7552
Chautaqua, NY	
3620 Janesville-Beloit, WI	0.8824
Rock, WI	
3640 Jersey City, NJ	1.1412
Hudson, NJ	
3660 Johnson City-Kingsport-Bristol, TN–VA	0.9114
Carter, TN	
Hawkins, TN	
Sullivan, TN	
Unicoi, TN	
Washington, TN	
Bristol City, VA	
Scott, VA	
Washington, VA	
3680 Johnstown, PA	0.8378
Cambria, PA	
Somerset, PA	
3700 Jonesboro, AR	0.7443
Craighead, AR	
3710 Joplin, MO	0.7510
Jasper, MO	
Newton, MO	
3720 Kalamazoo-Battlecreek, MI	1.0668
Calhoun, MI	
Kalamazoo, MI	
Van Buren, MI	
3740 Kankakee, IL	0.8653
Kankakee, IL	
3760 Kansas City, KS–MO	0.9564
Johnson, KS	
Leavenworth, KS	
Miami, KS	
Wyandotte, KS	
Cass, MO	
Clay, MO	
Clinton, MO	
Jackson, MO	
Lafayette, MO	
Platte, MO	
Ray, MO	
3800 Kenosha, WI	0.9196
Kenosha, WI	
3810 Killeen-Temple, TX	1.0252
Bell, TX	
Coryell, TX	
3840 Knoxville, TN	0.8831
Anderson, TN	
Blount, TN	
Knox, TN	
Loudon, TN	
Sevier, TN	
Union, TN	
3850 Kokomo, IN	0.8416
Howard, IN	
Tipton, IN	
3870 La Crosse, WI–MN	0.8749
Houston, MN	
La Crosse, WI	
3880 Lafayette, LA	0.8206
Acadia, LA	
Lafayette, LA	
St. Landry, LA	
St. Martin, LA	
3920 Lafayette, IN	0.9174
Clinton, IN	
Tippecanoe, IN	
3960 Lake Charles, LA	0.7776
Calcasieu, LA	
3980 Lakeland-Winter Haven, FL	0.8806
Polk, FL	
4000 Lancaster, PA	0.9481
Lancaster, PA	
4040 Lansing-East Lansing, MI	1.0088
Clinton, MI	
Eaton, MI	
Ingham, MI	
4080 Laredo, TX	0.7325
Webb, TX	
4100 Las Cruces, NM	0.8646
Dona Ana, NM	
4120 Las Vegas, NV–AZ	1.0592
Mohave, AZ	
Clark, NV	
Nye, NV	
4150 Lawrence, KS	0.8608
Douglas, KS	
4200 Lawton, OK	0.9045
Comanche, OK	
4243 Lewiston-Auburn, ME	0.9536
Androscoggin, ME	
4280 Lexington, KY	0.8390
Bourbon, KY	
Clark, KY	
Fayette, KY	
Jessamine, KY	
Madison, KY	
Scott, KY	
Woodford, KY	
4320 Lima, OH	0.9185
Allen, OH	
Auglaize, OH	
4360 Lincoln, NE	0.9231

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Lancaster, NE	
4400 Little Rock-North Little Rock, AR	0.8490
Faulkner, AR	
Lonoke, AR	
Pulaski, AR	
Saline, AR	
4420 Longview-Marshall, TX	0.8613
Gregg, TX	
Harrison, TX	
Upshur, TX	
4480 Los Angeles-Long Beach, CA	1.2232
Los Angeles, CA	
4520 Louisville, KY–IN	0.9507
Clark, IN	
Floyd, IN	
Harrison, IN	
Scott, IN	
Bullitt, KY	
Jefferson, KY	
Oldham, KY	
4600 Lubbock, TX	0.8400
Lubbock, TX	
4640 Lynchburg, VA	0.8228
Amherst, VA	
Bedford, VA	
Bedford City, VA	
Campbell, VA	
Lynchburg City, VA	
4680 Macon, GA	0.9227
Bibb, GA	
Houston, GA	
Jones, GA	
Peach, GA	
Twiggs, GA	
4720 Madison, WI	1.0055
Dane, WI	
4800 Mansfield, OH	0.8639
Crawford, OH	
Richland, OH	
4840 Mayaguez, PR	0.4475
Anasco, PR	
Cabo Rojo, PR	
Hormigueros, PR	
Mayaguez, PR	
Sabana Grande, PR	
San German, PR	
4880 McAllen-Edinburg-Mission, TX	0.8371
Hidalgo, TX	
4890 Medford-Ashland, OR	1.0354
Jackson, OR	
4900 Melbourne-Titusville-Palm Bay, FL	0.8819
Brevard, Fl	
4920 Memphis, TN–AR–MS	0.8589
Crittenden, AR	
DeSoto, MS	
Fayette, TN	
Shelby, TN	
Tipton, TN	
4940 Merced, CA	1.0947
Merced, CA	
5000 Miami, FL	0.9859
Dade, FL	
5015 Middlesex-Somerset-Hunterdon, NJ	1.1059
Hunterdon, NJ	
Middlesex, NJ	
Somerset, NJ	
5080 Milwaukee-Waukesha, WI	0.9819
Milwaukee, WI	
Ozaukee, WI	
Washington, WI	
Waukesha, WI	
5120 Minneapolis-St. Paul, MN–WI	1.0733
Anoka, MN	
Carver, MN	
Chisago, MN	
Dakota, MN	
Hennepin, MN	
Isanti, MN	
Ramsey, MN	
Scott, MN	
Sherburne, MN	
Washington, MN	
Wright, MN	
Pierce, WI	
St. Croix, WI	
5160 Mobile, AL	0.8455
Baldwin, AL	
Mobile, AL	
5170 Modesto, CA	1.0794
Stanislaus, CA	
5190 Monmouth-Ocean, NJ	1.0934
Monmouth, NJ	
Ocean, NJ	
5200 Monroe, LA	0.8414
Ouachita, LA	
5240 Montgomery, AL	0.7671
Autauga, AL	
Elmore, AL	
Montgomery, AL	
5280 Muncie, IN	0.9173
Delaware, IN	
5330 Myrtle Beach, SC	0.8072
Horry, SC	
5345 Naples, FL	1.0109
Collier, FL	
5360 Nashville, TN	0.9182
Cheatham, TN	
Davidson, TN	
Dickson, TN	
Robertson, TN	
Rutherford TN	
Sumner, TN	
Williamson, TN	
Wilson, TN	
5380 Nassau-Suffolk, NY	1.3807
Nassau, NY	
Suffolk, NY	
5483 New Haven-Bridgeport-Stamford-Danbury-Waterbury, CT	1.2618
Fairfield, CT	
New Haven, CT	
5523 New London-Norwich, CT	1.2013
New London, CT	
5560 New Orleans, LA	0.9566
Jefferson, LA	
Orleans, LA	
Plaquemines, LA	
St. Bernard, LA	
St. Charles, LA	
St. James, LA	
St. John Baptist, LA	
St. Tammany, LA	
5600 New York, NY	1.4449
Bronx, NY	
Kings, NY	
New York, NY	
Putnam, NY	
Queens, NY	
Richmond, NY	
Rockland, NY	
Westchester, NY	
5640 Newark, NJ	1.1980
Essex, NJ	
Morris, NJ	
Sussex, NJ	
Union, NJ	
Warren, NJ	
5660 Newburgh, NY–PA	1.1283
Orange, NY	
Pike, PA	
5720 Norfolk-Virginia Beach-Newport News, VA–NC	0.8316
Currituck, NC	
Chesapeake City, VA	
Gloucester, VA	
Hampton City, VA	
Isle of Wight, VA	
James City, VA	
Mathews, VA	
Newport News City, VA	
Norfolk City, VA	
Poquoson City, VA	
Portsmouth City, VA	
Suffolk City, VA	
Virginia Beach City, VA	
Williamsburg City, VA	
York, VA	
5775 Oakland, CA	1.5068
Alameda, CA	
Contra Costa, CA	
5790 Ocala, FL	0.9032
Marion, FL	
5800 Odessa-Midland, TX	0.8660
Ector, TX	
Midland, TX	
5880 Oklahoma City, OK	0.8481
Canadian, OK	
Cleveland, OK	
Logan, OK	
McClain, OK	
Oklahoma, OK	
Pottawatomie, OK	
5910 Olympia, WA	1.0901
Thurston, WA	
5920 Omaha, NE–IA	0.9421
Pottawattamie, IA	
Cass, NE	
Douglas, NE	
Sarpy, NE	
Washington, NE	
5945 Orange County, CA	1.1605
Orange, CA	
5960 Orlando, FL	0.9397
Lake, FL	
Orange, FL	
Osceola, FL	
Seminole, FL	
5990 Owensboro, KY	0.7480
Daviess, KY	
6015 Panama City, FL	0.8337

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Bay, FL	
6020 Parkersburg-Marietta, WV–OH	0.8046
Washington, OH	
Wood, WV	
6080 Pensacola, FL	0.8193
Escambia, FL	
Santa Rosa, FL	
6120 Peoria-Pekin, IL	0.8571
Peoria, IL	
Tazewell, IL	
Woodford, IL	
6160 Philadelphia, PA–NJ	1.1398
Burlington, NJ	
Camden, NJ	
Gloucester, NJ	
Salem, NJ	
Bucks, PA	
Chester, PA	
Delaware, PA	
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9606
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7826
Jefferson, AR	
6280 Pittsburgh, PA	0.9725
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.0960
Berkshire, MA	
6340 Pocatello, ID	0.9586
Bannock ID	
6360 Ponce, PR	0.4589
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9627
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR–WA	1.1344
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.1049
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
Statewide, RI	
6520 Provo-Orem, UT	1.0073
Utah, UT	
6560 Pueblo, CO	0.8450
Pueblo, CO	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
6580 Punta Gorda, FL	0.8725
Charlotte, FL	
6600 Racine, WI	0.8934
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	0.9818
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8345
Pennington, SD	
6680 Reading, PA	0.9516
Berks, PA	
6690 Redding, CA	1.1790
Shasta, CA	
6720 Reno, NV	1.0768
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	0.9918
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9152
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1307
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8402
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.0502
Olmsted, MN	
6840 Rochester, NY	0.9524
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9081
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9029
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.2202
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9564

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9544
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8366
Andrews, MO	
Buchanan, MO	
7040 St. Louis, MO–IL	0.9130
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	0.9935
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4513
Monterey, CA	
7160 Salt Lake City-Ogden, UT	0.9857
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7780
Tom Green, TX	
7240 San Antonio, TX	0.8499
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.2193
San Diego, CA	
7360 San Francisco, CA	1.4180
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4332
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4625
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1374
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0688
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.4187
Santa Cruz, CA	
7490 Santa Fe, NM	1.0332
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.2815
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9757
Manatee, FL	
Sarasota, FL	
7520 Savannah, GA	0.8638
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton—Wilkes-Barre—Hazleton, PA	0.8539
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1339
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8783
Mercer, PA	
7620 Sheboygan, WI	0.7862
Sheboygan, WI	
7640 Sherman-Denison, TX	0.8499
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.9381
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA–NE	0.8031
Woodbury, IA	
Dakota, NE	
17760 Sioux Falls, SD	0.8712
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9868
St. Joseph, IN	
7840 Spokane, WA	1.0486
Spokane, WA	
7880 Springfield, IL	0.8713
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.7989
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.0740
Hampden, MA	
Hampshire, MA	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
8050 State College, PA	0.9635
Centre, PA	
8080 Steubenville-Weirton, OH–WV	0.8645
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.1496
San Joaquin, CA	
8140 Sumter, SC	0.7842
Sumter, SC	
8160 Syracuse, NY	0.9464
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1016
Pierce, WA	
8240 Tallahassee, FL	0.8832
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9103
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8614
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana, AR-Texarkana, TX	0.8664
Miller, AR	
Bowie, TX	
8400 Toledo, OH	1.0390
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.9438
Shawnee, KS	
8480 Trenton, NJ	1.0380
Mercer, NJ	
8520 Tucson, AZ	0.9180
Pima, AZ	
8560 Tulsa, OK	0.8074
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8187
Tuscaloosa, AL	
8640 Tyler, TX	0.9567
Smith, TX	
8680 Utica-Rome, NY	0.8398
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3754
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.0946
Ventura, CA	
8750 Victoria, TX	0.8474
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0110
Cumberland, NJ	

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
8780 Visalia-Tulare-Porterville, CA	0.9924
Tulare, CA	
8800 Waco, TX	0.7696
McLennan, TX	
8840 Washington, DC–MD–VA–WV	1.0911
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpepper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8640
Black Hawk, IA	
8940 Wausau, WI	1.0545
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	1.0372
Palm Beach, FL	
9000 Wheeling, OH–WV	0.7707
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9403
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.7646
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8548
Lycoming, PA	
9160 Wilmington-Newark, DE–MD	1.1538
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9322
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0102
Yakima, WA	
9270 Yolo, CA	1.1431
Yolo, CA	
9280 York, PA	0.9415
York, PA	
9320 Youngstown-Warren, OH	0.9937
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0324

TABLE 4a.—WAGE INDEX FOR URBAN AREAS—Continued

Urban area (Constituent counties or county equivalents)	Wage index
Sutter, CA Yuba, CA 9360 Yuma, AZ Yuma, AZ	0.9732

TABLE 4B.—WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7260
Alaska	1.2302
Arizona	0.7989
Arkansas	0.6995
California	0.9977
Colorado	0.8129
Connecticut	1.2617
Delaware	0.8925
Florida	0.8838
Georgia	0.7761
Hawaii	1.0229
Idaho	0.8221
Illinois	0.7644
Indiana	0.8161
Iowa	0.7391
Kansas	0.7203
Kentucky	0.7772
Louisiana	0.7383
Maine	0.8468
Maryland	0.8617
Massachusetts	1.0718
Michigan	0.8923
Minnesota	0.8179
Mississippi	0.6911
Missouri	0.7205
Montana	0.8302
Nebraska	0.7401
Nevada	0.8914
New Hampshire	0.9717
New Jersey [1]	.....
New Mexico	0.8070
New York	0.8401
North Carolina	0.7937
North Dakota	0.7360
Ohio	0.8434
Oklahoma	0.7072
Oregon	0.9975
Pennsylvania	0.8421
Puerto Rico	0.3939
Rhode Island [1]	.....
South Carolina	0.7921
South Dakota	0.6983
Tennessee	0.7353
Texas	0.7404
Utah	0.8926
Vermont	0.9314
Virginia	0.7782
Washington	1.0221
West Virginia	0.7938
Wisconsin	0.8471
Wyoming	0.8247
Guam	0.6516
Virgin Islands	0.4588

[1] All counties within the State are classified urban.

TABLE 5.—COST REPORTING YEAR—ADJUSTMENT FACTOR [1]

If the HHA cost reporting period begins	The adjustment factor is
November 1, 1998	1.00239
December 1, 1998	1.00478
January 1, 1999	1.00720
February 1, 1999	1.00964
March 1, 1999	1.01210
April 1, 1999	1.01456
May 1, 1999	1.01702
June 1, 1999	1.01948
July 1, 1999	1.02197
August 1, 1999	1.02448
September 1, 1999	1.02701

[1] Based on compounded projected market basket inflation rates.

Source: The Home Health Agency Input Price Index, produced by HCFA for the period between 1983:1 and 2008:4. The forecasts are from Standard and Poor's DRI 3rd QTR 1997: @USSIM/TREND25YR0897@CISSIM/Control973 forecast exercise which has historical data through 1997:2.

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY

Per-beneficiary limitations month	Index level
October 1992	.98566
November 1992	.98800
December 1992	.99099
January 1993	.99399
February 1993	.99700
March 1993	.99933
April 1993	1.00166
May 1993	1.00400
June 1993	1.00666
July 1993	1.00933
August 1993	1.01200
September 1993	1.01400
October 1993	1.01600
November 1993	1.01800
December 1993	1.02099
January 1994	1.02399
February 1994	1.02700
March 1994	1.02866
April 1994	1.03033
May 1994	1.03200
June 1994	1.03499
July 1994	1.03499
August 1994	1.03499
September 1994	1.03499
October 1994	1.03499
November 1994	1.03499
December 1994	1.03499
January 1995	1.03499
February 1995	1.03499
March 1995	1.03499
April 1995	1.03499
May 1995	1.03499
June 1995	1.03499
July 1995	1.03499
August 1995	1.03499
September 1995	1.03499
October 1995	1.03499
November 1995	1.03499
December 1995	1.03499

TABLE 6.—MONTHLY INDEX LEVELS FOR CALCULATING INFLATION FACTORS TO BE APPLIED TO HOME HEALTH AGENCY—Continued

Per-beneficiary limitations month	Index level
January 1996	1.03499
February 1996	1.03499
March 1996	1.03499
April 1996	1.03499
May 1996	1.03499
June 1996	1.03499
July 1996	1.03720
August 1996	1.03941
September 1996	1.04162
October 1996	1.04383
November 1996	1.04604
December 1996	1.04856
January 1997	1.05108
February 1997	1.05361
March 1997	1.05582
April 1997	1.05803
May 1997	1.06024
June 1997	1.06370
July 1997	1.06717
August 1997	1.07065
September 1997	1.07317
October 1997	1.07569
November 1997	1.07822
December 1997	1.08074
January 1998	1.08327
February 1998	1.08580
March 1998	1.08769
April 1998	1.08958
May 1998	1.09148
June 1998	1.09494
July 1998	1.09841
August 1998	1.10189
September 1998	1.10441
October 1998	1.10693
November 1998	1.10946
December 1998	1.11230
January 1999	1.11514
February 1999	1.11798
March 1999	1.12019
April 1999	1.12240
May 1999	1.12461
June 1999	1.12776
July 1999	1.13091
August 1999	1.13408
September 1999	1.13660
October 1999	1.13912
November 1999	1.14165
December 1999	1.14480
January 2000	1.14795
February 2000	1.15112
March 2000	1.15332
April 2000	1.15553
May 2000	1.15774
June 2000	1.16120
July 2000	1.16467
August 2000	1.16816
September 2000	1.17099
October 2000	1.17383

X. Regulatory Impact Statement

A. Introduction

HCFA has examined the impacts of this notice with comment as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) (Pub. L. 96–354), and the Unfunded Mandates Reform Act

of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The RFA requires agencies to analyze options for regulatory relief for small businesses. For purposes of the RFA, States and individuals are not considered small entities. However, most providers, physicians, and health care suppliers are small entities, either by nonprofit status or by having revenues of $5 million or less annually. Approximately 25 percent of HHAs are identified as Visiting Nurse Associations, combined in government and voluntary, and official health agency, and therefore, are considered small entities. We anticipate this notice, in total, will have a significant impact on a substantial number of small entities based on the estimates shown below. We have examined the options for lessening the burden on small entities, however, the statute does not allow for any exceptions to these limitations based on size of entity. Therefore, there are no options to lessen the regulatory burden that are consistent with the statute.

Section 202 of the Unfunded Mandates Reform Act requires agencies to prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, or tribal governments, in the aggregate, or by private sector, of $100 million (adjusted annually for inflation). We believe that there are no costs associated with this notice with comment that apply to these governmental and private sectors. Therefore, the law does not apply.

1. Effect of This Notice

This notice is a part of the HHA IPS. As a result of rebasing the per-visit limitations, we estimate that there will be a cost to the Medicare program of approximately $70 million in Federal FY 1999. We estimate that the effect of the offset adjustment for the implementation of OASIS data collection, as discussed in section III.G. will result in negligible costs to the Medicare program. We note that this estimate differs from that published in the Paperwork Reduction Act section of the March 10, 1997 proposed rule on OASIS collection requirements (62 FR 11035). This is due to several factors. Unlike the OASIS proposed rule which calculated impacts based on total HHA costs on an agency basis, the offset adjustment factor in this notice is necessarily calculated on a per-visit, Medicare basis. Moreover, we have based these estimates on actual data collected from the home health PPS demonstration rather than using the general estimates of the proposed OASIS rule. We believe using actual data which was not available at the time the OASIS proposed rule was written produces a more accurate estimate of cost impact.

We should also note, however, that the adjustment only incorporates the incremental costs of data collection and not any incremental costs, if any, which may be incurred for OASIS reporting because no reliable cost data were available at this time. We are specifically requesting comments on these costs. Also, we cannot determine the number of providers affected by our revised new provider policy and therefore cannot determine what the financial impact, if any, will be.

2. Effect on March 31, 1998 Final Rule With Comment Period

As stated in the March 31, 1998 final rule with comment period (63 FR 15718) for Federal FY 1999, we estimate that the imposition of the per-beneficiary limitations will result in savings of $2.14 billion. However, the changes imposed through this notice to the per-visit limitations will result in savings of $670 million instead of $740 million as stated in the March 31, 1998 final rule with comment period (63 FR 15718). This is the result of rebasing the per-visit limitations. The total savings from both limitations for Federal FY 1999 will be $2.81 billion rather than $2.88 billion as stated in the March 31, 1998 rule.

This notice with comment is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866. However, we are preparing a regulatory impact statement because this notice with comment is an integral part of the HHA IPS.

It is clear that the changes being made in this document will affect both a substantial number of small HHAs as well as other classes of HHAs, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this notice with comment, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

B. Explanation of Per-Visit Limitations

Section 1861(v)(1)(L)(i) of the Act specifies that the per-visit limitations not exceed 105 percent of the median of the labor-related and nonlabor per-visit costs for freestanding HHAs. The reasonable costs used in the per-visit calculations will be updated by the home health market basket excluding any change in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996.

The methodology used to develop the schedule of per-visit limitations in this notice with comment is the same as that used in setting the limitations effective October 1, 1997. We are using the latest settled cost report data (as described in Section III. Update of Per-Visit Limitations) from freestanding HHAs to develop the per-visit limitations.

C. Explanation of Per-Beneficiary Limitations

Section 1861(v)(1)(L) requires the per-beneficiary limitation be a blend of: (1) an agency-specific per-beneficiary limitation based on 75 percent of 98 percent of the reasonable costs (including nonroutine medical supplies) for the agency's 12-month cost reporting period ending during FFY 1994, and (2) a census region division per-beneficiary limitation based on 25 percent of 98 percent of the regional average of such costs for the agency's census division for cost reporting periods ending during FFY 1994, standardized by the hospital wage index. The reasonable costs used in the per-beneficiary limitation calculations in one and two above will be updated by the home health market basket excluding any changes in the home health market basket with respect to cost reporting periods that began on or after July 1, 1994 and before July 1, 1996. This per-beneficiary limitation based on the blend of the agency-specific and census region division per-beneficiary limitations will then by multiplied by the agency's unduplicated census count of beneficiaries (entitled to benefits under Medicare) to calculate the HHA's per-beneficiary limitation for the cost reporting period subject to the limitation.

For new providers and providers without a 12-month cost reporting period ending in FFY 1994, the per-beneficiary limitation will be a national per-beneficiary limitation which will be equal to the median of these limitations applied to other HHAs as determined under section 1861(v)(1)(L)(v) of the Act.

The methodologies and data used to develop the schedule of per-beneficiary limitations set forth in this notice are the same as that used in setting the per-beneficiary limitations that were effective for cost reporting periods beginning on or after October 1, 1997. We have updated the per-beneficiary

limitations to reflect the expected cost increases occurring between the cost reporting periods ended during FFY 1994 and September 30, 1999, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. Therefore, we excluded this time period when we adjusted the database for the market basket increases.

Payments by Medicare under this system of payment limitations must be the lower of an HHA's actual reasonable allowable costs, per-visit limitations in the aggregate, or a per-beneficiary limitation in the aggregate.

D. Effect on Home Health Agencies

This notice with comment period sets forth revised schedules of limitations on home health agency costs that may be paid under the Medicare program for cost reporting periods beginning on or after October 1, 1998. These limitations replace the limitations that were set forth in our January 2, 1998 notice with comment period, per-visit limitations, (63 FR 89) and our March 31, 1998 final rule with comment period, per-beneficiary limitations, (63 FR 15718).

The following quantitative analysis presents the projected effects of the statutory changes effective for FFY 1999. This notice with comment period is necessary to implement the provisions of section 1861(v)(1)(L) of the Act, as amended by B.B.A. '97.

The settled cost report data that we are using have been adjusted by the most recent market basket factors, excluding market basket increases for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996, to reflect the expected cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1999.

We are unable to identify the effects of the changes to the cost limits on individual HHAs. However, Table 7 below illustrates the proportion of HHAs that are likely to be affected by the limits. This table is a model of our estimate of the revision in the schedule of the per-visit and per-beneficiary limitations. The total number of HHAs in this table, 6,414, is based on HHA cost reports with a FFY ending in 1994 and for new providers whose cost reports end on either December 31, 1994 or December 31, 1995. For both old and new providers, the length of the cost report is 12 months.

This table takes into account the behaviors that we believe HHAs will engage in order to reduce the adverse effects of section 4602 of B.B.A. '97 on their allowable costs. We believe these behavioral offsets might include an increase in the number of low cost beneficiaries served, a general decrease in the number of visits provided, and earlier discharge of patients who are not eligible for Medicare home health benefits because they no longer need skilled services but have only chronic, custodial care needs. We believe that, on average, these behavioral offsets will result in a 65 percent reduction in the effects these limits might otherwise have on an individual HHA for the per-beneficiary limitations and a 50 percent reduction for the per-visit limitations.

Column one of this table divides HHAs by a number of characteristics including their ownership, whether they are old or new agencies, whether they are located in an urban or rural area, and the census region they are located in. Column two shows the number of agencies that fall within each characteristic or group of characteristics, for example, there are 1,197 rural freestanding HHAs in our database. Column three shows the percent of HHAs within a group that are projected to exceed the per-visit limitation and therefore, not be affected by the per-beneficiary limitation, before the behavioral offsets are taken into account. Column four shows the average percent of costs over the per-visit limitation for an agency in that cell, including behavioral offsets. Column five shows the percent of HHAs within a group that are projected to exceed the per-beneficiary limitation and therefore, not be affected by the per-visit limitation, before the behavioral offsets are taken into account. Column six shows the average percent of costs over the per-beneficiary limitation for an agency in that category, including behavioral offsets. It is important to note that in determining the expected percentage of an agency's costs exceeding the cost limitations, column four (percent of costs exceeding visit limits) and column six (percent of costs exceeding beneficiary limits) are not to be added together. Either the per-visit limitation or the per-beneficiary limitation is exceeded, but not both.

IMPACT OF THE IPS HHA LIMITS, EFFECTIVE 10/1/98

	Number of agencies	Percent of agencies exceeding visit limits	Percent of costs exceeding visit limits	Percent of agencies exceeding beneficiary limits	Percent of costs exceeding beneficiary limits
BY: GEOGRAPHIC AREA:					
ALL AGENCIES	6414	29.8	4.1	60.2	9.8
FREESTANDING	4308	23.9	3.9	67.5	11.2
HOSPITAL BASED	2106	42.1	4.5	45.4	6.5
OLD AGENCIES	5256	25.7	2.2	62.7	9.4
FREESTANDING	3245	15.8	1.0	73.4	11.0
HOSPITAL BASED	2011	41.7	4.5	45.4	6.4
NEW AGENCIES	1158	48.6	19.5	49.3	12.6
FREESTANDING	1063	48.5	20.4	49.6	12.8
HOSPITAL BASED	95	49.5	5.3	46.3	9.2
ALL URBAN	4137	29.1	4.1	63.7	10.0
FREESTANDING	3111	23.6	3.8	69.3	11.3
HOSPITAL BASED	1026	46.0	5.0	46.5	6.6
OLD AGENCIES	3272	24.4	2.2	67.1	9.7
FREESTANDING	2292	15.2	1.0	75.9	11.1
HOSPITAL BASED	980	45.8	4.9	46.4	6.6
NEW AGENCIES	865	47.2	19.0	50.9	
12.3.					
FREESTANDING	819	47.0	19.7	51.0	12.5
HOSPITAL BASED	46	50.0	6.1	47.8	8.8
ALL RURAL	2277	31.1	3.9	54.0	9.1

IMPACT OF THE IPS HHA LIMITS, EFFECTIVE 10/1/98—Continued

	Number of agencies	Percent of agencies exceeding visit limits	Percent of costs exceeding visit limits	Percent of agencies exceeding beneficiary limits	Percent of costs exceeding beneficiary limits
FREESTANDING	1197	24.6	4.3	62.7	11.0
HOSPITAL BASED	1080	38.3	3.3	44.4	6.1
OLD AGENCIES	1984	27.9	1.9	55.4	8.5
FREESTANDING	953	17.2	0.9	67.4	10.5
HOSPITAL BASED	1031	37.8	3.3	44.3	6.0
NEW AGENCIES	293	52.9	21.1	44.7	13.8
FREESTANDING	244	53.7	22.7	44.7	14.1
HOSPITAL BASED	49	49.0	3.6	44.9	10.1
BY: REGION:					
OLD AGENCIES	5256	25.7	2.2	62.7	9.4
NEW ENGLAND	291	5.5	0.3	83.8	12.8
MIDDLE ATLANTIC	443	19.4	1.8	72.2	9.0
SOUTH ATLANTIC	739	24.1	1.7	65.4	9.9
EAST NORTH CENTRAL	866	21.6	1.6	68.6	10.3
EAST SOUTH CENTRAL	431	23.0	1.6	58.9	9.2
WEST NORTH CENTRAL	728	26.6	2.4	58.2	9.7
WEST SOUTH CENTRAL	936	30.1	3.1	56.3	8.6
MOUNTAIN	354	37.0	3.4	50.0	7.4
PACIFIC	428	39.3	4.9	56.8	7.3
NEW AGENCIES	1158	48.6	19.5	49.3	12.6
NEW ENGLAND	44	4.5	0.0	93.2	17.0
MIDDLE ATLANTIC	51	49.0	21.9	47.1	5.1
SOUTH ATLANTIC	44	56.8	25.5	43.2	7.3
EAST NORTH CENTRAL	151	74.2	36.1	25.2	4.4
EAST SOUTH CENTRAL	25	44.0	18.7	56.0	14.7
WEST NORTH CENTRAL	117	65.8	17.9	29.1	9.9
WEST SOUTH CENTRAL	484	39.3	16.4	59.9	16.5
MOUNTAIN	103	45.6	22.0	49.5	8.8
PACIFIC	138	52.9	19.8	43.5	10.1

E.1. Percent of Costs Exceeding Per Visit Limitations (Column Four)

Results from this column indicate that, for an HHA that reaches the per-visit limitation first, the average percent of costs exceeding the per-visit limitation for an HHA in the ''all agencies'' category is 4.1 percent after the behavioral offset. This should not be surprising since the intent of section 4602 of the BBA is to control the soaring expenditures of the Medicare home health benefit which have been driven largely by increased utilization. All discussion of the analysis of the per-visit limitation is based on the fact that HHAs in these categories reached the per-visit limitation and therefore are not affected by the per-beneficiary limitation.

For the old agencies category, (HHAs that filed a 12-month cost report that ended during FFY 1994), the average percent of costs exceeding the per-visit limitation is 2.2 percent. For the new agencies category, (such as HHAs that did not have a 12-month cost reporting period ended in FFY 1994 or that entered the Medicare program after FFY 1994), the average percent of costs exceeding the per-visit limitation is 19.5 percent. Old agencies will not be affected as much by the per-visit limitation the new agencies, on average, because the new agencies have, in general, reported higher per-visit costs.

For the urban areas HHA category, the average percent of costs exceeding the per-visit limitation is 4.1 percent, while the rural areas HHA category is 3.9 percent. For the old agency census division categories the average percent of costs exceeding the per-visit limitation ranges from a low of 0.3 percent in the New England census region to a high of 4.9 percent in the Pacific census region. The other census regions fall between 1.6 percent and 3.4 percent.

For the new agency census region categories the average percent of costs exceeding the per-visit limitation ranges from a low of 0.0 percent in the New England census region to a high of 36.1 percent in the East North Central census region. The other census regions fall between 16.4 percent and 25.5 percent.

E.2. Percent of Costs Exceeding Per-Beneficiary Limitation (Column Six)

Results from this column indicate that, for an HHA that reaches the per-beneficiary limitation first, the average percent of costs exceeding the per-beneficiary limitation for an HHA in the ''all agencies'' category is 9.8 percent after the behavioral offset. All discussion of the analysis of the per-beneficiary limitation is based on the fact that HHAs in these categories reached the per-beneficiary limitation and therefore are not affected by the per-visit limitation.

For the old agencies category, (HHAs that filed a 12-month cost report that ended during FFY 1994), the average percent of costs exceeding the per-beneficiary limitation is 9.4 percent. For the new agencies category, (including HHAs that did not have a 12-month cost reporting period ended in Federal FY 1994 or that entered the Medicare program after Federal FY 1994), the average percent of costs exceeding the per-visit limitation is 12.6 percent. Old agencies will not be affected as much by the per-beneficiary limitations as the new agencies, on average, because the new agenices have, in general, reported higher costs related to higher levels of utilization. Moreover, the statutory provision for old providers which bases 75 percent of the limitation on their own cost experience would implicitly result in less of an impact than experienced by the new providers whose limitations are based on a national median. Also, we believe the

differing impacts of these limits is an inherent result of beginning to draw unexplained variation among providers closer to national norms which existed prior to the rapid increase in home health expenditures of the post '93–'94 period.

For the urban areas HHA category, the average percent of costs exceeding the per-visit limitation is 10.0 percent, while the rural areas HHA category is 9.1 percent. For the old agency census division categories the average percent of costs exceeding the per-beneficiary limitation ranges from a low of 7.3 percent in the Pacific census region to a high of 12.8 percent in the New England census region. The other census regions fall between 7.4 percent and 10.3 percent. The differences between census regions reflect the pattern of highly disparate costs that have been reported historically between geographic areas which cannot be explained by differences in patient characteristics but appear more related to patterns of HHA practices.

For the new agency census region categories the average percent of costs exceeding the per-beneficiary limitation ranges from a low of 4.4 percent in the East North Central census region to a high of 17.0 percent in the New England census region. The other census regions fall between 5.1 percent and 16.5 percent. In general, newer agencies in census regions that have exceptionally high cost histories are more impacted due to their being limited to the national median.

Although there is considerable variation in these limitations, we believe this is a reflection of the wide variation in payments that have been recognized under the present cost reimbursement system. Moreover, we believe the differing impacts of these limitations is an inherent result of beginning to draw unexplained variation among providers closer to which existed prior to the rapid increase in home health expenditures of the post '93–'94 period.

Because this rule limits payments to HHAs to the lesser of actual cost, the per-visit limitations, or the per-beneficiary limitation, we have estimated the combined impact of these limitations.

We estimate that in FFY 1999 and 2000, 30 percent of the HHAs will be limited by the per-visit limitation while 60 percent will be limited to the per-beneficiary limitation. It is important to note again that an HHA is affected either by the per-visit limitation or the per-beneficiary. They will not be affected by both.

Medicare payments to managed care plans are based on fee-for-service Medicare benefits. Although we do not know what home health services are supplied for these payments, we know how much we pay the plans as a result of fee-for-service home health payments. Thus, managed care payments are figured in as part of our cost/savings estimates. Managed care plans are not expected to reduce home health services as a result of this notice. For Federal FY 1999, we estimate that 20 percent of the Medicare cost will be for payments to managed care plans, our estimate for Federal FY 2000 is 26 percent.

We believe that the effect of this notice on State Medicaid programs overall will be small. However, because of the flexibility and variation in State Medicaid policies and service delivery systems as well as differences in provider behavior in reaction to these limits, it is impossible to predict which States will be affected or the magnitude of the impact.

Under the Paperwork Reduction Act of 1995, agencies are required to provide a 60-day notice in the **Federal Register** and solicit public comments before a collection of information requirement is submitted to the Office of Management and Budget for review and approval. This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995.

XI. Other Required Information

A. Waiver of Proposed Notice

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** to provide a period for public comment before the provisions of the notice take effect. However, we may waive this procedure if for good cause we find that prior notice and comment are impracticable, unnecessary or contrary to public interest. 5 U.S.C 553(b)(B).

Section 1861(v)(1)(L) of the Act requires that the Secretary establish revised HHA cost limits for cost reporting periods beginning on or after July 1, 1991 and annually thereafter (except for cost reporting periods beginning on or after July 1, 1994 and before July 1, 1996). In accordance with the statute, we have used the same methodology to develop the schedules of limits that were used in setting the limits effective for cost reporting periods beginning on or after October 1, 1997. These cost limits have been updated by the appropriate market basket adjustment factor to reflect the cost increases occurring between the cost reporting periods for the data contained in the database and September 30, 1999, excluding any changes in the home health market basket with respect to cost reporting periods which began on or after July 1, 1994 and before July 1, 1996. In addition, as required under section 1861(v)(1)(L) of the Act, we have used the most recently published hospital wage index.

Therefore, for good cause we find that it was unnecessary to undertake notice and comment procedures. Generally, the methodology used to develop these schedules of limits is dictated by statute and does not require the exercise of discretion. These methodologies have also been previously published for public comment. It was also necessary to inform HHAs of their new cost limitations in a timely manner such that HHAs could benefit from the most recently published wage index and updated market basket adjustment factor.

We also find that it was impracticable to provide notice and comment procedures before publishing this notice. The per-beneficiary limitations were published on March 31, 1998 with a 60-day comment period. To fully respond to the comments and establish the limitation by August 1, 1998, it was impracticable to publish a proposed notice. Accordingly, for good cause, we waive prior notice and comment procedures. However, we are providing a 60-day comment period for public comment, as indicated at the beginning of this notice.

B. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the **DATES** section of this notice, and we will respond to those comments in a subsequent document.

Authority: Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)).

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare—Hospital Insurance)

Dated: July 28, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: July 30, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 98–20878 Filed 7–31–98; 3:03 pm]

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Federal Register

Tuesday
August 11, 1998

Part III

National Indian Gaming Commission

25 CFR Part 542

Minimum Internal Control Standards; Proposed Rule

NATIONAL INDIAN GAMING COMMISSION

25 CFR Part 542

RIN 3141–AA11

Minimum Internal Control Standards

AGENCY: National Indian Gaming Commission.

ACTION: Proposed rule.

SUMMARY: Tribal casino operations are subject to risk of loss because of customer or employee access and potential access to cash and cash equivalents within a casino. Furthermore, for table game operations, individual transactions are not recorded as they occur and cash receipts are not precisely known until they are removed from the drop boxes and counted. In response to the inherent risks and the need for effective controls in tribal gaming operations, the Commission developed this rule to establish Minimum Internal Control Standards (MICS).

DATES: Submit comments on or before September 10, 1998.

A public hearing will be held at 9 a.m., August 26, 1998.

Submit requests to present oral testimony on or before August 19, 1998.

ADDRESSES: Mail comments and requests to testify to Comments on Proposed Rule on MICS, National Indian Gaming Commission, 1441 L St., NW, Suite 9100, Washington, D.C. 20005, Attn.: Mai Dinh. Comments and requests may also be sent by facsimile to 202–632–7066. The hearing will be held at Mystic Lake, 2400 Mystic Lake Boulevard, Prior Lake, MN 55372.

FOR FURTHER INFORMATION CONTACT: Mai Dinh, 202–632–7003.

SUPPLEMENTARY INFORMATION:

Background

The Commission believes that the development and maintenance of strong internal controls are critical to the success of tribal casino operations. Other jurisdictions in the United States that engage in commercial gaming have established MICS for the gaming operations within their jurisdiction. The Commission recognizes that many tribes have established strong MICS for their gaming operation, in large part due to the efforts of the National Indian Gaming Association and the National Congress of American Indians. Some tribes, however, have not established MICS or adequate MICS. Thus, the Commission concluded that, to assure the integrity of Indian gaming, all tribes must establish internal controls. Therefore, as the federal regulatory agency responsible for oversight of Indian gaming, the Commission decided to develop and promulgate regulations on MICS.

In an effort to include the public, especially those directly involved in the industry, the Commission took steps to obtain input from several sources. On March 5, 1998, the Commission published an Advanced Notice of Proposed Rulemaking in the **Federal Register** soliciting comments from the public concerning the MICS. The Commission held a hearing on this subject in Portland, Oregon, on April 1, 1998. The Commission also established an Advisory Committee comprised wholly of elected tribal government officials or their designated tribal employees. The Commission received several useful comments from these sources which have been incorporated into this part.

Statutory Authority

25 U.S.C. 2702(2), 25 U.S.C. § 2706(b)(10).

Public Comments and Comments From the Advisory Committee

The Commission received several written and oral comments from the public, the hearing participants and the Advisory Committee. Several commenters and members of the Advisory Committee questioned the Commission's authority to promulgate this rule, especially as it pertains to class III gaming. The Advisory Committee, however, recognizes the need for stringent MICS.

The Commission believes that it has the authority to establish MICS for both class II and class III gaming. The Indian Gaming Regulatory Act granted broad authority to the Commission to ''promulgate regulations and guidelines as it deems appropriate to implement the provisions of this Act.'' 25 U.S.C. 2706(b)(10) (emphasis added). The Commission has determined that it is appropriate and necessary to promulgate regulations on MICS to implement one of the stated purposes for IGRA which is ''to ensure that the Indian tribe is the primary beneficiary of the gaming operation, and to assure that gaming is conducted fairly and honestly by both the operator and players.'' *See id.* at 2702(2). This authority is not limited to class II but also extends to class III.

One commenter questioned the use of the Commission's MICS in evaluating a tribe's petition for self-regulation for its class III gaming operation. The commenter believes that the Commission should compare a tribe's MICS to that of the Mississippi Band of Choctaw Indian. It is premature to respond to that comment because the Commission has not published a proposed rule concerning self-regulation for class III gaming operations at this time.

One commenter suggested that the Commission engage in negotiated rulemaking in developing and promulgating this rule. The Commission determined that it did not have the resources necessary to undertake a negotiated rulemaking process and that such a process would not allow the promulgation of such regulations in a timely manner. The Commission, however, recognizes the need for public participation, especially tribal participation, in the development of this proposed rule. For that reason, the Commission solicited comments through the Advance Notice of Proposed Rulemaking and the hearing in Portland, Oregon, prior to drafting this proposed rule. The Commission also assembled an Advisory Committee comprised of tribal regulators and gaming employees to assist in reviewing and editing the draft proposed rule. The Commission also informally discussed the MICS with people in the Indian gaming industry who are knowledgeable about this subject. Public participation will continue through the comment period and a second hearing that the Commission will be holding in Minneapolis in August 1998.

Several commenters and members of the Advisory Committee expressed concern that the Commission's MICS may conflict with MICS established in a Tribal-State compact. Although the Commission does not anticipate that there will be any direct conflicts between the Commission's MICS and a Tribal-State compact MICS, the Commission recognizes that there may be a possibility of that occurrence. Thus, in section 542.4, the regulations state that in the event of a direct conflict, the Tribal-State compact MICS would prevail. This section does not mean that if a standard in this part is more stringent than the Tribal-State compact, then the Tribal-State compact standard would apply. Rather, if one standard is more stringent than another, the more stringent standard would apply. An example of a direct conflict is if a Commission standard mandates the internal audit department to perform a certain function and a Tribal-State compact standard mandates that the external auditor perform that same function, then the tribal MICS should mandate that the external auditor will perform that function. An example of one standard being more stringent than

another is if a Tribal-State compact standard requires two people to perform a function and a Commission standard requires three people to perform that same function, the tribal MICS should require that three people perform that function.

Members of the Advisory Committee also expressed concern that the promulgation of MICS may lead to an extension of state jurisdiction of Indian gaming into areas where they currently do not have jurisdiction. The Commission does not intend that these regulations grant or extend to states any jurisdiction or power in class II and class III gaming in any manner. Section 542.4 makes clear this intention.

Several commenters and members of the Advisory Committee suggested that the Commission develop separate MICS for class II and class III gaming. After careful consideration, the Commission decided that separate MICS were unnecessary and may lead to confusion. The proposed rule is organized by category of games such as bingo, keno, and table games, and by operating departments such as cage and credit, and auditing. The proposed rule, however, is not designed to classify the games into class II or class III. Rather, the MICS address the control issues related to the games. Thus, section 542.6 pertaining to pull tabs may be applicable to class II or class III gaming operations because pull tabs may be class II or class III depending on the nature and circumstances of the game being played. The Commission believes that the most effective method of tailoring the MICS for class II and/or class III operations is through the tribal MICS as provided for in section 542.3 of this part. Each tribe will adopt MICS which address the games that their operations offer.

In its Advance Notice of Proposed Rulemaking, the Commission asked for comments on tiering strategy. Several commenters suggested ways for tiering including gross revenues, net revenues, types of games offered, class of games offered, number of employees, square footage and location of the gaming operation. One commenter suggested that there be no tiering and that the MICS would apply to all gaming operations. The Commission decided that, given the range of Indian gaming operations, tiering was essential for the MICS to have the widest practical application. The Commission chose to tier by gross revenues because this approach appears to provide for the most universal application to the largest number of operators and because operational complexity tends to increase with increased levels of revenue. Also, in other MICS that have a tiering approach such as Nevada's and the National Indian Gaming Association's, gross revenue is the basis for the tiering.

The Commission established three tiers. Tier A gaming operations are gaming operations with annual gross gaming revenues of no more than $3 million. Tier B gaming operations are gaming operations with annual gross gaming revenues of more than $3 million but not more than $10 million. Tier C gaming operations are gaming operations with annual gross gaming revenues of more than $10 million.

The Advance Notice of Proposed Rulemaking asked the public to comment on the deadline by which the tribes and the gaming operations must comply with this part. The suggestions from the commenters ranged from thirty days to two years. One commenter suggested that the deadline should be determined on a case by case analysis. The Commission decided that the tribes should establish the tribal MICS within six months of the effective date of this rule. The tribes will determine how long the gaming operation will have to come into compliance with the tribal MICS. That time, however, cannot exceed six months. A gaming operation must develop and implement an internal control system with the specified time. The internal control system must comply with the tribal MICS. In addition, the internal control system should provide management with reasonable, but not absolute, assurance that the assets are safeguarded against loss from unauthorized use or disposition and that transactions are executed in accordance with management's authorization and recorded properly to permit the preparation of financial statements in accordance with generally accepted accounting principles.

Drafting Information

In drafting this proposed rule, the Commission examined the overall areas of casino control which include safeguarding assets, developing reliable financial records, providing for tribe specific or general authorization of transactions and authorization for access to assets. Additional key components of casino control include comparison of recorded accountability to actual assets at frequent intervals, proper segregation of duties, timely correction of errors by competent employees and adequate computer controls where automated systems are used.

The controls take several forms, such as procedures which require that documents be originated, checked and processed with proper approvals. They also include physical safeguards, such as locked drop buckets and table drop boxes, secured count rooms and funds transport systems, equipment control, key controls, analysis of key statistical measures and trends, and the usage of meter readings. Surveillance systems and the organizational approach of people watching people are also key aspects of a well-developed control system among other factors.

In developing MICS, control standards in several existing gaming jurisdictions were evaluated. In actual practice, control systems and procedures vary from casino to casino and are typically developed based on the unique operating environment of a particular tribal gaming casino. For this reason, the Commission emphasizes that the MICS establish internal standards for the control of a tribal casino operation that are minimally required and at the same time provide operating latitude which allows for individual casinos' operating methods and control styles. For most tribal casino operations, actual operating practices and control standards will and should exceed the level of control established by this proposed rule.

The Commission realizes the possibility that some of the standards in the proposed rule may be too burdensome for some of the smallest gaming operations. To address this problem, the proposed rule includes a provision permitting the Tier A gaming operations to request a variance from a standard. The Commission, however, expects the gaming operation to first attempt to comply with all of the standards before seeking a variance. The Commission anticipates that it will grant a variance only after careful consideration and in isolated instances.

The MICS are not designed to address each and every game operated by tribal casinos. To provide MICS for all games would be nearly impossible. As a result, MICS have been developed for broad gaming categories such as table games and gaming machines. MICS have also been developed for widely operated games such as bingo, keno and gaming machines, as well as for key operating departments such as the cage and credit. For other games it is left to the tribes to develop their own specific controls.

The MICS are designed to permit and provide for controls in both manual and computerized systems. For tribe-authorized computer applications, alternative documentation and/or procedures which provide at least the level of control described by these standards will be acceptable.

Although most MICS contain currency transaction reporting standards, the Commission did not include any standards in this area because Indian gaming operations are already subject to the Bank Secrecy Act and the implementing regulations found in 31 CFR Part 103. This proposed rule references those regulations in section 542.3. The tribes must establish currency transaction reporting standards within their tribal MICS that are consistent with those regulations.

This proposed rule does not address the issue of classification of games and should not be interpreted to do so. As previously noted certain categories of games, pull-tabs for example, may be class II or class III depending on the circumstances. The pull tab standards will apply regardless of whether the game is class II or class III. If a particular game exhibits the characteristics that would be subject to a particular set of standards, then those standards apply regardless of which class the game is.

Public Participation

The Commission encourages and welcomes public comments on this proposed rule. The Commission will hold another hearing to discuss this proposed rule in Minneapolis on August 26, 1998.

Regulatory Flexibility Act

This proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* Because many tribes already have MICS that are nearly as stringent, as stringent as or more stringent than those required by this proposed rule, it will not impose substantive requirements that could be deemed as impacts within the scope of the Act.

Paperwork Reduction Act

The Commission is in the process of obtaining clearance from the Office of Management and Budget (OMB) for the information collection requirements contained in this proposed rule, as required by 44 U.S.C. 3501 *et seq.* The information required to be obtained and maintained is identified in sections 542.5 to 542.17, and relates to the documentation of activities in connection with the operation of gaming operations. The information will be used to determine whether a gaming operation is in compliance with minimum internal control standards. Response is required to be in compliance with this proposed rule.

The Commission recognizes that many gaming operations have MICS that are in compliance with this proposed rule or will require minimal effort to come into compliance. In computing the reporting burden and cost for this collection of information, the Commission factored this fact into its estimates. Public reporting burden for this collection of information is estimated to average 140 hours per gaming operation, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission estimates that approximately 315 gaming operations will be affected by this proposed rule, for an annual burden of 44,100 hours. The Commission further estimates that the total annual cost to the regulated community will be $4–4.5 million.

Send comments regarding this collection of information, including suggestions for reducing the burden to both, Mai Dinh, National Indian Gaming Commission, 1441 L Street N.W., Suite 9100, Washington, DC 20005; and to the Office of Information and Regulatory Affair, Office of Management and Budget, Washington, DC 20503. The Office of Management and Budget (OMB) has up to 60 days to approve or disapprove the information collection, but may respond after 30 days; therefore public comments should be submitted to OMB within 30 days in order to assure their maximum consideration.

The Commission solicits public comment as to:

a. whether the collection of information is necessary for the proper performance of the functions of the Commission, and whether the information will have practical utility;

b. the accuracy of the Commission's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. the quality, utility, and clarity of the information to be collected; and

d. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

_____An agency may not conduct, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act

The Commission has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environment Policy Act of 1969.

Larry Rosenthal,

Chief of Staff, National Indian Gaming Commission.

List of Subjects in 25 CFR Part 542

Gambling, Indian-lands. Indian-tribal government, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the National Indian Gaming Commission proposes to amend 25 CFR by adding a new part 542 as follows:

PART 542—MINIMUM INTERNAL CONTROL STANDARDS

Sec.

542.1 What does this part cover?
542.2 What are the definitions for this part?
542.3 How do I comply with this part?
542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?
542.5 What are the minimum internal control standards for bingo?
542.6 What are the minimum internal control standards for pull tabs?
542.7 What are the minimum internal control standards for card games?
542.8 What are the minimum internal control standards for manual keno?
542.9 What are the minimum internal control standards for computerized keno?
542.10 What are the minimum internal control standards for pari-mutuel wagering?
542.11 What are the minimum internal control standards for table games?
542.12 What are the minimum internal control standards for gaming machines?
542.13 What are the minimum internal control standards for cage and credit?
542.14 What are the minimum internal control standards for internal audit?
542.15 What are the minimum internal control standards for surveillance?
542.16 What are the minimum internal control standards for electronic data processing?
542.17 What are the minimum internal control standards for complimentary services or items?
542.18 Who may apply for a variance and how do I apply for one?
542.19 Does this part apply to charitable bingo operations?

Authority: 25 U.S.C. 2702(2), 2706(b)(10).

§ 542.1 What does this part cover?

This part establishes the minimum internal control standards for gaming operations on Indian land.

§ 542.2 What are the definitions for this part?

(a) The definitions in this section shall apply to all sections of this part unless otherwise noted.

(b) Definitions.

Accountability means all items of currency, chips, coins, tokens, receivables, and customer deposits constituting the total amount for which the bankroll custodian is responsible at a given time.

Accumulated credit payout means credit earned in a gaming machine that is paid to a customer manually in lieu of a machine payout.

Actual hold percentage means the percentage calculated by dividing the win by the drop or coin-in. Can be calculated for individual tables, games, shifts, day and on a cumulative basis.

AICPA means the American Institute of Certified Public Accountants.

Bank or bankroll means the inventory of currency, coins, and chips in the cage, pit area, and gaming machine booths and on the playing tables. Used to make change, pay winning bets, and pay gaming machine jackpots.

Betting station means the area designated in a race book that accepts and pays wagers to bettors.

Betting ticket means a printed, serially numbered form used to record the event upon which a wager is made, the amount and date of the wager, and sometimes the line or spread (odds). Used to record bets on sporting events.

Bill validator means a device that accepts and reads currency by denomination in order to accurately register customer credits at a gaming machine. Also referred to as a currency acceptor.

Bingo master card record means a record of all bingo cards purchased and used in bingo games.

Boxman means the first-level supervisor who is responsible for directly participating in and supervising the operation and conduct of the craps game.

Breakage means the difference between actual bet amounts paid out by a race track to bettors and amounts won due to bet payments being rounded up or down. For example a winning bet that should pay $4.25 may be actually paid at $4.20 due to rounding.

Cage means a secure work area within the gaming operation for cashiers and a storage area for the gaming operation bankroll.

Cage accountability form means an itemized list of the components that make up the cage accountability.

Cage credit means advances in the form of cash or gaming chips made to customers at the cage. Documented by the players signing an IOU or a marker similar to a counter check.

Cage marker forms means a document, usually signed by the customer evidencing an extension of credit at the cage to the customer by the gaming operation.

Calibration module means the section of a weigh scale used to set the scale to a specific amount or number of coins to be counted.

Call bets means a wager made without money or chips, reserved for a known patron and includes marked bets (which are supplemental bets made during a hand of play). For the purpose of settling a call bet, a hand of play in craps is defined as a natural winner (e.g. seven or eleven on the come-out roll), a natural loser (e.g. a two, three or twelve on the come-out roll), a seven-out, or the player making his point, whichever comes first.

Card games means a game in which the gaming operation is not party to wagers and from which the gaming operation receives compensation in the form of a rake-off, a time buy-in, or other fee or payment from a player for the privilege of playing.

Card room bank means the operating fund assigned to the card room or main card room bank.

Cash-out ticket means an instrument of value generated by a gaming machine representing credits owed to a customer at a specific gaming machine. This instrument may be wagered at other machines by depositing in the machine document acceptor.

Change ticket means an instrument of value automatically generated when a cash-out ticket includes change that cannot be wagered on a $1.00 and higher denomination machine. This instrument may be wagered at a lower denomination machine by depositing in the machine document acceptor.

Chip tray means container located on gaming tables where chips are stored that are used in the game.

Chips mean money substitutes, in various denominations, issued by a gaming establishment and used for wagering.

Coin in meter means the meter that displays the total amount wagered in a gaming machine which includes coins-in and credits played.

Coin room inventory means coins and tokens stored in the coin room that are generally used for gaming machine department operation.

Coin room vault means an area where coins and tokens used in the gaming machine department operation are stored.

Complementaries or *comps* means promotional allowances to customers.

Count means the total funds counted for a particular game, coin-operated gaming device, shift, or other period.

Count room means a room where the coin and cash drop from gaming machines, table games or other games are transported to and counted.

Counter check means a form provided by the gaming operation for the customer to use in lieu of a personal check.

Credit means the right granted by a gaming operation to a patron to defer payment of debt or to incur debt and defer its payment.

Credit limit means the maximum dollar amount of credit assigned to a customer by the gaming operation.

Credit slip means a form used to record either:

(1) The return of chips from a gaming table to the cage or

(2) The transfer of IOUs, markers, or negotiable checks from a gaming table to a cage or bankroll.

Currency acceptor is the device that accepts and reads currency by denomination in order to accurately register customer credits at a gaming machine.

Currency acceptor drop means cash contained in currency acceptor drop boxes.

Currency acceptor drop box means box attached to currency acceptors used to contain currency received by currency acceptors.

Currency acceptor drop box release key means the key used to release currency acceptor drop box from currency acceptor device.

Currency acceptor drop storage rack key means the key used to release currency acceptor drop boxes from the storage rack.

Customer deposits means the amounts placed with a cage cashier by customers for the customers' use at a future time.

Deal-in pull tabs games means the numerical sequence of all pull tabs in a specific pull tab game that are sold or available for sale to patrons.

Dealer/boxman means an employee who operates a game, individually or as a part of a crew, administering house rules and making payoffs.

Deskman means a person who authorizes payment of winning tickets and verifies pay-outs for keno games.

Document acceptor is the device integrated into each gaming machine that reads bar codes on coupons and cash-out tickets.

Draw ticket means a blank keno ticket whose numbers are punched out when balls are drawn for the game. Used to verify winning tickets.

Drop box means a locked container affixed to the gaming table into which the drop is placed. The game type, table number, and shift are indicated on the box.

Drop box contents keys means the key used to open drop boxes.

Drop box release keys means the key used to release drop boxes from tables.

Drop box storage rack keys means the key used to release drop boxes from the storage rack.

Drop bucket means a container located in the drop cabinet (or in a secured portion of the gaming machine in coinless/cashless configurations) for the purpose of collecting coins, tokens, cash-out tickets and coupons from the gaming machine.

Drop cabinet is the wooden or metal base of the gaming machine which contains the gaming machine drop bucket.

Drop in table games means the total amount of cash and chips contained in the drop box, plus the amount of credit issued at the table; drop in gaming machines means the total amount of money removed from the drop bucket; Drop in coinless/cashless gaming machines means the total amount of cash-out tickets and coupons removed from the drop bucket.

EPROM means erasable programmable read-only memory.

Earned and unearned take means race bets taken on present and future race events. Earned take means bets received on current or present events. Unearned take means bets take on future race events.

Fill means a transaction whereby a supply of chips or coins and tokens is transferred from a bankroll to a table or a coin-operated gaming device.

Fill slip means a document evidencing a fill.

Flare means the information sheet provided by the manufacturer that sets forth the rules at a particular game of breakopen tickets and that is associated with a specific deal of breakopen tickets. The flare shall contain the following information:

(1) Name of the game;

(2) Manufacturer name or manufacturer's logo;

(3) Ticket count;

(4) Prize structure, which shall include the number of winning breakopen tickets by denomination, with their respective winning symbols, numbers or both.

Floor pars means the sum of the theoretical hold percentages of all machines within a gaming machine denomination weighted by the coin-in contribution.

Future wagers means bets or races to be run in the future (e.g., Kentucky Derby).

Game openers and closers means the form used by gaming operation supervisory personnel to document the inventory of chips on a table at the beginning and ending of a shift.

Gaming machine means an electronic or electromechanical machine which contains a microprocessor with random number generator capability which allows a player to play games of chance, some of which may be affected by skill, which machine is activated by the insertion of a coin, token or currency, or by the use of a credit, and which awards game credits, cash, tokens, or replays, or a written statement of the player's accumulated credits, which written statements are redeemable for cash.

Gaming machine analysis report means a report prepared that compares theoretical to actual hold by gaming machine on a monthly or other periodic basis.

Gaming machine bill-in meter means a meter included on a gaming machine that accepts currency that tracks the number of bills put in the machine.

Gaming machine booths and change banks means a booth or small cage in the gaming machine area used to provide change to players, store change aprons and extra coin, and account for jackpot and other payouts.

Gaming machine count means the total amount of coins and tokens removed from a gaming machine drop bucket or bag. The amount counted is entered on the Gaming Machine Count Sheet and is considered the drop. Also, the procedure of counting the coins and tokens or the process of verifying gaming machine coin and token inventory.

Gaming machine count team means personnel that perform count of the gaming machine drop.

Gaming machine credit-in meter means a meter that records the amount wagered as a result of credits played.

Gaming machine drop cabinet means the stand that contains the drop bucket.

Gaming machine fill means the coins placed in a hopper.

Gaming machine fill and payout sheet means a list of the gaming machine fills and gaming machine payouts.

Gaming machine game mix means the type and number of games in a multiple game machine.

Gaming machine hopper loads means coins or tokens stored within a gaming machine used to make payments.

Gaming machine monitoring system means a system used by a gaming operation to monitor gaming machine meter reading activity on an online basis.

Gaming machine pay table means the reel strip combinations illustrated on the face of the gaming machine that can provide payouts of designated coin amounts.

Gaming machine weigh/count and wrap means the comparison of the weighed gaming machine drop to counted and wrapped coin.

Gaming operation accounts receivable (gaming operation credit) means credit extended to gaming operation patrons in the form of markers, returned checks or other credit instruments that have not been repaid.

Hard drop summary report means a report prepared that shows the results of the gaming machine/drop weigh/count and wrap by denomination.

Hold means the relationship of win to coin-in for gaming machines and win to drop for table games.

Hub means the person or entity that is licensed to provide the operator of a race book information related to horse racing which is used to determine winners of races or payoffs on wagers accepted by the race book.

Inside ticket means a keno ticket retained by the house, showing the customers' selection of numbers and the amount wagered.

Internal audit means individuals who perform an audit function of a gaming operation that are independent of the department subject to audit. Independence is obtained through the organizational reporting relationship as the department shall not report to management of the gaming operation. Internal audit activities should be conducted in a manner that permits objective evaluation of areas examined. Results of audits are generally communicated to management. Audit exceptions generally require follow-up. Internal audit personnel may provide audit coverage to more than one operation within a tribes gaming operation holdings.

Issue slip means a copy of a credit instrument that is retained for numerical sequence control purposes.

Jackpot payout means the portion of a jackpot paid by gaming machine personnel. The amount is usually determined as the difference between the total posted jackpot amount and the coins paid out by the machine. May also be the total amount of the jackpot.

Jackpot payout slip means a form on which the portion of a jackpot paid by gaming machine personnel is recorded.

Keno locked box copy or restricted copy means copies of Keno tickets that are created for written tickets that cannot be accessed by Keno personnel.

Keno multi race ticket means a keno ticket that is played in multiple games.

Keno outstations means areas other than the main keno area where bets may be placed and tickets paid.

Lammer button means a type of chip that is placed on a gaming table to indicate that the amount of chips designated thereon has been given to the

customer for wagering on credit prior to completion of the credit instrument.

Main card room bank means a fund of currency, coin, and chips used primarily for poker and pan card game areas. Used to make even money transfers between various games as needed. May be used similarly in other areas of the gaming operation.

Marker means a document, usually signed by the customer, evidencing an extension of credit to him by the gaming operation.

Marker credit play means that players are allowed to purchase chips using credit in the form of a marker.

Marker inventory form means a form maintained at table games or in the gaming operation pit that are used to track marker inventories at the individual table or pit.

Marker issue slip means the copy of an original marker that is inserted in the table drop box at the time credit is extended.

Marker payment slip means the copy of the original marker used to document customer marker payment transactions. The payment slip is inserted in the table drop box if the marker is paid in the pit or attached to the original marker until the marker is paid.

Marker transfer form means a from used to document transfers of markers from the pit to the cage.

Master credit record means a form to record the date, time, shift, game, table, amount of credit given, and the signatures or initials of the individuals extending the credit.

Master game program number means the game program number listed on a gaming machine EPROM.

Master game report sheet means a form used to record, by shift and day, each table games' winnings and losses. This form reflects the opening and closing table inventories, the fills and credits, and the drop and win.

Mechanical/coin counter means a device used to count coins that may be used in a count room in lieu of a coin weigh scale.

Meter means an electronic (soft) or mechanical (hard) apparatus in a gaming machine. May record the number of coins wagered, the number of coins dropped, the number of times the handle was pulled, or the number of coins paid out to winning players.

Metered count machine means a device used in a coin room to count coins.

Multi-game machines means a gaming machine that includes more than one type of game option.

Name credit instruments means personal checks, payroll checks, counter checks, hold checks, travelers checks or other similar instruments that are accepted in the pit as a form of credit issuance to a player.

Order for credit means a form that is used to request the transfer of chips from a table to the cage. The order precedes the actual transfer transaction which is documented on a credit slip.

Outs means winning race book tickets that have not been paid at the end of a shift.

Outside ticket means a keno ticket given to a customer as a receipt, with the customer's selection of numbers and the amount wagered marked on it.

Par percentage means the percentage of each dollar wagered that the house wins (i.e., gaming operation advantage).

Par sheet means a specification sheet for a gaming machine that provides machine hold percentage, model number, hit frequency, reel combination, number of reels, number of coins that can be accepted and reel strip listing.

Pari-mutuel book means a race book that accepts pari-mutuel wagers on horse races.

Pari-mutuel wagering means a system of wagering on a race or sport'ng event where the winners divide the total amount wagered, net of commissions and operating expenses, proportionate to the individual amount wagered.

Payment slip means that part of a marker form on which customer payments are recorded.

Pit podium means stand located in the middle of the tables used as a work space and record storage area for gaming operation supervisory personnel.

Pit repayment means a customer's repayment of credit at a table.

Pit supervisor means the employee who supervises all games in a pit.

Player tracking system means a system typically used in gaming machine departments that can record the gaming machine play of individual patrons.

Post time in horse racing means the time when the last horse has entered the starting gate.

Primary and secondary jackpots means promotional pools offered at certain card games that can be won in addition to the primary pot.

Progressive gaming machine means a gaming machine, with a payoff indicator, in which the payoff increases as it is played (i.e., deferred payout). The payoff amount is accumulated, displayed on a machine and will remain until a player lines up the jackpot symbols that result in the progressive amount being paid.

Progressive jackpots means deferred payout.

Progressive table game means table games that offer progressive jackpots.

Promotional payouts are generally personal property or awards given to players by the gaming operation as an inducement to play. Promotions vary but a promotion example might be a program developed where a player receives a form of personal property based on the number of games or sessions played.

Promotional progressive pots/pools means funds contributed to a table game by and for the benefit of players. Funds are distributed to players based on a predetermined event.

Proposition players means a person paid a fixed sum by the gaming operation for the specific purpose of playing in a card game who uses his own funds and who retains his winnings and absorbs his losses.

Rabbit ears means a device, generally V-shaped, that holds the numbered balls selected during a keno or bingo game so that the numbers are visible to players and employees.

Rake means a commission charged by the house for maintaining or dealing a game such as poker.

Rake circle means the area of a table where rake is placed.

Random number generator means a device that generates numbers in the absence of a pattern. May be used to determine numbers selected in various games such as keno and bingo. Also commonly used in gaming machines to generate game outcome.

Reel symbols means symbols listed on reel strips of gaming machines.

Rim credit means extensions of credit that are not evidenced by the immediate preparation of a marker and does not include call bets.

Runner means a gaming employee who transports chips/ cash to and from a gaming table to a cashier.

Screen Automated Machine or SAM means an automated terminal used in some race books to accept wagers. SAM's also pay winning tickets in the form of a voucher which is redeemable for cash at the race book.

Shift means any time period designated by management up to 24 hours.

Shill or game starter means an employee financed by the house and acting as a player for the purpose of starting or maintaining a sufficient number of players in a game.

Short pay means a payoff from a coin-operated gaming device that is less than the listed amount.

Sleeper means a winning keno ticket not presented for payment or a winning bet left on the table through a player's forgetfulness.

Soft count means the count of the contents in a drop box.

Table bank par means the chip imprest amount that a table bank is maintained at.

Table chip tray means a container used to hold coins and chips at a gaming table.

Table games means games that are banked by the house or a pool whereby the house or the pool pays all winning bets and collects from all losing bets.

Table inventory means the total coins, chips, and markers at a table.

Table opener and closer means the document where chips and funds held at a table are recorded when a table inventory is taken. Also known as table inventory form.

Take and total take means the amount of a bet or bets taken in by a pari-mutuel race book.

Theoretical hold means the intended hold percentage or win of an individual coin-operated gaming machine as computed by reference to its payout schedule and reel strip settings.

Theoretical hold worksheet means a worksheet provided by the manufacturer for all gaming machines which indicated the theoretical percentages that the gaming machine should hold based on adequate levels of coin-in. The worksheet also indicates the reel strip settings, number of coins that may be played, the payout schedule, the number of reels and other information descriptive of the particular type of gaming machine.

Tier A means gaming operations with annual gross gaming revenue of no more than $3 million.

Tier B means gaming operations with annual gross gaming revenue of more than $3 million but not more than $10 million.

Tier C means gaming operations with annual gross gaming revenues of more than $10 million.

Tokens means a coinlike money substitute, in various denominations, used for gambling transactions.

Total take means the total amount of funds bet by a customer on a specific race book ticket.

Vault means a secure area within the gaming operation where currency, coins, and chips are stored.

Weigh count means the value of coins and currency counted by a weigh machine.

Weigh scale calibration module means the device used to adjust a coin weigh scale.

Weigh scale interface means a communication device between the weigh scale used to calculate the amount of funds included in drop buckets and the computer system used to record the weigh data.

Weigh tape means the tape where weighed coin is recorded.

Wide area progressive gaming machine means gaming machines that make deferred payouts where individual machines are linked to machines in other operations and all the machines affect the progressive amount. As a coin is inserted into a single machine, the progressive meter on all of the linked machines increases.

Win means the new win resulting from all gaming activities. Net win results from deducting all gaming losses from all wins prior to considering associated operating expenses.

Win to write hold percentage means bingo or Keno win divided by write to determine hold percentage.

Wrap means the procedure of wrapping coins. May also refer to the total amount or value of the wrapped coins.

Write means the total amount wagered in keno, bingo, and race and sports book operations.

Writer means an employee who writes keno or race and sports book tickets. A keno writer usually also makes payouts.

Writer machine means a locked device used to prepare keno or race and sports book tickets.

§ 542.3 How do I comply with this part?

(a) Within six months of [EFFECTIVE DATE OF THE FINAL RULE], each tribe or its designated tribal governmental body or agency shall establish by regulation and implement tribal minimum internal control standards which shall:

(1) Be at least as stringent as those set forth in this part;

(2) Contain standards for currency transaction reporting that comply with 31 CFR part 103;

(3) Establish standards for new games which are not addressed in this part; and

(4) Establish a deadline, which shall not exceed six months, by which a gaming operation must come into compliance with the tribal minimum internal control standards.

(b) Tribal regulations promulgated pursuant to this section shall not be required to be submitted to the Commission pursuant to 25 CFR 522.3 (b).

(c) Each gaming operation shall develop and implement an internal control system that, at a minimum, complies with the tribal minimum internal control standards.

(d) The independent certified public accountant (CPA) shall annually evaluate the internal control system of the gaming operation and determine whether the system complies with the tribal minimum internal control standards. The CPA shall prepare a report of the findings for the tribe and management. A copy of the report shall be submitted to the commission within 120 days of the gaming operation's fiscal year end.

§ 542.4 How do these regulations affect minimum internal control standards established in a Tribal-State compact?

(a) If an internal control standard or a requirement set forth in this part is more stringent than an internal control standard established in a Tribal-State compact, than the internal control standard or requirement set forth in this part shall prevail.

(b) If there is a direct conflict between an internal control standard established in a Tribal-State compact and a standard or requirement set forth in this part, then the internal control standard established in to a Tribal-State compact shall prevail.

(c) Nothing in this part shall grant or extend a state's jurisdiction in class II or class III gaming.

§ 542.5 What are the minimum internal control standards for bingo?

(a) Game play standards. (1) The functions of seller and payout verifier shall be segregated. Employees who sell cards on the floor shall not verify payouts with cards in their possession. Floor clerks who sell cards on the floor are permitted to announce the serial numbers of winning cards.

(2) All sales of bingo cards shall be documented by recording at least the following:

(i) Date;

(ii) Shift;

(iii) Session (if applicable);

(iv) Dollar amount;

(v) Signature or initials of at least one seller (if manually documented); and

(vi) Signature or initials of person independent of seller who has randomly verified the card sales (this requirement is not applicable to locations with $1 million or less in annual write).

(3) The total write shall be computed and recorded by shift (and session, if applicable).

(4) The gaming operation shall develop and comply with procedures that insure the correct calling of numbers selected in the bingo game.

(5) Each ball shall be shown to a television camera immediately before it is called so that it is individually displayed to all patrons. For locations not equipped with cameras, each ball drawn shall be shown to an independent patron.

(6) For all coverall games and other games offering a payout of $1,200 or more, as the balls are called the numbers shall be immediately recorded

by the caller and maintained for a minimum of 24 hours.

(7) Controls shall be present to assure that the numbered balls are placed back into the selection device prior to calling the next game.

(8) The authenticity of each payout shall be verified by at least two persons. A computerized card verifying system may function as the second person verifying the payout if the card with the winning numbers is displayed on a reader board.

(9) Payouts in excess of $1,200 shall require written approval, by supervisory personnel independent of the transaction, that the bingo card has been examined and verified to the bingo card record to ensure that the ticket has not been altered.

(10) Total payout shall be computed and recorded by shift or session, if applicable.

(b) If the gaming operation offers promotional payouts or awards, the payout form/documentation shall include the following information:

(1) Date and time;

(2) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(3) Type of promotion; and

(4) Signature of at least one employee authorizing and completing the transaction.

(c) All funds used to operate the bingo department shall be recorded on an accountability form. These funds shall be counted by at least two persons and reconciled to the recorded amounts at the end of each shift or session.

(d) Access and control of bingo equipment shall be restricted as follows:

(1) Access to controlled bingo equipment (e.g., blower, balls in play, and back-up balls) shall be restricted to authorized persons.

(2) Procedures shall be established to inspect new bingo balls put into play as well as for those in use.

(3) Bingo equipment shall be maintained and checked for accuracy on a periodic basis.

(4) The bingo card inventory shall be controlled so as to assure the integrity of the cards being used as follows:

(i) Purchased paper shall be inventoried and secured by an individual independent from the bingo sales;

(ii) The issue of paper to the cashiers shall be documented and signed for by the inventory control department and cashier. The document log shall include the numerical sequence of the bingo paper;

(iii) A copy of the bingo paper control log shall be given to the bingo ball caller for purposes of determining if the winner purchased the paper that was issued to the gaming operation that day;

(iv) At the end of each month an independent department shall verify the accuracy of the ending balance in the bingo paper control by counting the paper on-hand;

(v) Monthly the amount of paper sold from the bingo paper control log shall be compared to the amount of revenue for reasonableness.

(e) Data concerning bingo shall be maintained as follows:

(1) Records shall be maintained which include win, write (card sales), and a win-to-write hold percentage for:

(i) Each shift or each session;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date.

(2) Non-bingo management shall review bingo statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Investigations shall be documented and maintained for Commission inspection.

(f) If the gaming operation utilizes electronic equipment in connection with the play of bingo, then the following standards shall also apply:

(1) If the electronic equipment contains a bill acceptor, then § 542.12(g) shall apply.

(2) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically by an entity independent of Bingo personnel to determine that it is correctly reading the bar code or the microchip.

(3) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.12(u) (as applicable) shall apply.

(g) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in paragraph (f) of this section will be acceptable.

(h) Standards for linked electronic games. (1) Host requirements/game information. (i) Providers of any linked electronic game(s) shall maintain complete records of game data for a period of one (1) year from the date the games are played (or a time frame established by the Tribe). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, game data for the preceding 72 hours shall be immediately accessible;

(ii) Data required to be maintained for each game played includes:

(A) Date and time game start and game end.

(B) Sales information by location.

(C) Money distribution by location.

(D) Refund totals by location.

(E) Cards-in-play count by location.

(F) Identification number of winning card(s).

(G) Ordered list of bingo balls drawn.

(H) Prize amounts at start and end of game.

(2) Host requirements/sales information.

(i) Providers of any linked electronic game(s) shall maintain complete records of sales data for a period of one (1) year from the date the games are played (or a time frame established by the Tribe). This data may be kept in an archived manner, provided the information can be produced within 24 hours upon request. In any event, sales data for the preceding 10 days shall be immediately accessible. Summary information must be accessible for at least 120 days.

(ii) Sales information required shall include:

(A) Daily sales totals by location.

(B) Commissions distribution summary by location.

(C) Game-by-game sales, prizes, refunds, by location.

(D) Daily network summary, by game by location.

(3) Remote host requirements. (i) Linked game providers shall maintain online records at the remote host site for any game played. These records shall remain online until the conclusion of the session of which the game is a part. Following the conclusion of the session, records may be archived, but in any event, must be retrievable in a timely manner for at least 72 hours following the close of the session. Records shall be accessible through some archived media for at least 90 days from the date of the game;

(ii) Game information required includes date and time of game start and game end, sales totals, money distribution (prizes) totals, and refund totals;

(iii) Sales information required includes cash register reconciliations, detail and summary records for purchases, prizes, refunds, credits, and game/sales balance for each session.

(i) Standards for player accounts (for proxy play and linked electronic games). (1) Prior to participating in any game, players shall be issued a unique player account number. The player account number can be issued through the following means:

(i) Through the use of a point-of-sale (cash register device);

(ii) By assignment through an individual play station;

(iii) Through the incorporation of a ''player tracking'' media.

(2) Printed receipts issued in conjunction with any player account should include a time/date stamp.

(3) All player transactions shall be maintained, chronologically by account number, through electronic means on a data storage device. These transaction records shall be maintained online throughout the active game and for at least 24 hours before they can be stored on an ''off-line'' data storage media.

(4) The game software shall provide the ability to, upon request, produce a printed account history, including all transactions, and a printed game summary (total purchases, deposits, wins, debits, for any account that has been active in the game during the preceding 24 hours).

(5) The game software shall provide a ''player account summary'' at the end of every game. This summary shall list all accounts for which there were any transactions during that game day and include total purchases, total deposits, total credits (wins), total debits (cash-outs) and an ending balance.

§ 542.6 What are the minimum internal control standards for pull tabs?

(a) Standards for statistical reports. (1) Records shall be maintained which include win, write (sales) and a win to write hold percentage as compared to the theoretical hold percentage derived from the flare for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(2) Non Pull Tab management independent of pull tab personnel shall review statistical information at least on a monthly basis and shall investigate any large or unusual statistical fluctuations. These investigations shall be documented and maintained for inspection.

(3) Each month, the actual hold percentage shall be compared to the theoretical hold percentage. Any significant variations shall be investigated.

(b) Winning pull tabs shall be verified and paid as follows:

(1) Payouts in excess of a dollar amount determined by the tribe shall be verified by at least two employees.

(2) Total payout shall be computed and recorded by shift.

(3) The winning Pull Tabs shall be voided so that they cannot be presented for payment again.

(c) Personnel independent of Pull Tab management shall verify the amount of winning Pull Tabs redeemed each day.

(d) Pull Tab inventory (including unused tickets) shall be controlled, so as to assure the integrity of the Pull Tabs.

(1) Purchased pull tabs shall be inventoried and secured by an individual independent from the pull tab sales.

(2) The issue of pull tabs to the cashier or sales location shall be documented and signed for by the inventory control department and the cashier or tribal official witnessing the fill. The document log shall include the serial number of the pull tabs.

(3) A copy of the pull tab control log shall be given to the redemption booth for purposes of determining if the winner purchased the pull tab that was issued by the gaming operation.

(4) At the end of each month, an independent department shall verify the accuracy of the ending balance in the pull tab control by counting the pull tabs on hand.

(5) Monthly, a comparison shall be done, of the amount of pull tabs sold from the pull tab control log to the amount of revenue recognized for reasonableness.

(e) Access to Pull Tabs shall be restricted to authorized persons.

(f) Transfers of Pull Tabs from storage to the sale location shall be secured and independently controlled.

(g) All funds used to operate the pull tabs game shall be recorded on an accountability form.

(h) For any authorized computer application, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(i) If the gaming operation utilizes electronic equipment in connection with the play of pull tabs, then the following standards shall also apply:

(1) If the electronic equipment contains a bill acceptor, then § 542.12(g) shall apply.

(2) If the electronic equipment uses a bar code or microchip reader, the reader shall be tested periodically to determine that it is correctly reading the bar code or microchip.

(3) If the electronic equipment returns a voucher or a payment slip to the player, then § 542.12(u) (as applicable) shall apply.

§ 542.7 What are the minimum internal control standards for card games?

(a) Standards for supervision. (1) Supervision shall be provided at all times the card room is in operation by personnel with authority equal to or greater than those being supervised.

(2) Transfers between table banks and the main card room bank (or cage, if a main card room bank is not used) shall be authorized by a supervisor and evidenced by the use of a lammer. (A lammer is not required if the exchange of chips, tokens, and/or currency takes place at the table.)

(3) Transfers from the main card room bank (or cage, if a main card room bank is not used) to the table banks shall be verified by the card room dealer and the runner.

(4) If applicable, transfers between the main card room bank and the cage shall be properly authorized and documented.

(5) A rake shall be collected in accordance with the posted rules unless authorized by a supervisor.

(b) Standards for drop and count. The procedures for the collection of card games drop boxes and the count of the contents thereof shall comply with the internal control standards applicable to the pit drop boxes.

(c) Playing cards, both used and unused, shall be maintained in a secure location to prevent unauthorized access and reduce the possibility of tampering. Unused cards shall be maintained in a secure location until marked or destroyed to prevent unauthorized access and reduce the possibility of tampering. The tribe shall establish a reasonable time period within which to mark and remove cards from play which shall not exceed seven days. A card contact log shall be maintained that documents when cards are received on site, distributed to and returned from tables and removed from the gaming operation.

(d) Standards for reconciliation of card room bank. (1) The amount of the main card room bank shall be counted, recorded, and reconciled on at least a per shift basis.

(2) At least once per shift the table banks shall be counted, recorded, and reconciled by a dealer (or other individual if the table is closed) and a supervisor, and shall be attested to by their signatures on the check-out form.

(e) Standards for shills and proposition players. (1) Issuance of shill funds shall have the written approval of the supervisor.

(2) Shill returns shall be recorded and verified on the shill sign-out form.

(3) The replenishment of shill funds shall be documented.

(f) Standards for promotional progressive pots and pools. (1) All funds contributed by players into the pools shall be returned when won in accordance with the posted rules with no commission or administrative fee withheld.

(2) Rules governing promotional pools shall be posted, clearly legible from each table, and designate:

(i) The amount of funds to be contributed from each pot;

(ii) What type of hand it takes to win the pool (e.g., what constitutes a ''bad beat'');

(iii) How the promotional funds will be paid out;

(iv) How/when the contributed funds are added to the jackpots; and

(v) Amount/percentage of funds allocated to primary and secondary jackpots, if applicable.

(3) Promotional pool contributions shall not be placed in or near the rake circle, in the drop box, or commingled with gaming revenue from card games or any other gambling game.

(4) Promotional funds removed from the card game shall be placed in a locked container in plain view of the public.

(5) Persons authorized to transport the locked container shall be precluded from having access to the contents keys.

(6) The contents key shall be maintained by a department independent of the card room.

(7) At least once a day, the locked container shall be removed by two individuals, one of whom is independent of the card games department, and transported directly to the cage or other secure room to be counted.

(8) If the funds are maintained in the cage, the contents shall be counted, recorded, and verified prior to accepting the funds into cage accountability.

(9) The amount of the jackpot shall be conspicuously displayed in the card room. At least once a day the progressive sign or meter, if applicable, shall be updated to reflect the current pool amount.

(10) At least once a day increases to the progressive sign/meter shall be reconciled to the cash previously counted or received by the cage.

(g) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.8 What are the minimum internal control standards for manual keno?

(a) Physical controls over equipment. (1) The keno write and desk area shall be restricted to specified personnel (desk area is restricted to preclude writers from accessing inside tickets).

(2) Effective periodic maintenance shall be planned to service keno equipment.

(3) Keno equipment maintenance shall be independent of the keno function.

(4) Keno maintenance shall report irregularities to management personnel independent of keno, either in writing or verbally.

(5) Keno balls in use shall be safeguarded to prevent tampering. The gaming operation shall establish and comply with procedures for inspecting new keno balls put into play as well as for those being used.

(6) There shall be safeguards over electronic equipment to prevent access and/or tampering.

(b) Game play standards. (1) The individual controlling inside tickets shall:

(i) Be precluded from writing and making payouts, including during the writer's break periods; or

(ii) Have all winning tickets written by him with payouts exceeding $100.00 verified, regraded, and compared to the inside ticket by another keno employee. Additionally, this individual writes tickets out of his own predesignated writer's station and bank (unless a community bank is used).

(2) At no time shall a keno game with annual write of greater than or equal to $500,000 be operated by one person.

(3) Both inside and outside keno tickets shall be stamped with the date, ticket sequence number, and game number (as applicable to the system being used). The ticket shall indicate that it is multi-race (if applicable).

(4) The game openers and closers shall be stamped with the date, ticket sequence number, and game number. An alternative which provides the same controls may be acceptable.

(5) Controls shall exist to ensure that inside tickets have been received from outstations prior to calling of a game.

(6) Controls shall exist to prevent the writing and voiding of tickets after a game has been closed and the number selection process for the game has begun.

(7) A legible restricted copy of written keno tickets shall be created (carbonized locked box copy, microfilm, videotape, etc.) for, at a minimum, all winning tickets exceeding $30.00. If there are no restricted copies of winning tickets of $30.00 or less, then the desk person shall not write tickets.

(8) When it is necessary to void a ticket which contains the sequence number, the ticket shall be designated as ''void'' and initialed or signed by at least one person.

(c) Standards for number selection. (1) A camera shall be utilized to film the following both prior to, and subsequent to, the calling of a game:

(i) Empty rabbit ears;

(ii) Date and time;

(iii) Game number, and

(iv) Full rabbit ears.

(2) The picture of the rabbit ears on the camera shall provide a legible identification of the numbers on the balls drawn.

(3) Keno personnel shall produce a draw ticket as numbers are drawn, and such tickets contain the race number, numbers drawn, and date. The draw ticket shall be verified to the balls drawn by a second keno employee.

(4) A gaming operation shall establish and comply with procedures which prevent unauthorized access to keno balls in play.

(5) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(6) A gaming operation shall establish effective procedures for inspecting new keno balls put into play as well as for those in use.

(d) Winning tickets shall be verified and paid as follows:

(1) All winning tickets shall be compared with the draw ticket by the writer before being paid, marked with evidence that the ticket was ''paid'' and marked with the amount of the payout.

(2) Payouts over a predetermined amount (not to exceed $30.00) shall be verified by actual examination of the inside ticket.

(3) Wins over a specified dollar amount (not to exceed $10,000 for locations with annual keno write in excess of $5,000,000 and $3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department evidenced by their signature;

(ii) Examination of films of rabbit ears prior to and after the game is called to determine that the same numbers called were not left up from the prior game and to verify the accuracy of the draw ticket;

(iii) If necessary, film may be developed as soon as possible after payouts;

(iv) Regrading of the inside ticket and comparison of both the winning ticket presented for payment and the inside ticket to the restricted copy (machine copy, microfilm, videotape, etc.);

(v) Procedures described in this paragraph shall be documented for later verification and reconciliation by the keno audit process on a ball check form.

(e) A cash summary report (count sheet) shall be prepared for the end of every shift which includes:

(I) Computation of cash proceeds for the shift by bank (i.e., community bank or individual writer banks, whichever is applicable); and

(i) Signatures in ink of two employees who have verified the cash proceeds recorded in the above computation.

(f) Statistics shall be maintained as follows:

(1) Records shall be maintained which include (for each game) win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Calendar or fiscal year-to-date, as applicable.

(2) Non-keno management shall review keno statistical information at least on a monthly basis and investigate any large or unusual statistical fluctuations.

(3) Such investigations shall be documented and maintained.

(4) The accounting department or someone who is independent of the keno writer and desk person, shall calculate and indicate in a summary report the total ''write'' by game and shift, total ''payout'' by game and shift, and the ''win/loss'' by game and shift.

(5) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of +/−3%. The base level is defined as the gaming operations win percentage for the previous business year or the previous 12 months.

(g) Key control standards. (1) Keys to locked box tickets shall be maintained by a department independent of the keno function.

(2) The master panel, which safeguards the wiring that controls the sequence of the game, shall be locked at all times to prevent unauthorized access. Someone independent of the Keno department is required to accompany such keys to the Keno area and observe repairs or refills each time locked boxes are accessed.

(3) Master panel keys shall be maintained by a department independent of the keno function.

(4) Microfilm machine keys shall be maintained by personnel who are independent of the keno writer function.

(5) Someone independent of the keno writer function (e.g., a keno supervisor who doesn't write or someone independent of keno) shall be required to observe each time the microfilm machine is accessed by keno personnel.

(6) Keno equipment discussed in this section shall always be locked when not being accessed.

(7) All electrical connections shall be wired in such a manner so as to prevent tampering.

(8) Duplicate keys to the above areas shall be maintained independently of the keno department.

(h) Standards for keno audit. (1) The accounting department shall perform the various audit functions of keno and shall include verification on a sample basis at least once a week of the total ''write'' by writer and shift (from inside tickets for microfilm or videotape system or from locked box copies for a writing machine system), the total ''payout'' by writer and shift, and the ''win/loss'' by writer and shift.

(2) Audit procedures may be performed up to one month following the transaction.

(3) Keno audit personnel shall foot write (either inside ticket or restricted copy) and payouts (customer copy) to arrive at an audited win/loss by shift.

(4) Keno audit personnel shall obtain an audited win/loss for each bank (i.e., individual writer or community). The keno audit function is independent of the keno department for the next five standards.

(5) The keno receipts (net cash proceeds) shall be compared with the audited win/loss by keno audit personnel.

(6) Major cash variances (i.e., overages or shortages in excess of $25.00) noted in the comparison in paragraph (h) (5) of this section shall be investigated on a timely basis.

(7) On a sample basis (for at least one race per shift or ten races per week) keno audit personnel shall perform the following, where applicable:

(i) Regrade winning tickets utilizing the payout schedule and draw tickets and compare winning tickets (inside and outside) to restricted copies (locked box copy, developed microfilm, videotape, etc.) for 100% of all winning tickets of $100.00 or greater and 25% of all winning tickets under $100.00 for those races selected;

(ii) Either review sequential numbering on inside tickets (microfilm and videotape systems) to ensure that tickets have not been destroyed to alter the amount of write, or compute write from developed film and compare to write computed from inside tickets;

(iii) Review restricted copies for blank tickets and proper voiding of voids;

(iv) Ensure the majority of the races in the sample selected contain payouts in excess of $100.00 but less than the amount established for the independent verification required by paragraph (d) (3) of this section.

(8) In addition to the audit procedures in paragraph (h) (7) of this section, when a keno game is operated by one person:

(i) At least 25% of all other winning tickets shall be regraded;

(ii) At least 10% of all tickets shall be traced to the restricted copy;

(iii) Film of rabbit ears shall be randomly compared to draw tickets for at least 25% of the races;

(9) The keno audit function shall be independent of the keno shift being audited when performing standards in paragraph (h) (7) (i), (ii), and (iii) of this section.

(10) Draw tickets shall be compared to rabbit ears film for at least five races per week with payouts which do not require draw ticket verification independent of the keno department. (The draw information may be compared to the rabbit ears at the time the balls are drawn provided it is done without the knowledge of keno personnel and it is subsequently compared to the keno draw ticket.)

(11) Documentation (e.g., logs, checklists, etc.) shall be maintained which shall evidence the performance of all keno audit procedures.

(12) Non-keno management shall review keno audit exceptions, perform investigations into unresolved exceptions and document results.

(13) Copies of all Keno tickets and the video tape of the rabbit ears shall be maintained for at least seven days.

(i) Standards for multi-race keno tickets. (1) Procedures are established to notify keno personnel immediately of large multi-race winners to ensure compliance with the standard in paragraph (d) (3) of this section.

(2) Controls exist to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(j) For any authorized computer applications, alternate documentation and/or procedures that are at least at the level of control described by the standards in this section may be acceptable.

§ 542.9 What are the minimum internal control standards for computerized keno?

(a) Game play standards. (1) The computerized customer ticket shall include the date, game number, ticket sequence number, station number, and conditioning (including multi-race if applicable).

(2) Concurrently with the generation of the ticket the information on the ticket shall be recorded on a restricted transaction log or computer storage media.

(3) Keno personnel shall be precluded from access to the restricted transaction log or computer storage media.

(4) When it is necessary to void a ticket, the void information shall be inputted in the computer and the computer shall document the appropriate information pertaining to the voided wager (e.g., void slip is issued or equivalent documentation is generated).

(5) Controls shall exist to prevent the writing and voiding of tickets after a

game has been closed and after the number selection process for that game has begun.

(6) The controls in effect for tickets prepared in outstations (if applicable) shall be identical to those in effect for the primary keno game.

(b) The following standards shall apply if a rabbit ear system is utilized:

(1) A camera shall be utilized to film the following both prior to, and subsequent to, the calling of a game:

(i) Empty rabbit ears;

(ii) Date and time;

(iii) Game number; and

(iv) Full rabbit ears.

(2) The film of the rabbit ears shall provide a legible identification of the numbers on the balls drawn.

(3) Keno personnel shall immediately input the selected numbers in the computer and the computer shall document the date, the game number, the time the game was closed, and the numbers drawn.

(4) A gaming operation shall establish and comply with procedures which prevent unauthorized access to keno balls in play.

(5) Back-up keno ball inventories shall be secured in a manner to prevent unauthorized access.

(6) The gaming operation shall establish and comply with procedures for inspecting new keno balls put into play as well as for those in use.

(c) The following standards shall apply if a random number generator is utilized:

(1) The random number generator shall be linked to the computer system and shall directly relay the numbers selected into the computer without manual input.

(2) Keno personnel shall be precluded from access to the random number generator.

(d) Winning tickets shall be verified and paid as follows:

(1) The sequence number of tickets presented for payment shall be inputted into the computer, and the payment amount generated by the computer shall be given to the patron.

(2) A gaming operation shall establish and comply with procedures to preclude payment on tickets previously presented for payment, unclaimed winning tickets (sleepers) after a specified period of time, voided tickets, and tickets which have not been issued yet.

(3) All payouts shall be supported by the customer (computer-generated) copy of the winning ticket (payout amount is indicated on the customer ticket or a payment slip is issued).

(4) A manual report or other documentation shall be produced and maintained documenting any payments made on tickets which are not authorized by the computer.

(5) Winning tickets over a specified dollar amount (not to exceed $10,000 for locations with more than $5 million annual keno write and $3,000 for all other locations) shall also require the following:

(i) Approval of management personnel independent of the keno department, evidenced by their signature;

(ii) Review of the videotape or development of the film of the rabbit ears to verify the legitimacy of the draw and the accuracy of the draw ticket (for rabbit ear systems only);

(iii) Comparison of the winning customer copy to the computer reports;

(iv) Regrading of the customer copy using the payout schedule and draw information; and

(v) Documentation and maintenance of the procedures in this paragraph.

(6) When the keno game is operated by one person, all winning tickets in excess of an amount to be determined by management (not to exceed $1,500) shall be reviewed and authorized by someone independent of the keno department.

(e) Check out standards at the end of each keno shift. For each writer station, a cash summary report (count sheet) shall be prepared that includes:

(1) Computation of net cash proceeds for the shift and the cash turned in; and

(2) Signatures of two employees who have verified the net cash proceeds for the shift and the cash turned in.

(f) If a gaming operation offers promotional payouts and awards, the payout form/documentation shall include the following information:

(1) Date and time;

(2) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(3) Type of promotion; and

(4) Signature of at least one employee authorizing and completing the transaction;

(g) Statistics shall be maintained as follows:

(1) Records shall be maintained which include win and write by individual writer for each day.

(2) Records shall be maintained which include (for each licensed game) win, write, and win-to-write hold percentage for:

(i) Each shift;

(ii) Each day;

(iii) Month-to-date; and

(iv) Year-to-date or fiscal year-to-date as applicable.

(3) Non-keno management independent from the keno personnel shall review keno statistical data at least on a monthly basis and investigate any large or unusual statistical variances.

(4) At a minimum, investigations shall be performed for statistical percentage fluctuations from the base level for a month in excess of +/−3%. The base level shall be defined as the gaming operation's win percentage for the previous business year or the previous 12 months.

(5) Such investigations shall be documented and maintained.

(h) System Security Standards. (1) All keys (including duplicates) to sensitive computer hardware in the keno area shall be maintained by a department independent of the keno function.

(2) Someone independent of the keno department shall be required to accompany such keys to the keno area and shall observe changes or repairs each time the sensitive areas are accessed.

(I) A gaming operation shall comply with the following documentation standards:

(1) Adequate documentation of all pertinent keno information shall be generated by the computer system.

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum:

(i) Ticket information (as described in paragraph (a)(1) of this section);

(ii) Payout information (date, time, ticket number, amount, etc.);

(iii) Game information (number, ball draw, time, etc.);

(iv) Daily recap information which includes:

(A) Write;

(B) Payouts; and

(C) Gross revenue (win);

(v) System exception information, including:

(A) Voids;

(B) Late pays; and

(C) Appropriate system parameter information (e.g., changes in pay tables, ball draws, payouts over a predetermined amount, etc.); and

(vi) Personnel access listing which includes at least:

(A) Employee name;

(B) Employee identification number; and

(C) Listing of functions employee can perform or equivalent means of identifying same.

(j) Keno audit standards. (1) The keno audit function shall be independent of the keno department.

(2) At least annually, keno audit shall foot the write on the restricted copy of the keno transaction report for a minimum of one shift and compare the total to the total as documented by the computer.

(3) For at least one shift every other month keno audit shall perform the following:

(i) Foot the customer copy of the payouts and trace the total to the payout report; and

(ii) Regrade at least 1% of the winning tickets using the payout schedule and draw ticket;

(4) Keno audit shall perform the following:

(i) For a minimum of five games per week, compare the videotape/film of the rabbit ears to the computer transaction summary;

(ii) Compare net cash proceeds to the audited win/loss by shift and investigate any large cash overages or shortages (i.e., in excess of $25.00);

(iii) Review and regrade all winning tickets greater than or equal to $1,500, including all forms which document that proper authorizations and verifications were obtained and performed;

(iv) Review the documentation for payout adjustments made outside the computer and investigate large and frequent payments;

(v) Review personnel access listing for inappropriate functions an employee can perform;

(vi) Review system exception information on a daily basis for propriety of transactions and unusual occurrences including changes to the personnel access listing;

(vii) If a random number generator is used, then at least weekly review the numerical frequency distribution for potential patterns; and

(viii) Investigate and document results of all noted improper transactions or unusual occurrences.

(5) When the keno game is operated by one person:

(i) The customer copies of all winning tickets in excess of $100 and at least 5% of all other winning tickets shall be regraded and traced to the computer payout report;

(ii) The videotape/film of rabbit ears shall be randomly compared to the computer game information report for at least 10% of the games during the shift;

(iii) Keno audit personnel shall review winning tickets for proper authorization pursuant to paragraph (d)(6) of this section.

(6) In the event any person performs the writer and deskman functions on the same shift, the procedures described in paragraphs (j)(5)(i) and (ii) of this section (using the sample sizes indicated) are performed on tickets written by that person.

(7) Documentation (e.g., a log, checklist, etc.) which evidences the performance of all keno audit procedures shall be maintained.

(8) Non-keno management shall review keno audit exceptions, and perform and document investigations into unresolved exceptions.

(9) When a multi-game ticket is part of the sample in Standards in paragraphs (j)(3)(ii), (j)(5)(i) and (j)(6) of this section, the procedures can be performed for 10 games or 10% of the games won, whichever is greater.

(k) Access to the computer system shall be adequately restricted (i.e., passwords are changed at least quarterly, access to computer hardware is physically restricted, etc.).

(l) There shall be effective maintenance planned to service keno equipment, including computer program updates, hardware servicing, and keno ball selection equipment (e.g., service contract with lessor).

(m) Keno equipment maintenance (excluding keno balls) shall be independent of the keno function.

(n) Keno maintenance shall report irregularities to management personnel independent of keno.

(o) All documents, including computer storage media discussed in this section shall be retained for five (5) years except for the following which shall be retained for at least seven (7) days:

(1) Videotape of rabbit ears;

(2) All copies of winning keno tickets of less than $1,500.00; and

(3) The information required in paragraph (i)(3) of this section.

(p) Procedures shall be established to notify keno personnel immediately of large multi-race winners to ensure compliance with standards in paragraphs (d)(5)(i) through (v). Procedures shall be established to ensure that keno personnel are aware of multi-race tickets still in process at the end of a shift.

(q) For any authorized computer applications, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.10 What are the minimum internal control standards for pari-mutuel wagering?

(a) Betting ticket and equipment standards. (1) All pari-mutuel wagers shall be transacted through the pari-mutuel system. In case of computer failure between the pari-mutuel book and the hub, no tickets shall be manually written.

(2) Whenever a betting station is opened for wagering or turned over to a new writer/cashier, the writer/cashier shall sign on and the computer shall document gaming operation name, station number, the writer/cashier identifier, and the date and time.

(3) A betting ticket shall consist of at least three parts:

(i) An original which shall be transacted and issued through a printer and given to the patron;

(ii) A copy which shall be recorded concurrently with the generation of the original ticket either on paper or other storage media (e.g., tape or diskette);

(iii) A restricted copy which shall not be accessible to book employees; and

(iv) For automated systems the second copy referred to in paragraph (a)(3)(ii) and the restricted copy referred to in paragraph (a)(3)(iii) may be retained within the automated system.

(4) Upon accepting a wager, the betting ticket which is created shall contain the following:

(i) An alpha-numeric ticket number;

(ii) Gaming operation name and station number;

(iii) Race track, race number, horse identification or event identification, as applicable;

(iv) Type of bet(s), each bet amount, total number of bets, and total take; and

(v) Date and time.

(5) All tickets shall be considered final at post time.

(6) If a book voids a betting ticket written prior to post time;

(i) A void designation shall be immediately branded by the computer on the ticket;

(ii) All voids shall be signed by the writer/cashier and the supervisor at the time of the void; and

(iii) A ticket may be voided manually by inputting the ticket sequence number and immediately writing/stamping a void designation on the original ticket.

(7) Future wagers shall be accepted and processed in the same manner as regular wagers.

(b) Payout standards. (1) Prior to making payment on a ticket the writer/cashier shall input the ticket for verification and payment authorization.

(2) The system shall brand the ticket with a paid designation, the amount of payment and date, or if a writer/cashier manually inputs the ticket sequence number into the computer, the writer/cashier shall immediately date stamp and write/stamp a paid designation on the patron's ticket.

(3) The computer shall be incapable of authorizing payment on a ticket which has been previously paid, a voided ticket, a losing ticket, or an unissued ticket.

(4) In case of computer failure, tickets may be paid. In those instances where system failure has occurred and tickets are manually paid, a log shall be maintained which includes:

(i) Date and time of system failure;
(ii) Reason for failure; and
(iii) Date and time system is restored.
(5) A log for all manually paid tickets shall be maintained which shall include:
(i) An alpha-numeric ticket number;
(ii) Gaming operation name and station number;
(iii) Racetrack, race number has identification or event identification, as applicable;
(iv) Type of bet(s), each bet amount, total number of bets and total take;
(v) Date and time.
(6) All manually paid tickets shall be entered into the computer system as soon as possible to verify the accuracy of the payout (this does not apply to purged, unpaid winning tickets). All manually paid tickets shall be regraded as part of the end-of-day audit process should the computer system be inoperative.
(c) Checkout standards. (1) Whenever the betting station is closed or the writer/cashier is replaced, the writer/cashier shall sign off and the computer shall document the gaming operation name, station number, the writer/cashier identifier, the date and time, and cash balance.
(2) For each writer/cashier station a summary report shall be completed at the conclusion of each shift including:
(i) Computation of cash turned in for the shift; and
(ii) Signatures of two employees who have verified the cash turned in for the shift.
(d) Pari-mutuel book employees shall be prohibited from wagering on race events while on duty, including during break periods and from wagering on race events occurring while the employee is on duty.
(e) Computer reports standards. (1) Adequate documentation of all pertinent pari-mutuel information shall be generated by the computer system.
(2) This documentation shall be restricted to authorized personnel.
(3) The documentation shall be created daily and shall include, but not limited to:
(i) Ticket/voucher number;
(ii) Date/time of transaction;
(iii) Type of wager;
(iv) Horse identification or event identification;
(v) Amount of wagers (by ticket, writer/SAM, track/event, and total);
(vi) Amount of payouts (by ticket, writer/SAM, track/event, and total);
(vii) Tickets refunded (by ticket, writer, track/event, and total);
(viii) Unpaid winners/vouchers (''outs'') (by ticket/voucher, track/event, and total);
(ix) Voucher sales/payments (by ticket, writer/SAM, and track/event);
(x) Voids (by ticket, writer, and total);
(xi) Future wagers (by ticket, date of event, total by day, and total at the time of revenue recognition);
(xii) Results (winners and payout data);
(xiii) Breakage data (by race and track/event);
(xiv) Commission data (by race and track/event); and
(xv) Purged data (by ticket and total).
(4) The system shall generate the following reports:
(i) A daily reconciliation report that summarizes totals by track/event, including write, the day's winning ticket total, total commission and breakage due the gaming operation, and net funds transferred to or from the gaming operation's bank account;
(ii) An exception report that contains a listing of all system functions and overrides not involved in the actual writing or cashing of tickets, including sign-on/off, voids, and manually input paid tickets; and
(iii) A purged ticket report that contains a listing of ticket numbers, description, ticket cost and value, and date purged.
(f) A gaming operation shall perform the following accounting and auditing functions:
(1) The pari-mutuel audit shall be conducted by someone independent of the race, sports, and pari-mutuel operations.
(2) Documentation shall be maintained evidencing the performance of all pari-mutuel accounting and auditing procedures.
(3) An accounting employee shall examine the daily reconciliation report, compare it to the revenue summary produced by the system, and recalculate the net amount due to or from the systems operator. An accounting employee shall reconcile transfers with the bank statements on a monthly basis.
(4) The auditor shall verify daily cash turn-in by comparing actual cash turned in to cash turn-in per pari-mutuel reports (Beginning balance, (+) fills (draws), (+) net write (sold less voids), (−) payouts (net of IRS withholding), (−) moneybacks (paids), (=) cash turn-in.).
(5) For one track/event per day, the auditor shall verify commissions per the daily reconciliation report by recalculating track/event commissions.
(6) For the track/event selected above, the auditor shall verify daily transfers due to/from the systems operator by recalculating the deposits (Net sales, (+) negative breakage, (−) commissions, (−) positive breakage, (−) accrual pays, (=) deposit).
(7) An accounting employee shall produce a gross revenue recap report to calculate gross revenue on a daily and month-to-date basis, including the following totals:
(i) Commission;
(ii) Positive breakage;
(iii) Negative breakage;
(iv) Track/event fees;
(v) Track/event fee rebates; and
(vi) Purged tickets.
(8) Track/event fees and track/event fee rebates shall be traced to the invoices received from the systems operator.
(9) All winning tickets and vouchers from the SAM's shall be removed on a daily basis by an accounting employee.
(10) SAM's winning tickets and vouchers shall be immediately delivered to the accounting department.
(11) The auditor shall perform the following procedures:
(i) For one SAM per day, foot the winning tickets and vouchers deposited and trace to the totals of SAM activity produced by the system;
(ii) Foot the listing of cashed vouchers and trace to the totals produced by the system;
(iii) Review all exceptions for propriety of transactions and unusual occurrences;
(iv) Review all voids for propriety;
(v) For one day per week, verify the results as produced by the system to the results provided by an independent source;
(vi) For one day per week, regrade 1% of paid (cashed) tickets to ensure accuracy and propriety; and
(vii) When applicable, reconcile the daily totals of future tickets written to the totals produced by the system for both unearned and earned take, and review the reports to ascertain that future wagers are properly included on the day of the event.
(12) At least annually the auditor shall perform the following:
(i) Foot the wagers for one day and trace to the total produced by the system; and
(ii) Foot the customer copy of paid tickets for one day and trace to the total produced by the system.
(13) At least one day per quarter, the auditor shall recalculate and verify the change in the unpaid winners to the total purged tickets.
(g) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.11 What are the minimum internal control standards for table games?

(a) Where a standard in this section requires a minimum of three employees to perform a function or be present during one, Tier A and B gaming operations may require only two employees to be present.

(b) If a gaming operation allows marker credit play (exclusive of rim credit and call bets), the following standards shall apply:

(1) A marker system shall allow for credit to be both issued and repaid in the pit. A name credit system shall allow for the issuance of credit without using markers.

(2) Prior to the issuance of gaming credit to a player, the employee extending the credit shall contact the cashier or other independent source to determine if the player's credit limit has been properly established and there is sufficient remaining credit available for the advance.

(3) Proper authorization of credit extension in excess of the previously established limit shall be documented.

(4) The amount of credit extended shall be communicated to the cage or another independent source and the amount documented within a reasonable time subsequent to each issuance.

(5) The marker form shall be prepared in at least triplicate form (triplicate form being defined as three parts performing the functions delineated in the standard in paragraph (b) (6) of this section), with a preprinted or concurrently-printed marker number, and utilized in numerical sequence (This requirement shall not preclude the distribution of batches of markers to various pits.).

(6) At least three parts of each separately numbered marker form shall be utilized as follows:

(i) Original shall be maintained in the pit until settled or transferred to the cage;

(ii) Payment slip shall be maintained in the pit until the marker is settled or transferred to the cage. If paid in the pit, the slip shall be inserted in the table drop box. If not paid, the slip shall be transferred to the cage with the original;

(iii) Issue slip—shall be inserted into the appropriate table drop box when credit is extended or when the player has signed the original.

(7) When marker documentation (e.g., issue slip and payment slip) is inserted in the drop box, such action shall be performed by the dealer at the table.

(8) A record shall be maintained which details the following (e.g., master credit record retained at the pit podium.):

(i) The signature or initials of the individual(s) approving the extension of credit (unless such information is contained elsewhere for each issuance);

(ii) The legible name of the individual receiving the credit;

(iii) The date and shift of granting the credit;

(iv) The table on which the credit was extended;

(v) The amount of credit issued;

(vi) The marker number;

(vii) The amount of credit remaining after each issuance or the total credit available for all issuances;

(viii) The amount of payment received and nature of settlement (e.g., credit slip number, cash, chips, etc.); and

(ix) The signature or initials of the individual receiving payment/settlement.

(9) The forms required in paragraphs (b) (5), (6), and (8) of this section shall be safeguarded, and adequate procedures shall be employed to control the distribution, use, and access to these forms.

(10) All credit extensions shall be initially evidenced by lammer buttons which shall be displayed on the table in public view and placed there by supervisory personnel.

(11) Marker preparation shall be initiated and other records updated within approximately one hand of play following the initial issuance of credit to the player.

(12) Lammer buttons shall be removed only by the dealer employed at the table upon completion of a marker transaction.

(13) The original marker shall contain at least the following information: marker number, player's name and signature, date, and amount of credit issued.

(14) The issue slip or stub shall include the same marker number as the original, the table number, date and time of issuance, and amount of credit issued. The issue slip or stub shall also include the signature of the individual extending the credit, and the signature or initials of the dealer at the applicable table, unless this information is included on another document verifying the issued marker.

(15) The payment slip shall include the same marker number as the original. When the marker is paid in full in the pit, it shall also include the table number where paid, date and time of payment, nature of settlement (cash, chips, etc.) and amount of payment. The payment slip shall also include the signature of a pit supervisor acknowledging payment, and the signature or initials of the dealer receiving payment, unless this information is included on another document verifying the payment of the marker.

(16) When partial payments are made in the pit, a new marker shall be completed reflecting the remaining balance and the marker number of the marker originally issued.

(17) When partial payments are made in the pit, the payment slip of the marker which was originally issued shall be properly cross-referenced to the new marker number, completed with all information required by paragraph (b) (16) of this section, and inserted into the drop box.

(18) The cashier's cage or another independent source shall be notified when payments (full or partial) are made in the pit so that cage records can be updated for such transactions. Notification shall be made no later than when the patron's play is completed or at shift end, whichever is earlier.

(19) The Tribe shall implement appropriate controls for purpose of security and integrity. The Tribe shall establish and comply with procedures for collecting and recording checks returned to the gaming operation after deposit which include re-deposit procedures. These procedures shall provide for notification of cage/credit departments and custodianship of returned checks.

(20) All portions of markers, both issued and unissued, shall be safeguarded and procedures shall be employed to control the distribution, use and access to the forms.

(21) An investigation shall be performed to determine the cause and responsibility for loss whenever marker forms, or any part thereof, are missing. The result of the investigation shall be documented and maintained for inspection.

(22) When markers are transferred to the cage, marker transfer forms or marker credit slips (or similar documentation) shall be utilized and such documents shall include, at a minimum, the date, time, shift, marker number(s), table number(s), amount of each marker, the total amount transferred, signature of pit supervisor releasing instruments from the pit, and the signature of cashier verifying receipt of instruments at the cage.

(23) All markers shall be transferred to the cage within 24 hours of issuance.

(24) Markers shall be transported to the cashier's cage by an individual who is independent of the marker issuance and payment functions (pit clerks may perform this function).

(c) The following standards shall apply if personal checks or other name

credit instruments are accepted in the pit:

(1) Prior to accepting a name credit instrument, the employee extending the credit shall contact the cashier or another independent source to determine if the player's credit limit has been properly established and the remaining credit available is sufficient for the advance.

(2) All name credit instruments shall be transferred to the cashier's cage (utilizing a two-part order for credit) immediately following the acceptance of the instrument and issuance of chips (If name credit instruments are transported accompanied by a credit slip, an order for credit is not required).

(3) The order for credit (if applicable) and the credit slip shall include the patron's name, amount of the credit instrument, the date, time, shift, table number, signature of pit supervisor releasing instrument from pit, and the signature of cashier verifying receipt of instrument at the cage.

(4) The procedures for transacting table credits at standards in paragraphs (f)(16) through (f)(23) shall be strictly adhered to.

(5) The acceptance of payments in the pit for name credit instruments shall be prohibited.

(d) The following standards shall apply if call bets are accepted in the pit:

(1) A call bet shall be evidenced by the placement of a lammer button, chips, or other identifiable designation in an amount equal to that of the wager in a specific location on the table.

(2) The placement of the lammer button, chips, or other identifiable designation shall be performed by supervisory/boxmen personnel. The placement may be performed by a dealer only if the supervisor physically observes and gives specific authorization.

(3) The call bet shall be settled at the end of each hand of play by the preparation of a marker, repayment of the credit extended, or the payoff of the winning wager. Call bets extending beyond one hand of play shall be prohibited.

(4) The removal of the lammer button, chips, or other identifiable designation shall be performed by the dealer/boxman upon completion of the call bet transaction.

(e) The following standards shall apply if rim credit is extended in the pit:

(1) Rim credit shall be evidenced by the issuance of chips to be placed in a neutral zone on the table and then extended to the patron for the patron to wager, or to the dealer to wager for the patron, and by the placement of a lammer button or other identifiable designation in an amount equal to that of the chips extended.

(2) Rim credit shall be recorded on player cards, or similarly used documents, which shall be:

(i) Prenumbered or concurrently numbered and accounted for by a department independent of the pit;

(ii) For all extensions and subsequent repayments, evidenced by the initials or signatures of a supervisor and the dealer attesting to the Validity of each credit extension and repayment;

(iii) An indication of the settlement method (e.g., serial number of marker issued, chips, cash);

(iv) Settled no later than when the patron leaves the table at which the card is prepared;

(v) Transferred to the accounting department on a daily basis;

(vi) Reconciled with other forms utilized to control the issuance of pit credit (e.g., master credit records, table cards).

(f) If foreign currency is accepted in the pit, the following standards shall apply:

(1) Foreign currency transactions shall be authorized by a pit supervisor/boxman who completes a foreign currency exchange form prior to the exchange for chips or tokens;

(2) Foreign currency exchange forms include the country of origin, total face value, amount of chips/token extended (i.e., conversion amount), signature of supervisor/boxman, and the dealer completing the transaction;

(3) Foreign currency exchange forms and the foreign currency shall be inserted in the drop box by the dealer.

(g) Fill and credit standards. (1) Fill slips and credit slips shall be in at least triplicate form, in a continuous numerical series, and prenumbered and concurrently numbered in a form utilizing the alphabet and only in one series at a time. The alphabet need not be used if the numerical series is not repeated during the business year.

(2) Unissued and issued fill/credit slips shall be safeguarded and adequate procedures shall be employed in the distribution, use and control of same. Personnel from the cashier or pit departments shall have no access to the locked box copies of the fill, credit slips.

(3) When a fill/credit slip is voided, the cashier shall clearly mark ''void'' across the face of the original and first copy, the cashier and one other person independent of the transactions shall sign both the original and first copy, and shall submit them to the accounting department for retention and accountability.

(4) Fill transactions shall be authorized by a pit supervisor prior to the issuance of fill slips and transfer of chips, tokens, or monetary equivalents. The fill request shall be communicated to the cage where the fill slip is printed.

(5) At least three parts of each fill slip shall be utilized as follows:

(i) One part shall be transported to the pit with the fill and, after the appropriate signatures are obtained, deposited in table drop box;

(ii) One part shall be retained in the cage for reconciliation of cashier bank;

(iii) One part shall be retained intact by the locked machine in a continuous unbroken form;

(6) For Tier C gaming operations, the part of the fill slip that is placed in the drop box shall be of a different color for fills than for credits, unless the type of transaction is clearly distinguishable in another manner (the checking of a box on the form shall not be a clearly distinguishable indicator).

(7) The table number, shift, and amount of fill by denomination and in total shall be noted on all copies of the fill slip. The correct date and time shall be indicated on at least two copies.

(8) All fills shall be carried from the cashier's cage by an individual who is independent of the transaction.

(9) The fill slip shall be signed by at least the following individuals (as an indication that each has counted the amount of the fill and the amount agrees with the fill slip):

(i) Cashier who prepared the fill slip and issued the chips, tokens, or monetary equivalent;

(ii) Runner who carried the chips, tokens, or monetary equivalents from the cage to the pit;

(iii) Dealer who received the chips, tokens, or monetary equivalents at the gaming table; and

(iv) Pit supervisor who supervised the fill transaction.

(10) Fills shall be either broken down or verified by the dealer in public view before the dealer places the fill in the table tray.

(11) All fill slips requesting chips or money shall be prepared at the time a fill is made.

(12) The original fill slip shall then be deposited into the drop box on the table by the dealer, where it shall appear in the soft count room with the cash receipts for the shift.

(13) When table credits are transacted, a two-part order for credit shall be prepared by the pit supervisor for transferring chips, tokens or monetary equivalents from the pit to the cashier area or other secure area of accountability.

(14) The duplicate copy of an order for credit shall be retained in the pit to check the credit slip for proper entries

and to document the total amount of chips, tokens, and monetary equivalents removed from the table.

(15) At least three parts of each credit slip shall be utilized as follows:

(i) One part shall be retained in the cage for reconciliation of the cashier bank;

(ii) One part shall be transported to the pit by the runner who brought the chips, tokens, markers, or monetary equivalents from the pit to the cage, and after the appropriate signatures are obtained, deposited in the table drop box;

(iii) One part shall be retained by the locked machine intact in a continuous unbroken form.

(16) The table number, shift, and the amount of credit by denomination and in total shall be noted on all copies of the credit slip. The correct date and time shall be indicated on at least two copies.

(17) Chips, tokens and/or monetary equivalents shall be removed from the table tray by the dealer and shall be broken down or verified by the dealer in public view prior to placing them in racks for transfer to the cage.

(18) All chips, tokens, and monetary equivalents removed from the tables and markers removed from the pit shall be carried to the cashier's cage by an individual who is independent of the transaction.

(19) The credit slip shall be signed by at least the following individuals (as an indication that each has counted or, in the case of markers, reviewed the items transferred):

(i) Cashier who received the items transferred from the pit and prepared the credit slip;

(ii) Runner who carried the items transferred from the pit to the cage and returned to the pit with the credit slip;

(iii) Dealer who had custody of the items prior to transfer to the cage; and

(iv) Pit supervisor who supervised the credit transaction.

(20) The credit slip shall be inserted in the drop box by the dealer.

(21) Chips, tokens, or other monetary equivalents shall be deposited on or removed from gaming tables only when accompanied by the appropriate fill/credit or marker transfer forms.

(h) Drop procedures standards. (1) At the close of each shift:

(i) Each table's chip, token, coin, and marker inventory shall be counted and recorded on a table inventory form; or

(ii) If the table banks are maintained on an imprest basis, a final fill or credit shall be made to bring the bank back to par.

(2) If final fills are not made, beginning and ending inventories shall be recorded on the master game sheet for shift win calculation purposes.

(3) The accuracy of inventory forms prepared at shift end shall be verified by the outgoing pit supervisor and a dealer, another pit supervisor, or another supervisor from another gaming department. Verifications shall be evidenced by signature on the inventory form.

(4) If inventory forms are placed in the drop box, such action shall be performed by someone other than a pit supervisor.

(5) The setting out of empty drop boxes and the drop shall be a continuous process.

(6) Procedures shall be developed and implemented to insure that unauthorized access to empty drop boxes shall not occur from the time the boxes leave the storage racks until they are placed on the tables.

(7) At the end of each shift:

(i) All locked drop boxes shall be removed from the tables by an individual independent of the pit shift being dropped;

(ii) A separate drop box shall be placed on each table each shift or a gaming operation operator may utilize a single drop box with separate openings and compartments for each shift; and

(iii) Upon removal from the tables, drop boxes shall be placed on the cart. The security team member stands guard over the cart at all times. Upon completion of the drop, the cart shall be transported directly to the count room or other secure place and locked in a secure manner until the count takes place.

(8) If drop boxes are not placed on all tables, then the pit department shall document which tables were open during the shift.

(9) Upon removal from tables, drop boxes shall be transported directly to the count room or other secure place and locked in a secure manner until the count takes place.

(10) The transporting of drop boxes shall be performed by a minimum of two individuals, at least one of whom shall be independent of the pit shift being dropped. This standard does not apply to Tier A gaming operations.

(11) All drop boxes shall be posted with a number corresponding to a permanent number on the gaming table and marked to indicate game, table number and shift.

(i) Soft count standards. (1) If counts from various revenue centers occur simultaneously in the count room, procedures shall be in effect which prevent the commingling of funds from different revenue centers.

(2) The soft count shall be performed by a minimum of three employees. A second count shall be performed by an employee on the count team who did not perform the initial count.

(3) At no time during the count shall there be fewer than three employees in the count room until the monies have been accepted into cage/vault accountability.

(4) Count team members shall be rotated on a routine basis (rotation is such that the count team is not consistently the same three individuals more than four days per week). This standard shall not apply to Tier A gaming operations.

(5) The count team shall be independent of transactions being reviewed and counted and the subsequent accountability of soft drop proceeds. A dealer or a cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all soft count documentation.

(6) The drop boxes shall be individually emptied and counted in such a manner to prevent the commingling of funds between boxes until the count of the box has been recorded.

(7) The count of each box shall be recorded in ink or other permanent form of recordation.

(8) If currency counters shall be utilized and the count room table shall be used only to empty boxes and sort/stack contents, a count team member shall be able to observe the loading and unloading of all currency at the currency counter, including rejected currency.

(9) Drop boxes, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to recorded or live surveillance, provided the count is monitored in its entirety by someone independent to the count.

(10) Original and first copies of fill/credit slips shall be matched or otherwise reconciled by the count team to verify that the total dollar amounts for the shift are identical. For Tier A or B gaming operations, this function may be performed by the accounting department.

(11) Orders for fill/credit (if applicable) shall be matched to the fill/credit slips.

(12) Fills and credits shall be traced to or recorded on the count sheet and examined for correctness.

(13) Pit marker issue and payment slips removed from the drop boxes shall either be:

(i) Traced to or recorded on the count sheet by the count team; or

(ii) Totaled by shift and traced to the totals documented by the computerized system. Accounting personnel shall verify the issue/payment slip for each table is accurate.

(14) Foreign currency exchange forms removed from the drop boxes shall be reviewed for the proper daily exchange rate and the conversion amount shall be recomputed by the count team. Alternatively, this may be performed by accounting/auditing employees.

(15) The opening/closing table and marker inventory forms (if applicable) shall either be:

(i) Examined and traced to or recorded on the count sheet; or

(ii) If a computerized system is used, accounting personnel can trace the opening/closing table and marker inventory forms (if applicable) to the count sheet. Discrepancies shall be investigated with the findings documented and maintained for inspection.

(16) Corrections to information originally recorded by the count team on soft count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team members who verified the change.

(17) The count sheet shall be reconciled to the drop by a count team member who shall not function as the sole recorder.

(18) All members of the count team shall attest by signature to their participation in the games drop. The count team supervisor shall attest to the accuracy of the games drop.

(19) All monies and monetary equivalents that were counted shall be turned over to the cage or vault cashier (who shall be independent of the count team) or to an authorized person independent of the revenue generation and the count process for verification.

(20) The above mentioned individual shall certify by signature as to the accuracy of the monies delivered and received.

(21) Access to stored drop boxes, full or empty, shall be restricted to authorized members of the drop and count teams.

(22) Access to the count room during the count shall be restricted to members of the drop and count teams, excluding authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(23) The count sheet, with all supporting documents, shall be promptly delivered to the accounting department by a count team member or someone other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(j) Key control standards. (1) The involvement of at least two individuals independent of the cage department shall be required to access stored empty drop boxes.

(2) Drop box release keys standards.

(i) The keys shall be maintained by a department independent of the pit department;

(ii) Only the person authorized to remove drop boxes from the tables shall be allowed access to the release keys; however, the count team members may have access to the release keys during the soft count in order to reset the drop boxes; and

(iii) Persons authorized to drop the table games drop boxes shall be precluded from having access to drop box contents keys.

(3) Storage rack keys standards.

(i) Someone independent of the pit department shall be required to accompany such keys and observe each time drop boxes are removed from or placed in storage racks. This paragraph shall not apply to Tier A and Tier B gaming operations;

(ii) Persons authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys with the exception of the count team.

(4) Drop box contents keys standards.

(i) The physical custody of the keys needed for accessing stored full drop box contents shall require the involvement of persons from at least two separate departments.

(ii) Access to the contents key at other than scheduled count times shall require the involvement of at least three persons from separate departments, including management, and the reason for access shall be documented with the signatures of all participants and observers.

(iii) Only count team members shall be allowed access to drop box content keys during the soft count process.

(5) At least three (two for three tables or less) count team members are required to be present at the time count room and other soft count keys are issued for the soft count.

(6) All duplicate keys shall be maintained in a manner which provides the same degree of control over drop boxes as is required for the original keys. Records shall be maintained for each key duplicated which indicate the number of keys made and destroyed.

(7) Logs are maintained by the custodian of sensitive keys to document authorization of personnel accessing keys.

(k) Table games computer generated documentation standards. (1) The computer system shall be capable of generating adequate documentation of all information recorded on the source documents and transaction detail (e.g., fill/credit slips, markers, etc.).

(2) This documentation shall be restricted to authorized personnel.

(3) The documentation shall include, at a minimum, system exception information (e.g., appropriate system parameter information, corrections, voids, etc.).

(4) Personnel access listing which includes, at a minimum:

(i) Employee name;

(ii) Employee identification number (if applicable); and

(iii) Listing of functions employees can perform or equivalent means of identifying the same.

(5) For any authorized computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by these standards will be acceptable.

(l) Playing cards and dice, not yet issued to the pit, shall be maintained in a secure location to prevent unauthorized access and reduce the possibility of tampering. Used cards and dice shall be maintained in a secure location until ''marked'', ''scored'' or ''destroyed'' to prevent unauthorized access and reduce the possibility of tampering. Used playing cards and dice shall be canceled or destroyed in a timely manner not to exceed seven days.

(m) Pit supervisory personnel (with authority equal to or greater than those being supervised) shall provide supervision of all table games.

(n) Analysis of table game performance standards. (1) Records shall be maintained by day and shift indicating any single-deck blackjack games which were dealt for an entire shift.

(2) Records reflecting hold percentage by table and type of game shall be maintained by shift, by day, cumulative month-to-date, and cumulative year-to-date.

(3) This information shall be presented to and reviewed by management independent of the pit department on at least a monthly basis.

(4) The above referenced management shall investigate any unusual fluctuations in hold percentage with pit supervisory personnel.

(5) The results of such investigations shall be documented in writing and maintained.

(o) Table games accounting/auditing procedures.

(1) The accounting and auditing procedures shall be performed by personnel who are independent of the transactions being audited/accounted for.

(2) If a table game has the capability to determine drop (e.g., bill-in/coin-drop meters, bill validator, computerized record, etc.) the dollar amount of the drop shall be reconciled to the actual drop by shift.

(3) Accounting/auditing employees shall review exception reports for all computerized table games systems at least monthly for propriety of transactions and unusual occurrences.

(4) All noted improper transactions or unusual occurrences shall be investigated with the results documented.

(5) Evidence of table games auditing procedures and any follow-up performed shall be maintained and is available upon request by the Commission.

(6) A daily recap shall be prepared for the day and month-to-date which shall include the following information:

(i) Pit credit issues;

(ii) Pit credit payments in chips;

(iii) Pit credit payments in cash;

(iv) Drop;

(v) Win; and

(vi) Gross revenue.

(p) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by these standards will be acceptable.

§ 542.12 What are the minimum internal control standards for gaming machines?

(a) When a standard in this section requires a minimum of three employees to perform a function or be present during one, Tier A and Tier B gaming operation may require only two employees to be present.

(b) For this section only, credit or customer credit means a unit of value equivalent to cash or cash equivalents deposited, wagered, won, lost or redeemed by a patron.

(c) Coins shall include tokens.

(d) Coin drop standards.

(1) A minimum of three employees shall be involved in the removal of the gaming machine drop, at least one of whom is independent of the gaming machine department.

(2) Count room personnel shall not be allowed to exit or enter the count room except for emergencies or scheduled breaks. At no time when uncounted funds are present shall there be less than three (3) persons in the count room.

(3) Each gaming operation shall maintain on file the time when the drop buckets and bill acceptor canisters will be removed and the time when the contents are to be counted.

(4) All drop buckets or canisters shall be removed only at the time previously designated except for emergency drops.

(5) The gaming machine drop supervisor shall notify surveillance when the drop is to begin in order that surveillance may monitor the activities.

(6) Surveillance shall record in a proper log or journal in a legible manner any exceptions or variations to established procedures observed during the drop. Such log or journal shall be made available for review upon request.

(7) Security shall be provided over the buckets removed from the gaming machine drop cabinets prior to being transported to the count room.

(8) As each machine is opened, the contents shall be tagged with its respective machine number if the bucket is not permanently marked with the machine number. The contents shall be transported directly to the area designated for the counting of such monies. If more than one trip is required to remove the contents of the machines, the filled carts of coins shall be securely locked in the room designed for counting. There shall be a locked covering on any carts in which the drop route includes passage out of doors.

(9) Each drop bucket in use shall be:

(i) Housed in a locked compartment separate from any other compartment of the gaming machine and keyed differently than other gaming machine compartments; and

(ii) Identifiable to the gaming machine from which it is removed (i.e., permanently marked with the gaming machine I.D. number, bar coded labels, printed tags, etc.). If the gaming machine is identified with a removable tag which is placed in the bucket, the tag shall be placed on top of the bucket when it is collected.

(10) Each gaming machine shall have drop buckets into which tokens that are retained by the gaming machine are collected. Drop bucket contents shall not be used to make change or pay hand-paid payouts.

(11) The collection procedures may include procedures for dropping gaming machines which have trays instead of drop buckets.

(e) Equipment standards. (1) A weigh scale calibration module shall be secured so as to prevent unauthorized access (e.g., prenumbered seal, lock and key, etc.).

(2) Someone independent of the cage, vault, gaming machine, and count team functions shall be required to be present whenever the calibration module is accessed.

(3) Such access shall be documented and maintained.

(4) A count team member shall prepare a hard drop summary report showing the results of the weigh/count and wrap by denomination. Discrepancies between the weigh/count and wrap shall be investigated immediately and explained on the summary report.

(5) If a weigh scale interface is used, it shall be adequately restricted so as to prevent unauthorized access (passwords, keys, etc.).

(6) If the weigh scale has a zero adjustment mechanism, it shall be physically limited to minor adjustments (e.g., weight of a bucket) or physically situated such that any unnecessary adjustments to it during the weigh process would be observed by other count team members.

(7) The weigh scale and weigh scale interface (if applicable) shall be tested by someone who is independent of the cage, vault and gaming machine departments and count team at least quarterly. At least semi-annually, the above test is performed by internal audit in accordance with the internal audit standards.

(8) During the gaming machine count, at least two employees shall verify the accuracy of the weigh scale with varying weights or with varying amounts of previously counted coin for each denomination to ensure the scale is properly calibrated (varying weights/coin from drop to drop is acceptable).

(9) The preceding weigh scale and weigh scale interface test results shall be documented and maintained; the results shall be signed by two count team members and the count team leader.

(10) If a mechanical coin counter is used (instead of a weigh scale), the gaming operation shall establish and comply with procedures that are equivalent to those described in paragraphs (c)(7), (c)(8), and (c)(9) of this section.

(11) If a coin meter count machine is used, the count team member shall record the machine number denomination and number of coins in ink on a source document, unless the meter machine automatically records such information.

(12) The weigh scale shall have a calibration module which shall be locked and adjusted by the vendor. When the module is accessed, a weight scale calibration module access log shall be completed.

(13) At least once per month, the weigh scale shall be tested, and the test documented and signed by at least three (3) individuals, including one individual independent of the count.

(f) Gaming machine count and wrap standards. (1) The weigh/count shall be performed by a minimum of three employees.

(2) At no time during the weigh/count shall there be fewer than three employees in the count room.

(3) The gaming machine count team shall be independent of the gaming machine department and the subsequent accountability of gaming machine count proceeds, unless they are non-supervisory gaming machine employees and perform the laborer function only. (A non-supervisory gaming machine employee is defined as a person below the level of gaming machine shift supervisor.)

(4) The following functions shall be performed in the counting of the gaming machine drop:

(i) Recorder function which involves the recording of the gaming machine count;

(ii) Count team supervisor function which involves the control of the gaming machine weigh and wrap process.

(5) The amount of the gaming machine drop from each machine shall be recorded in ink on a gaming machine count document by the recorder or mechanically printed by the weigh scale. If a weigh scale interface is used, the gaming machine drop figures are transferred via direct line or computer storage media.

(6) The recorder and at least one other count team member shall sign the weigh tape and the gaming machine count document attesting to the accuracy of the weigh/count.

(7) At least three employees who participate in the weigh/count and/or wrap process shall sign the gaming machine count document or a summary report to attest to their presence. If all other count team members do not sign the gaming machine count document or a summary report, they shall sign a supplemental document evidencing their participation in the weigh/count and/or wrap.

(8) The coins shall be wrapped and reconciled in a manner which precludes the commingling of gaming machine drop coin with coin (for each denomination) from the next gaming machine drop.

(9) At least two employees shall be present throughout the wrapping of the gaming machine drop.

(10) If the gaming machine count is conducted with a continuous mechanical count meter which is not reset during the count and is verified in writing by at least three employees at the start and end of each nomination count, then one employee may perform the wrap.

(11) If the coins are not wrapped immediately after being weighed/counted, they shall be secured and not commingled with other coins.

(12) The coins shall be wrapped immediately after being weighed or counted. As the coin is being wrapped, it shall be maintained in such a manner so as to be able to obtain an accurate count when the wrap is completed. At the completion of the wrap, a count team member shall independently count the wrap and reconcile it with the weigh/meter count.

(13) If the coins are transported off the property, a second (alternative) count procedure shall be performed before the coins leave the property. Any variances shall be documented.

(14) Transfers out of the count room during the gaming machine count and wrap process shall be strictly prohibited, or if transfers are permitted during the count and wrap, each transfer shall be recorded on a separate multi-part form with a preprinted or concurrently-printed form number (used solely for gaming machine count transfers) which shall be subsequently reconciled by the accounting department to ensure the accuracy of the reconciled wrapped gaming machine drop. If transfers are permitted, they must be counted and signed for by at least two members of the count team and by someone independent of the count team who is responsible for authorizing the transfer.

(15) If the count room serves as a coin room and coin room inventory is not secured so as to preclude access by the count team, then the following two standards shall apply:

(i) At the commencement of the gaming machine count the following requirements shall be met:

(A) The coin room inventory shall be counted by at least two employees, one of whom is a member of the count team and the other is independent of the weigh/count and wrap procedures;

(B) The count in paragraph (f)(15)(i)(A) shall be recorded on an appropriate inventory form;

(ii) Upon completion of the wrap of the gaming machine drop:

(A) At least two members of the count team (wrap team), independently from each other, shall count the ending coin room inventory;

(B) The counts in paragraph (f) shall be recorded on a summary report(s) which evidences the calculation of the final wrap by subtracting the beginning inventory from the sum of the ending inventory and transfers in and out of the coin room;

(C) The same count team members shall compare the calculated wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(D) A member of the cage/vault department shall count the ending coin room inventory by denomination and shall reconcile it to the beginning inventory, wrap, transfers and weigh/count; and

(E) At the conclusion of the reconciliation, at least two count/wrap team members and the verifying employee shall sign the summary report(s) attesting to its accuracy.

(16) For Tier A and B gaming operations the functions described in paragraph (f)(15)(ii) (A) and (C) of this section may be performed by only one count team member. That count team member must then sign the summary report, along with the verifying employee, as required under paragraph (f)(15)(ii)(E).

(17) If the count room is segregated from the coin room, or if the coin room is used as a count room and the coin room inventory is secured to preclude access by the count team, all of the following requirements shall be completed, at the conclusion of the count:

(i) At least two members of the count/wrap team shall count the final wrapped gaming machine drop independently from each other;

(ii) The counts shall be recorded on a summary report;

(iii) The same count team members (or the accounting department) shall compare the final wrap to the weigh/count, recording the comparison and noting any variances on the summary report;

(iv) A member of the cage/vault department shall count the wrapped gaming machine drop by denomination and reconcile it to the weigh/count;

(v) At the conclusion of the reconciliation, at least two count team members and the cage/vault employee shall sign the summary report attesting to its accuracy;

(vi) The wrapped coins (exclusive of proper transfers) shall be transported to the cage, vault or coin vault after the reconciliation of the weigh/count to the wrap;

(vii) Upon completion of the wrap of the slot drop, a count team member shall prepare a hard drop summary report showing the results of the weigh/count and wrap by denomination. Discrepancies between the weigh/count and wrap shall be investigated immediately and explained on a summary report.

(18) Large (by denomination, either $1,000 or 2% of the drop, whichever is less) or unusual (e.g., zero for weigh count or patterned for all counts) variances between the weigh/count and wrap shall be investigated by management personnel independent of the gaming machine department, count team and the cage/vault functions on a timely basis.

(19) The results of such investigation shall be documented and maintained.

(20) All gaming machine count and wrap documentation, including any applicable computer storage media, shall be immediately delivered to the accounting department by other than the cashier's department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(21) A count team member shall transport the summary report and its support documents to the accounting department immediately after the cashier signs it.

(22) If applicable, the weight shall be converted to dollar amounts prior to the reconciliation of the weigh to the wrap.

(23) A count team member shall test the metered count machine (if used) prior to the actual count to ascertain if the metering device is functioning properly with a predetermined number of coins for each denomination.

(24) If a coin meter is used, a count team member shall convert the coin count for each denomination into dollars and shall enter the results on a summary sheet.

(25) As the coin is being wrapped, it shall be maintained in such a manner so as to be able to obtain an accurate count when the wrap is completed.

(26) Immediately upon receiving the funds, an independent person shall count the gaming machine drop by denomination and shall sign the count sheet attesting to the accuracy of the total and the denominations of the funds received.

(27) A count team member shall transport the summary report and its supporting documents to the accounting department immediately after the verifier signs it.

(28) Machine hard or soft ''in-meter'' readings shall be recorded at least monthly and retained at least seven years.

(29) Gaming machine analysis reports, which compare actual hold to theoretical hold by gaming machine shall be prepared on at least a monthly basis.

(30) Such reports shall provide all data on both month-to-date and year-to-date bases.

(31) The gaming machine hopper loads and coin in the drop cabinet shall be secured and accounted for during the removal and maintenance of gaming machines.

(32) Cashier/change banks shall be counted and reconciled for each shift.

(33) Corrections on gaming machine count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team employees. If a weigh scale interface is used, corrections to gaming machine count data shall be made using either of the following:

(i) Crossing out the error on the gaming machine document, entering the correct figure, and then obtaining the initials of at least two count team employees. If this procedure is used, an employee independent of the gaming machine department and count team shall enter the correct figure into the computer system prior to the generation of related gaming machine reports; or

(ii) During the count process, correct the error in the computer system and enter the passwords of at least two count team employees. If this procedure is used, an exception report shall be generated by the computer system identifying the gaming machine number, the error, the correction and the count team employees testifying to the correction.

(g) Currency acceptor drop and count standards. (1) Tier A gaming operations may be exempt from compliance with this section, if the gaming operations develop and comply with procedures that shall protect the integrity of the drop and count.

(2) The currency acceptor drop boxes shall be removed by an employee independent of the gaming machine department, then transported directly to the soft count room or other similarly restricted location and locked in a secure manner until the count takes place.

(3) The transporting of currency acceptor drop boxes shall be performed by a minimum of two employees, at least one of whom is independent of the gaming machine department.

(4) The currency acceptor count shall be performed in a soft count room or equivalently secure area with comparable controls.

(5) The currency acceptor count shall be performed by a minimum of three employees.

(6) Currency acceptor count team members shall be rotated on a routine basis.

(7) For Tier B gaming operation a minimum of two persons shall perform the count provided the count is viewed either live or on videotape within seven days by an employee independent of the count.

(8) The currency acceptor count team shall be independent of transactions being reviewed and counted, and the subsequent accountability of currency drop proceeds.

(9) A cage cashier may be used if this person is not allowed to perform the recording function. An accounting representative may be used if there is an independent audit of all currency acceptor count documentation.

(10) The currency acceptor drop boxes shall be individually emptied and counted in such a manner as to prevent the commingling of funds between boxes until the count of the box has been recorded.

(11) The count of each box shall be recorded in ink or other permanent form of recordation.

(12) If currency counters are utilized and the count room table is used only to empty boxes and sort/stack contents, a count team member shall be able to witness the loading and unloading of all currency at the currency counter, including rejected currency.

(13) Drop boxes, when empty, shall be shown to another member of the count team, to another person who is observing the count, or to recorded or live surveillance, provided the count is monitored in its entirety by someone independent of the count.

(14) Corrections to information originally recorded by the count team on currency acceptor count documentation shall be made by crossing out the error, entering the correct figure, and then obtaining the initials of at least two count team members who verified the change.

(15) The count sheet shall be reconciled to the total drop by a count team member who shall not function as the sole recorder.

(16) All members of the count team shall attest by signature to the accuracy of the currency acceptor drop count. Three verifying signatures on the count sheet shall be adequate if all additional count team employees sign a supplemental document evidencing their involvement in the count process.

(17) All monies that were counted shall be turned over to the cage cashier (who is independent of the count team) or to an employee independent of the revenue generation and the count process for verification.

(18) The employee shall certify by signature as to the accuracy of the currency delivered and received.

(19) Access to stored full drop boxes shall be restricted to authorized members of the drop and count teams.

(20) Access to the count room shall be restricted to members of the drop and count teams, excluding authorized observers, supervisors for resolution of problems, and authorized maintenance personnel.

(21) The count sheet, with all supporting documents, shall be promptly delivered to the accounting department by a count team member or someone other than the cashiers department. Alternatively, it may be adequately secured (e.g., locked container to which only accounting personnel can gain access) until retrieved by the accounting department.

(h) Jackpot payouts, gaming machines fills, short pays and accumulated credit payouts standards. (1) For jackpot payouts and gaming machine fills, documentation shall include the following information on a three-part form:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of cash payout or gaming machine fill (both alpha and numeric), or description of personal property awarded; Alpha is optional if another unalterable method is used for evidencing the amount of the payout;

(iv) Game outcome (including reel symbols, card values and suits, etc.) for jackpot payouts;

(v) Signatures of at least two employees verifying and witnessing the payout or gaming machine fill, however, on graveyard shifts (eight-hour maximum) payouts/fills less than $100 can be made without the payout/fill being witnessed if the second person signing can reasonably verify that a payout/fill is justified; and

(vi) Preprinted or concurrently-printed sequential number.

(2) Jackpot payouts over a predetermined amount shall require the signature and verification of a supervisory or management employee independent of the gaming machine department. This predetermined amount shall be authorized by management, documented, and maintained.

(3) For short pays of $10.00 or more, the jackpot payout form includes:

(i) Date and time;

(ii) Machine number;

(iii) Dollar amount of payout (both alpha and numeric);

(iv) Signatures of at least two employees verifying and witnessing the payout.

(4) Short pays involving a single token in a denomination higher than $10.00 may be handled without the documentation required in paragraph (h) (3) of this section.

(5) Computerized jackpot/fill systems shall be restricted so as to prevent unauthorized access and fraudulent payouts by one individual.

(6) Payout forms shall be controlled and routed in a manner that precludes any one individual from producing a fraudulent payout by forging signatures or by altering the amount paid out subsequent to the payout and misappropriating the funds.

(i) If a gaming operation offers promotional payouts and awards, the payout form/documentation includes the following information:

(1) Date and time;

(2) Machine number and denomination;

(3) Dollar amount of payout or description of personal property (e.g., jacket, toaster, car, etc.);

(4) Type of promotion (e.g., double jackpots, four-of-a-kind bonus, etc.); and

(5) Signature of at least one employee authorizing and completing the transaction.

(j) Gaming machine department funds standards. (1) The gaming machine booths and change banks, which are active during the shift, shall be counted down and reconciled each shift utilizing appropriate accountability documentation.

(2) The wrapping of loose gaming machine booth and cage cashier coin shall be performed at a time or location that does not interfere with the hard count/wrap process or the accountability of that process.

(3) A record shall be maintained evidencing the transfers of unwrapped coin and is retained for at least 7 days.

(4) A record shall be maintained evidencing the transfers of wrapped and unwrapped coins.

(k) EPROM standards. (1) At least annually, procedures shall be performed to insure the integrity of a sample of gaming machine game program EPROMs by personnel independent of the gaming operation or the machines being tested.

(2) The EPROM compartment key shall be maintained in the cage. Access to the EPROM compartment key shall require one key from security and one key from the cage to open the key box which contains the EPROM compartment key. An authorized Tribal official or designee shall be present when the EPROM compartment key is accessed. A list of Tribal officials and designees authorized to obtain the EPROM compartment key shall be maintained in the cage;

(3) EPROM duplication standards.

(i) Procedures shall be developed and implemented for the following:

(A) Removal of EPROMs from devices, the verification of the existence of errors as applicable, and the correction via duplication from the master game program EPROM;

(B) Copying one gaming device program to another approved program;

(C) Verification of duplicated EPROMs prior to being offered for play;

(D) Destruction, as needed, of EPROMs with electrical failures;

(E) Securing the EPROM duplicator and master game EPROMs from unrestricted access;

(ii) The master game program number, par percentage, and the pay table shall be verified to the par sheet when initially received from the manufacturer.

(iii) Gaming machines with potential jackpots in excess of $100,000 shall have the circuit boards locked or physically sealed. The lock or seal shall necessitate the presence of an individual independent of the gaming machine department to access the device game program EPROM. If a seal is used to secure the board to the frame of the gaming device, it shall be pre-numbered.

(iv) Records which document the procedures in paragraph (k)(3)(i) of this section shall include the following information:

(A) Date;

(B) Machine number (source and destination);

(C) Manufacturer;

(D) Program number;

(E) Personnel involved;

(F) Reason for duplication;

(G) Disposition of any permanently removed EPROM;

(H) Seal numbers, if applicable, and;

(I) Approved testing lab approval numbers, if available.

(4) EPROMS returned to gaming devices shall be labeled and shall include the date program number, information identical to that shown on the manufacturer's label, and initials of the individual replacing the EPROM.

(l) Standards for evaluating theoretical and actual hold percentages. (1) Accurate and current theoretical hold worksheets shall be maintained for each gaming machine.

(2) For those gaming machines or groups of identical machines (excluding multi-game machines) with differences in theoretical payback percentage exceeding a 4% spread between the minimum and maximum theoretical payback, an employee or department independent from the gaming machine department shall:

(i) On a quarterly basis, record the meters that contain the number of plays by wager (i.e., one coin, two coins, etc.);

(ii) On an annual basis, calculate the theoretical hold percentage based on the distribution of plays by wager type;

(iii) On an annual basis, adjust the machine(s) theoretical hold percentage in the gaming machine statistical report to reflect this revised percentage.

(3) For multi-game machines, an employee or department independent of the gaming machine department shall:

(i) Weekly record the total coin-in meter;

(ii) Quarterly record the coin-in meters for each game contained in the machine;

(iii) On an annual basis adjust the theoretical hold percentage to a weighted average based upon the ratio of coin-in for each game.

(4) The adjusted theoretical hold percentage for multi-game machines may be combined for machines with exactly the same game mix throughout the year.

(5) The theoretical hold percentages used in the slot analysis reports should be within the performance standards set by the manufacturer.

(6) Records shall be maintained for each machine which indicate the dates and type of changes made and the recalculation of theoretical hold as a result of the changes.

(7) Records shall be maintained for each machine which indicate the date the machine was placed into service, the date the machine was removed from operation, the date the machine was placed back into operation, and any changes in machine numbers and designations.

(8) All of the gaming machines shall contain functioning meters which shall record coin-in or credit-in.

(9) All gaming machines with currency acceptors shall contain functioning bill-in meters which record the dollar amounts or number of bills accepted by denomination.

(10) Gaming machine in-meter readings shall be recorded at least weekly (monthly for Tier A gaming operations) immediately prior to or subsequent to a gaming machine drop. However, the time between readings may extend beyond one week in order for a reading to coincide with the end of an accounting period only if such extension is for no longer than six days.

(11) The employee who records the in-meter reading shall either be independent of the hard count team or shall be assigned on a rotating basis, unless the in-meter readings are randomly verified quarterly for all gaming machines and currency acceptors by someone other than the regular in-meter reader.

(12) Upon receipt of the meter reading summary, the accounting department shall review all meter readings for reasonableness using pre-established parameters.

(13) Prior to final preparation of statistical reports, meter readings which do not appear reasonable shall be reviewed with gaming machine department employees, and exceptions documented, so that meters can be repaired or clerical errors in the recording of meter readings can be corrected.

(14) A report shall be produced at least monthly showing month-to-date, year-to-date, and if practicable, life-to-date actual hold percentage computations for individual machines and a comparison to each machine's theoretical hold percentage previously discussed.

(15) Each change to a gaming machine's theoretical hold percentage, including progressive percentage contributions, shall result in that machine being treated as a new machine in the statistical reports (i.e., not commingling various hold percentages).

(16) If promotional payouts and awards are included on the gaming machine statistical reports, it shall be in a manner which prevents distorting the actual hold percentages of the affected machines.

(17) A report shall be produced at least monthly showing year-to-date combined gaming machine performance, by denomination. The report shall include the following for each denomination:

(i) Floor par;

(ii) Combined actual hold percentage;

(iii) Percentage variance (b—a); and

(iv) Projected dollar variance (i.e., coin-in times the percentage variance).

(18) The statistical reports shall be reviewed by both gaming machine department management and management employees independent of the gaming machine department on at least a monthly basis.

(19) Large variances between theoretical hold and actual hold shall be investigated and resolved with the findings documented in a timely manner.

(20) For purposes of analyzing large variances between actual hold and theoretical hold percentages, information to create floor par reports by machine type shall be maintained.

(21) Maintenance of the computerized gaming machine monitoring system data files shall be performed by a department independent of the gaming machine department. Alternatively, maintenance may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified on a monthly basis by employees independent of the gaming machine department.

(22) Updates to the computerized gaming machine monitoring system to reflect additions, deletions, or movements of gaming machines shall be made at least weekly prior to in-meter readings and the weigh process.

(m) Gaming machine hopper contents standards. (1) When machines are temporarily removed from the floor, gaming machine drop and hopper contents shall be protected to preclude the misappropriation of stored funds.

(2) When machines are permanently removed from the floor, the gaming machine drop and hopper contents shall be counted and recorded by at least two employees with appropriate documentation being routed to the accounting department for proper recording and accounting for initial hopper loads.

(n) Gaming machine drop keys standards. (1) The physical custody of the keys needed to access gaming machine coin drop cabinets, including duplicates, shall require the involvement of two persons, one of whom is independent of the gaming machine department.

(2) Gaming machine coin drop cabinet keys, including duplicates, shall be maintained by a department independent of the gaming machine department.

(3) Two employees (separate from key custodian) shall be required to accompany such keys while checked out and observe each time gaming machine drop cabinets are accessed, unless surveillance is notified each time keys are checked out and surveillance observes the person throughout the period the keys are checked out.

(o) Currency acceptor key control standards. (1) Tier A gaming operation shall not be subject to the requirements of paragraph (o) of this section, provided that the gaming operation develops and complies with procedures that maintain adequate key control and restricts access to the keys.

(2) The physical custody of the keys needed for accessing stored full currency acceptor drop box contents shall require involvement of persons from two separate departments.

(3) Only the employees authorized to remove the currency acceptor drop boxes shall be allowed access to the release keys. For situations that require access to the currency acceptor drop box at other than scheduled drop time, the date, time, and signature of employee signing out/in release key must be documented. The currency acceptor

drop box release keys are separately keyed from the currency acceptor contents keys.

(4) The count team members may have access to the release keys during the count only in order to reset the drop boxes if necessary.

(5) Employees authorized to drop the currency acceptor drop boxes shall be precluded from having access to drop box contents keys.

(6) Someone independent of the gaming machine department shall be required to accompany currency acceptor drop box storage rack keys and observe each time drop boxes are removed from or placed in storage racks;

(7) Employees authorized to obtain drop box storage rack keys shall be precluded from having access to drop box contents keys (with the exception of the count team);

(8) The physical custody of the keys needed for accessing currency acceptor drop box contents shall require involvement of persons from three separate departments. Access to the contents key at other than scheduled count times shall require the involvement of at least three employees from separate departments, including management. The reason for access shall be documented with the signatures of all participants and observers. Only the count team members shall be allowed access to drop box contents.

(9) At least three count team members shall be required to be present at the time currency acceptor count room keys and other count keys are issued for the count.

(10) Duplicate keys shall be maintained in such a manner as to provide the same degree of control over drop boxes as is required for the original keys. Records shall be maintained for each key duplicated which indicate the number of keys made and destroyed;

(p) Player tracking standards. (1) The player tracking system shall be secured so as to prevent unauthorized access (e.g., changing passwords at least quarterly and physical access to computer hardware, etc.).

(2) The addition of points to members' accounts other than through actual gaming machine play shall be sufficiently documented (including substantiation of reasons for increases) and shall be authorized by a department independent of the player tracking and gaming machines. Alternatively, addition of points to members' accounts may be authorized by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by employees independent of the gaming machine department on a quarterly basis;

(3) Booth employees who redeem points for members shall not have access to lost cards;

(4) Changes to the player tracking system parameters, such as point structures and employee access, shall be performed by supervisory employees independent of the gaming machine department. Alternatively, changes to player tracking system parameters may be performed by gaming machine supervisory employees if sufficient documentation is generated and it is randomly verified by supervisory employees independent of the gaming machine department on a monthly basis.

(5) All other changes to the player tracking system shall be appropriately documented.

(q) Progressive gaming machines standards. (1) A meter that shows the amount of the progressive jackpot shall be conspicuously displayed at or near the machines to which the jackpot applies.

(i) At least once each day, each licensee shall record the amount shown on each progressive jackpot meter at the licensee's establishment except for those jackpots that can be paid directly from the machine's hopper;

(ii) Explanations for meter reading decreases shall be maintained with the progressive meter reading sheets, and where the payment of a jackpot is the explanation for a decrease, the licensee shall record the jackpot payout number on the sheet or have the number reasonably available.

(iii) Each licensee shall record the base amount of each progressive jackpot the licensee offers.

(2) The wide area progressive gaming machines system shall be adequately restricted to prevent unauthorized access (e.g., changing passwords at least quarterly, access to EPROMs, and physical access to computer hardware, etc.).

(3) For the wide area progressive system, procedures shall be developed, implemented, and documented for:

(i) Reconciliation of meters and jackpot payouts;

(ii) Collection/drop of gaming machine funds;

(iii) Jackpot verification and payment and billing to gaming operations on pro-rata basis;

(iv) System maintenance;

(v) System accuracy; and

(vi) System security.

(4) Reports adequately documenting the procedures required in paragraph (q)(3) of this section shall be generated and retained.

(r) Gaming machine accounting/auditing procedures standards. (1) Gaming machine accounting/auditing procedures shall be performed by employees who are independent of the transactions being reviewed.

(2) For computerized player tracking systems, an accounting/auditing employee shall perform the following procedures at least one day per month:

(i) Foot all jackpot and fill slips and trace totals to those produced by the system; and

(ii) Review all slips written (from the restricted copy) for continuous sequencing;

(iii) Foot all points-redeemed documentation and trace to the system-generated totals;

(iv) Review all points-redeemed documentation for propriety.

(3) For computerized gaming machine monitoring systems, procedures shall be performed at least monthly to verify that the system is transmitting and receiving data from the gaming machines properly and to verify the continuing accuracy of the coin-in meter readings as recorded in the gaming machine statistical report.

(4) For weigh scale interface systems, for a least one drop period per month accounting/auditing employees shall compare the weigh tape to the system-generated weigh, as recorded in the gaming machine statistical report, in total. Discrepancies shall be resolved prior to generation/distribution of gaming machine reports.

(5) For each drop period, accounting/auditing personnel shall compare the ''coin-to-drop'' meter reading to the actual drop amount. Discrepancies should be resolved prior to generation/distribution of slot statistical reports.

(6) Follow-up shall be performed for any one machine having an unresolved variance between actual drop and coin-to-drop meter reading in excess of 3%. The follow-up performed and results of the investigation shall be documented and maintained.

(7) At least weekly, accounting/auditing employees shall compare the bill-in meter reading to the total currency acceptor drop amount for the week. Discrepancies shall be resolved prior to the generation/distribution of gaming machine statistical reports.

(8) Follow-up shall be performed for any one machine having an unresolved variance between actual drop and bill-in meter reading in excess of 3%. The follow-up performed and results of the investigation shall be documented and maintained.

(9) At least annually, accounting/auditing personnel shall randomly verify that EPROM changes are properly reflected in the gaming machine analysis reports.

(10) Accounting/auditing employees shall review exception reports for all computerized gaming machine systems on a daily basis for propriety of transactions and unusual occurrences.

(11) All gaming machine auditing procedures and any follow-up performed shall be documented and maintained for inspection.

(s) For all computerized gaming machine systems, a personal access listing shall be maintained which includes at a minimum:

(1) Employee name;

(2) Employee identification number (or equivalent); and

(3) Listing of functions employee can perform or equivalent means of identifying same.

(t) For any computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

(u) For gaming machines that accept coins or currency and issue cash-out tickets, the following standards shall apply:

(1) In addition to the applicable accounting and auditing standards in paragraph (r) of this section, on a quarterly basis, the gaming operation shall foot all jackpot cash-out tickets and trace totals to those produced by the system.

(2) The customer may request a cash-out ticket from the gaming machine which reflects all remaining credits. The cash-out ticket shall be printed at the gaming machine by an internal document printer.

(3) The customer shall redeem the cash-out ticket at a change booth or cashiers' cage. Once presented for redemption, the cashier shall:

(i) Scan the bar code via an optical reader or its equivalent; or

(ii) Input the cash-out ticket validation number into the computer.

(4) The information contained in paragraph (u)(3) of this section shall be transmitted to the host computer. The host computer shall verify the authenticity of the cash-out ticket and communicate directly to the change booth or cashier cage terminal.

(5) If valid, the cashier pays the customer the appropriate amount and the cash-out ticket is electronically noted ''paid'' in the system. The ''paid'' cash-out ticket shall remain in the cashiers' bank for reconciliation purposes.

(6) If invalid, the host computer shall notify the cashier that one of the following conditions exists:

(i) Serial number cannot be found on file (stale date, forgery, etc.);

(ii) Cash-out ticket has already been paid;

(iii) Amount of cash-out ticket differs from amount on file. The cashier shall refuse payment to the customer and notify a supervisor of the invalid condition. The supervisor shall resolve the dispute;

(7) If the coinless/cashless gaming machine system temporarily goes down, cashiers may redeem cash-out tickets after recording the following:

(i) Serial number of the cash-out ticket;

(ii) Date;

(iii) Dollar amount; and

(iv) Issuing gaming machine number.

(8) Cash-out tickets shall be validated as expeditiously as possible when the coinless/cashless gaming machine system is restored.

(9) The gaming operation shall develop and implement procedures to control cash-out ticket paper which shall include procedures which:

(i) Prevent the counterfeiting of cash-out ticket paper;

(ii) Adequately controls the inventory of the cash-out ticket paper; and

(iii) Provide for the destruction of all unused cash-out ticket paper.

(10) If the coinless/cashless gaming machine system is down for more than four hours, the gaming operation shall promptly notify the tribal council or its designated representative.

(11) These gaming machine systems shall comply with all other standards (as applicable) in this section including:

(i) Standards for currency acceptor drop and count;

(ii) Standards for coin drop and count; and

(iii) Standards concerning EPROMS.

(v) If the gaming machine does not accept currency or coin and does not return currency or coin, the following standard shall apply:

(1) For paragraph (v) of this section, the following definitions shall apply:

(i) Bank Number means a unique number assigned to identify a network of player terminals;

(ii) Terminal Number means a unique number assigned to identify a single player terminal in the gaming operation;

(iii) PIN means personal identification number selected by player and used to access player's account;

(iv) Machine Payout Form means a document used to log all progressive jackpots and amounts won greater than $1,200.

(v) Adjustment Form means a document used to describe and identify any change to player's account balance not generated directly by player gaming activity;

(vi) A game Server means an electronic selection device, utilizing a random number generator.

(2) Equipment.

(i) A central computer, with supporting hardware and software, to coordinate network activities, provide system interface, and store and manage a player/account database;

(ii) A network of contiguous player terminals with touch-screen or button-controlled video monitors connected to an electronic selection device and the central computer via a communications network;

(iii) One or more electronic selection devices, utilizing random number generators, each of which selects any combination or combinations of numbers, colors and/or symbols for a network of player terminals.

(3) Player terminals standards.

(i) The player terminals are connected to a game server;

(ii) The game server shall generate and transmit to the bank of player terminals a set of random numbers, colors and/or symbols at regular intervals. The subsequent game results are determined at the player terminal and the resulting information is transmitted to the account server;

(iii) The game servers shall be housed in a game server room or secure locked cabinet off the casino floor.

(4) Patron account maintenance standards.

(i) A central computer acting as an account server shall provide customer account maintenance and the deposit/withdrawal function of those account balances;

(ii) Patrons may access their accounts on the computer system by means of a Player Identification Card at the player terminal. Each player terminal may be equipped with a card reader and PIN (personal identification number) pad or touch screen array for this purpose;

(iii) All communications between the player terminal and the account server shall be encrypted for security reasons.

(5) Patron account generation standards.

(i) A computer file for each patron shall be prepared by a clerk, with no incompatible functions, prior to the patron being issued a PIN Card to be utilized for machine play. The patron shall select his/her four digit PIN, known only to the patron, to be used in conjunction with the PIN Card;

(ii) The clerk shall sign-on with a unique password to a terminal equipped with peripherals required to input data from the Patron Registration form. Passwords are issued and can only be changed by MIS personnel at the discretion of the Department Director;

(iii) After entering a specified number of incorrect PIN entries at the Cage or player terminal, the patron shall be directed to proceed to the Gaming Machine Information Center to obtain a new PIN. If a patron forgets, misplaces or requests a change to their four digit PIN, the patron shall proceed to the Gaming Machine Information Center.

(6) Deposit of credits standards.

(i) The cashier shall sign-on with a unique password to a cashier terminal equipped with peripherals required to complete the credit transactions. Passwords are issued and can only be changed by MIS personnel at the discretion of the Department Director;

(ii) The patron shall present cash, chips, coin or coupons along with their PIN Card to a cashier to deposit Credits;

(iii) The cashier shall complete the transaction by utilizing a card scanner which the cashier shall slide the patron's PIN Card through;

(iv) The cashier shall accept the funds from the patron and enter the appropriate amount on the cashier terminal;

(v) A multi-part Deposit Slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign two copies of the Deposit Slip receipt. The original of the signed Deposit Slip shall be given to the patron. The first copy of the signed Deposit Slip shall be secured in the cashier's cash drawer;

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall secure the funds in their cash drawer and return the PIN Card to the patron.

(7) Prize standards.

(i) Winners at the Gaming Machines may receive cash, prizes redeemable for cash or merchandise, at the discretion of the Gaming Operation;

(ii) If merchandise prizes are to be awarded, the specific type of prize or prizes which may be won shall be disclosed to the player before the game begins;

(iii) The patron shall maintain his/her PIN Card for an indefinite period of time. Patrons shall not be required to redeem the balance in their account immediately or at the end of their gaming trip which creates a liability to the patron from the gaming operation.

(8) Payoff odds standards.

(i) Payoff odds shall be determined by the Gaming Operation and approved by the tribe or tribal gaming commission;

(ii) The payoff odds for all winning combinations shall be conspicuously posted on a sign or displayed on a designated screen of the Player Terminal;

(iii) The Gaming Operation shall submit the pay rate, pay tables, seed amounts (if applicable), machine entry procedures and authorizations, the attendant jackpot payout key control procedures, and machine entry key control procedures to the tribe or the tribe's independent regulatory body.

(9) The Gaming operation shall determine the minimum and maximum wagers. The amounts of such wagers shall be conspicuously posted on a sign or displayed on a designated screen of the Player Terminal.

(10) Jackpot payout procedures.

(i) When any progressive jackpot or a payout of $1,200.00 or more is won, the Player terminal shall lock-up preventing further play.

(ii) The player terminal shall indicate by light and sound that a jackpot has been won.

(iii) An attendant shall go to the player terminal and obtain suitable identification such as a driver's license.

(iv) An attendant shall complete the Machine Payout Form for all winning jackpots of $1,200.00 or more. The Form shall include, at a minimum, the following information:

(A) game number and type;

(B) bank location;

(C) account number of the player

(D) name of the player;

(E) terminal number the jackpot was won at;

(F) date, time, and shift;

(G) amount won;

(H) amount wagered;

(I) signature and badge number of the attendant verifying surveillance was notified for jackpot winning of $5,000 or greater for a single game; and

(J) signature and badge number of attendant attesting to reactivation of the terminal.

(v) The attendant shall reactivate the machine upon completion of the appropriate paperwork.

(11) Game rules for each game that is offered for use to patrons on the Gaming Machines shall be described in a brochure available to patrons.

(12) The patron shall present their PIN Card to a cashier to withdraw their Credits. The cashier shall perform the following:

(i) Slide the PIN Card through the card scanner;

(ii) Request the patron to enter their PIN;

(iii) The cashier shall ascertain the amount the patron wishes to withdraw and enter the amount into the computer;

(iv) A multi-part Withdrawal Slip shall be generated by the point of sale receipt printer. The cashier shall direct the patron to sign the original and one copy of the Withdrawal Slip;

(v) The cashier shall verify that the PIN Card and the patron match by:

(A) Comparing the patron to image on the computer screen of patron's picture ID or;

(B) Comparing the patron signature on the Withdrawal Slip to signature on the computer screen.

(vi) The cashier shall verify the patron's balance before completing the transaction. The cashier shall pay the patron the appropriate amount, issue the patron the original Withdrawal Slip and return the PIN Card to the patron;

(vii) The first copy of the Withdrawal Slip shall be placed in the cash drawer. All account transactions shall be accurately tracked by the account server computer system. The first copy of the Withdrawal Slip shall be forwarded to the Accounting Department at the end of the gaming day.

(viii) In the event the imaging function is temporarily disabled, patrons shall be required to provide positive ID for cash withdrawal transactions at the cashier stations.

§ 542.13 What are the minimum internal control standards for cage & credit?

(a) The following standards shall apply if the gaming operation authorizes and extends credit to patrons:

(1) At least the following information shall be recorded for patrons who have credit limits or are issued credit (excluding personal checks, payroll checks, cashier's checks and traveler's checks):

(i) Patron's name, current address, and signature;

(ii) Identification verifications;

(iii) Authorized credit limit;

(iv) Documentation of authorization by an individual designated by management to approve credit limits; and

(v) Credit issuances and payments.

(2) Prior to extending credit, the patron's gaming operation credit record and/or other documentation shall be examined to determine the following:

(i) Properly authorized credit limit;

(ii) Whether remaining credit is sufficient to cover the credit issuance; and

(iii) Identity of the patron (except for known patrons).

(3) Credit extensions over a specified dollar amount shall be approved by personnel designated by management.

(4) Proper approval of credit extensions over 10 percent of the previously established limit shall be documented.

(5) The job functions of credit approval (i.e., establishing the patron's credit worthiness) and credit extension (i.e., monitoring patron's credit

availability) shall be segregated for credit extensions to a single patron of $10,000 or more per day (applies whether the credit is extended in the pit or the cage).

(6) If cage credit is extended to a single patron in an amount exceeding $2,500, applicable gaming personnel shall be notified on a timely basis of the patrons playing on cage credit, the applicable amount of credit issued, and the available balance.

(7) Cage marker forms shall be at least two parts (the original marker and a payment slip), prenumbered by the printer or concurrently numbered by the computerized system, and utilized in numerical sequence.

(8) The completed original cage marker shall contain at least the following information: marker number, player's name and signature, and amount of credit issued (both alpha and numeric).

(9) The completed payment slip shall include the same marker number as the original, date and time of payment, amount of payment, nature of settlement (cash, chips, etc.), and signature of cashier receiving the payment.

(10) If personal checks, cashier's checks, or payroll checks are cashed the Tribe shall implement appropriate controls for purpose of security and integrity. The Tribe shall establish and comply with procedures for collecting and recording checks returned to the gaming operation after deposit which include re-deposit procedures. These procedures shall provide for notification of cage/credit departments and custodianship of returned checks.

(11) Counter checks shall comply with the requirements of paragraph (a)(10) of this section.

(12) When counter checks are issued, the following shall be included on the check:

(i) The patron's name and signature;

(ii) The dollar amount of the counter check (both alpha and numeric);

(iii) Date of issuance; and

(iv) Signature or initials of the individual approving the counter check transaction.

(13) When travelers checks or other guaranteed drafts such as cashier's checks are presented, the cashier shall comply with the examination and documentation procedures as required by the Tribe.

(b) Payment standards.

(1) All payments received on outstanding credit instruments shall be permanently recorded in the gaming operation's records.

(2) When partial payments are made on credit instruments, they shall be evidenced by a multi-part receipt (or another equivalent document) which contains:

(i) The same preprinted number on all copies;

(ii) Patron's name;

(iii) Date of payment;

(iv) Dollar amount of payment (or remaining balance if a new marker is issued), and nature of settlement (cash, chips, etc.);

(v) Signature of employee receiving payment; and

(vi) Number of credit instrument on which partial payment is being made.

(3) Unless account balances are routinely confirmed on a random basis by the accounting or internal audit departments, or statements are mailed by someone independent of the credit transactions and collections thereon, and the department receiving payments cannot access cash, then the following standards shall apply:

(i) The routing procedures for payments by mail require that they are received by a department independent of credit instrument custody and collection;

(ii) Such receipts by mail shall be documented on a listing indicating the customer's name, amount of payment, nature of payment (if other than a check), and date payment received;

(iii) The total amount of the listing of mail receipts shall be reconciled with the total mail receipts recorded on the appropriate accountability by the accounting department on a random basis (for at least three days per month).

(c) Access to credit documentation shall be restricted as follows:

(1) The credit information shall be restricted to those positions which require access and are so authorized by management;

(2) Outstanding credit instruments shall be restricted to persons authorized by management; and

(3) Written-off credit instruments shall be further restricted to individuals specified by management;

(d) Documentation shall be maintained as follows:

(1) All extensions of cage credit, pit credit transferred to the cage and subsequent payments shall be documented on a credit instrument control form.

(2) Records of all correspondence, transfers to and from outside agencies, and other documents related to issued credit instruments shall be maintained.

(e) Write-off and settlement standards.

(1) Written-off or settled credit instruments shall be authorized in writing.

(2) Such authorizations shall be made by at least two management officials, who are from departments independent of the credit transaction.

(f) The use of collection agencies shall be governed by the following standards:

(1) If outstanding credit instruments are transferred to collection agencies, or other collection representatives, a copy of the credit instrument and a receipt from the collection representative shall be obtained and maintained until such time as the original credit instrument is returned or payment is received.

(2) An individual independent of credit transactions and collections shall periodically review the documents in paragraph (f)(1) of this section.

(g) If a gaming operation permits a customer to deposit funds with the gaming operation.

(1) The receipt or withdrawal of a customer deposit shall be evidenced by at least a two-part document with one copy going to the customer and one copy remaining in the cage file.

(2) The multi-part receipt shall contain the following information:

(i) Same receipt number on all copies;

(ii) Customer's name and signature;

(iii) Date of receipt and withdrawal;

(iv) Dollar amount of deposit/withdrawal; and

(v) Nature of deposit (cash, check, chips); however,

(vi) Provided all of the information in paragraph (g)(2)(i) through (v) is available, the only required information for all copies of the receipt is the receipt number.

(3) The gaming operation shall establish and comply with procedures which:

(i) Maintain a detailed record by patron name and date of all funds on deposit;

(ii) Maintain a current balance of all customer cash deposits which are in the cage/vault inventory or accountability; and

(iii) Reconcile this current balance with the deposits and withdrawals at least daily.

(4) The gaming operation shall describe the sequence of the required signatures attesting to the accuracy of the information contained on the customer deposit or withdrawal form ensuring that the form is signed by the cashier.

(5) All customer deposits and withdrawal transactions at the cage shall be recorded on a cage accountability form on a per-shift basis.

(6) Only cash, cash equivalents, chips and tokens shall be accepted from customers for the purpose of a customer deposit.

(7) The Tribe shall establish and comply with procedures which verify the patron's identity including photo identification.

(8) A file for patrons shall be prepared prior to acceptance of a deposit.

(h) Cage and vault accountability standards. (1) All transactions that flow through the cage shall be summarized on a cage accountability form on a per shift basis.

(2) Increases and decreases to the cage inventory shall be supported by documentation.

(3) The cage and vault (including coin rooms) inventories shall be counted by the oncoming and outgoing cashiers. These employees shall make individual counts for comparison of accuracy and maintenance of individual accountability which shall be recorded at the end of each shift during which activity took place. All discrepancies shall be noted and investigated.

(4) All net changes in outstanding gaming operation accounts receivables, including all returned checks, shall be summarized on a cage accountability form or similar document on a per shift basis.

(5) The gaming operation cash-on hand shall include, but is not limited to, the following components:

(i) Currency and coins;

(ii) House chips, including reserve chips;

(iii) Personal checks, cashier's checks and traveler's checks for deposit;

(iv) Customer deposits;

(v) Chips on tables;

(vi) Hopper loads (coins put into machines when they are placed in service); and

(vii) Fills and credits (these documents shall be treated as assets and liabilities, respectively, of the cage during a business day. When win or loss is recorded at the end of the business day, they are removed from the accountability).

(6) The Tribe shall establish a minimum bankroll formula to ensure the gaming operation maintains cash or cash equivalents (on hand and in the bank, if readily accessible) in an amount sufficient to satisfy obligations to the gaming operation's patrons as they are incurred.

(i) The Tribe shall establish and comply with procedures for the receipt, inventory, storage, and destruction of gaming chips and tokens.

(j) Any program for exchanges of coupons for chips and/or tokens or other coupon program shall be approved by the Tribe prior to implementation; if approved, the Tribe shall establish and comply with procedures that account for and control of such programs.

(k) A gaming operation shall comply with the following accounting standards:

(1) The cage accountability shall be reconciled to the general ledger at least monthly.

(2) A trial balance of gaming operation accounts receivable, including the name of the patron and current balance, shall be prepared at least monthly for active, inactive, settled or written-off accounts. The reconciliation and any follow-up performed shall be documented and retained.

(3) The trial balance of gaming operation accounts receivable shall be reconciled to the general ledger each month. The reconciliation and any follow-up performed shall be documented and retained.

(4) A trial balance of the gaming operations inactive or written-off accounts receivable, including the name of patron and balance, shall be prepared at least quarterly:

(5) On a monthly basis an evaluation of the collection percentage of credit issued to identify unusual trends shall be performed.

(6) All cage and credit accounting procedures and any follow-up performed shall be documented.

(l) An individual independent of the cage, credit, and collection functions shall perform all of the following at least three times per year:

(1) Ascertain compliance with credit limits and other established credit issuance procedures;

(2) Randomly reconcile outstanding balances of both active and inactive accounts on the accounts receivable listing to individual credit records and physical instruments;

(3) Examine credit records to determine that appropriate collection efforts are being made and payments are being properly recorded; and

(4) For a minimum of five (5) days per month, partial payment receipts shall be subsequently reconciled to the total payments recorded by the cage for the day and shall be numerically accounted for.

(m) Computer applications utilized, alternate documentation and/or procedures which provide at least the level of control described by the standards in this section will be acceptable.

§ 542.14 What are the minimum internal control standards for internal audit?

(a) Each gaming operation shall employ qualified internal auditing personnel.

(1) Tier C gaming operations shall maintain a separate internal audit department (whose primary function is performing internal audit work and who is independent with respect to the departments subject to audit).

(2) Tier A and B gaming operations shall either maintain a separate internal audit department or designate personnel who are independent with respect to the departments/procedures being examined to perform internal audit work.

(3) The internal audit personnel shall report directly to the tribe, the tribal gaming commission, audit committee or other entity designated by the tribe.

(b) Documentation (e.g., checklists, programs, reports, etc.) shall be prepared to evidence all internal audit work performed as it relates to these requirements. The internal audit department operates with audit programs which, at a minimum, address the MICS. Additionally, the department properly documents the work performed, the conclusions reached, and resolution of all exceptions.

(c) All material exceptions resulting from internal audit work shall be investigated and resolved, with the results of such being documented and retained for five years.

(d) The internal audit department shall report to management and the Tribe or its designated tribal governmental body all instances of non-compliance that come to its attention during the course of testing compliance with the standards in this part. Management shall be required to respond to internal audit findings stating corrective measures to be taken to avoid recurrence of the audit exception. Such management responses shall be included in the internal audit report which will be delivered to the Tribe or its designated tribal governmental body.

(e) The internal audit department shall perform audits of all major areas of the gaming operation.

(1) The following are reviewed at least once during every six-month period:

(i) Table games, including but not limited to, fill and credit procedures, pit credit play procedures, rim credit procedures, soft drop/count procedures and the subsequent transfer of funds, surprise testing of count room currency counters, location and control over sensitive keys, the tracing of source documents to summarized documentation and accounting records, and reconciliation to restricted copies;

(ii) Gaming machines, including but not limited to, jackpot payout and slot fill procedures, slot drop/count and currency acceptor drop/count and subsequent transfer of funds, surprise testing of weigh scale and weigh scale interface, surprise testing of count room currency counters, slot machine drop cabinet access, tracing of source documents to summarized documentation and accounting records, reconciliation to restricted copies, location and control over sensitive keys,

compliance with EPROM duplication procedures, and compliance with MICS procedures for gaming machines that accept coins or currency and issue cash-out tickets or gaming machines that do not accept currency or coin and do not return currency or coin.

(2) The following are reviewed at least annually:

(i) Keno, including but not limited to, game write and payout procedures, sensitive key location and control, and a review of keno auditing procedures;

(ii) Card games, including but not limited to, card games operation, monetary exchange procedures, shill transactions, and count procedures;

(iii) Bingo, including but not limited to, bingo card control, payout procedures, and cash reconciliation process;

(iv) Complimentary service or item, including but not limited to, procedures where by complimentary service items are issued and authorized;

(v) Cage and credit procedures including all cage, credit and collection procedures, and the reconciliation of trial balances to physical instruments on a sample basis. Cage accountability shall be reconciled to the general ledger;

(vi) Pari-mutuel wagering, including write and payout procedures, and pari-mutuel auditing procedures;

(vii) Electronic data processing functions, including review for compliance with EDP standards.

(3) In addition to the observation and examinations performed under paragraph (e) of this section, follow-up observations and examinations shall be performed to verify that corrective action has been taken regarding all instances of noncompliance cited by internal audit, the independent accountant, and/or the Commission. The verification shall be performed within six months following the date of notification.

(4) Whenever possible, internal audit observations shall be performed on an unannounced basis (i.e., without the employees being forewarned that their activities will be observed). Additionally, if the independent accountant also performs the internal audit function, the accountant shall perform separate observations of the table games/gaming machine drops and counts to satisfy the internal audit observation requirements and independent accountant tests of controls as required by the AICPA Guide.

(f) Reports documenting audits performed shall be maintained and made available to the Commission upon request. The audit reports shall include the following information:

(1) Audit objectives;

(2) Audit procedures and scope;

(3) Findings and conclusions;

(4) Recommendations, if applicable; and

(5) Management's response.

(g) The internal audit department shall determine compliance with procedures that verify receipt of goods and services of the gaming operation resulting from purchasing contracts or commitments for amounts in excess of $25,000 per annum.

§ 542.15 What are the minimum internal control standards for surveillance?

(a) The surveillance system shall be maintained and operated from a surveillance room and shall provide surveillance over gaming areas. Tier A operations shall not be required to have a surveillance room if the gaming operation maintains and operates an unmanned surveillance system in a secured location whereby the areas under surveillance are continually taped.

(b) The entrance to the surveillance room or secured location shall be located so that it is not readily accessible by either gaming operation employees who work primarily on the casino floor, or the general public.

(c) Access to a surveillance room shall be limited to surveillance personnel, key employees and other persons authorized in accordance with the gaming operation policy. Authorized surveillance personnel shall maintain sign-in logs of authorized persons entering the surveillance room.

(d) Surveillance room equipment shall have total override capability over all other satellite surveillance equipment located outside the surveillance room.

(e) For all Tier B and C gaming operations, in the event of power loss to the surveillance system, an auxiliary or backup power source shall be available and capable of providing immediate restoration of power to all elements of the surveillance system that enable surveillance personnel to observe the table games remaining open for play and all areas covered by dedicated cameras.

(f) The surveillance system shall include date and time generators which possess the capability to display the date and time of recorded events on video tape recordings. The displayed date and time shall not significantly obstruct the recorded view.

(g) The surveillance room shall be staffed for all shifts and activities by personnel trained in the use of the equipment, knowledge of the games and house rules.

(h) Each video camera required by the standards in this section shall be installed in a manner that will prevent it from being readily obstructed, tampered with or disabled by patrons or employees.

(i) Each video camera required by the standards in this section shall possess the capability of having its picture displayed on a video monitor and recorded. The surveillance system shall include sufficient numbers of monitors and recorders to simultaneously display and record multiple gaming and count room activities, and record the views of all dedicated cameras and motion activated dedicated cameras.

(j) Reasonable effort shall be made to repair each malfunction of surveillance system equipment required by the standards in this section within seventy-two (72) hours after the malfunction is discovered.

(k) In the event of a dedicated camera malfunction, the gaming operation shall immediately provide alternative camera coverage or other security measures, such as additional supervisory or security personnel, to protect the subject activity.

(l) Each gaming machine offering a payout of more than $250,000 shall be monitored by dedicated camera(s) to provide coverage of:

(1) All patrons and employees at the gaming machine, and

(2) The face of the gaming machine, with sufficient clarity to identify the payout line(s) of the gaming machine; however

(m) Notwithstanding paragraph (l) of this section, if the gaming machine is a multi-game machine, the gaming operation with the approval of the Tribe may develop and implement alternative procedures to verify payouts.

(n) The surveillance system of all Tier B and C gaming operations shall monitor and record a general overview of the activities occurring in each gaming machine change booth.

(o) The surveillance system of gaming operations operating four (4) or more table games shall provide at a minimum one pan-tilt-zoom camera per two tables and surveillance must be capable of taping:

(1) With sufficient clarity to identify patrons and dealers; and

(2) With sufficient coverage and clarity to simultaneously view the table bank and determine the configuration of wagers, card values and game outcome.

(p) The surveillance system of gaming operations operating three (3) or less table games shall:

(1) Comply with the requirements of paragraph (n) of this section; or

(2) Have one (1) overhead camera at each table.

(q) All craps tables shall have two stationary cross view cameras covering both ends of the table. All roulette areas shall have one overhead stationary camera covering the roulette wheel and shall also have one stationary overview of the play of the table. All big wheel games shall have one stationary camera viewing the wheel.

(r) Each progressive table game with a potential progressive jackpot of $25,000 or more shall be recorded and monitored by dedicated cameras that provide coverage of:

(1) The table surface, sufficient that the card values and card suits can be clearly identified; and

(2) An overall view of the entire table with sufficient clarity to identify patrons and dealer; and

(3) A view of the progressive meter jackpot amount. If several tables are linked to the same progressive jackpot meter, only one meter need be recorded.

(s) The surveillance system shall possess the capability to monitor the keno and bingo ball drawing device or random number generator, which shall be recorded during the course of the draw by a dedicated camera or automatically activated camera, with sufficient clarity to identify the balls drawn or numbers selected.

(t) The surveillance system shall monitor and record general activities in each keno game area, with sufficient clarity to identify the employees performing the different functions.

(u) The surveillance system in the bingo game area shall monitor and record the game board and the activities of the employees responsible for drawing, calling and entering the balls drawn or numbers selected.

(v) The surveillance system shall monitor and record general activities in each race book, sports pool and pari-mutuel book ticket writer and cashier area, with sufficient clarity to identify the employees performing the different functions.

(w) The surveillance system shall monitor and record a general overview of activities occurring in each cage and vault area, with sufficient clarity to identify employees within the cage and patrons and employees at the counter areas. Each cashier station shall be equipped with one stationary overhead camera covering the transaction area. The surveillance system shall be used as an overview for cash transactions. This overview should include the customer, the employee and the surrounding area. This standard is optional for Tier A gaming operations.

(x) The cage or vault area in which fills and credits are transacted shall be monitored and recorded by a dedicated camera or motion activated dedicated camera that provides coverage with sufficient clarity to identify the chip values and the amounts on the fill and credit slips. Controls provided by a computerized fill and credit system may be deemed an adequate alternative to viewing the fill and credit slips.

(y) The surveillance system shall monitor and record all areas where currency or coin may be stored or counted, including the soft and hard count rooms, all doors to the soft and hard count rooms, all scales and wrapping machines and all areas where uncounted currency and coin may be stored during the drop and count process. Tier C gaming operations shall also maintain audio capability of the soft count room. The surveillance system shall provide for:

(1) Coverage of scales shall be sufficiently clear to view any attempted manipulation of the recorded data.

(2) Monitoring and recording of the table games drop box storage rack or area by either a dedicated camera or a motion-detector activated camera.

(3) Monitoring and recording of all areas where coin may be stored or counted, including the hard count room, all doors to the hard count room, all scales and wrapping machines and all areas where uncounted coin may be stored during the drop and count process.

(4) Monitoring and recording of soft count room, including all doors to the room, all drop boxes, safes, and counting surfaces, and all count team personnel. The counting surface area must be continuously monitored by a dedicated camera during the soft count.

(5) Monitoring and recording of all areas where currency is sorted, stacked, counted, verified or stored during the soft count process.

(z) All video recordings of coverage provided by the dedicated cameras or motion-activated dedicated cameras required by the standards in this section shall be retained for a minimum of seven days. Recordings involving suspected or confirmed gaming crimes, unlawful activity, or detentions and questioning by security personnel, must be retained for a minimum of thirty (30) days. Recordings of all linked systems (bingo, ball draws, gaming machines, etc.) shall be maintained for at least 30 days.

(aa) Video recordings shall be provided to the Commission upon request.

(bb) A video library log shall be maintained to demonstrate the storage, identification and retention standards required in this section have been complied with.

(cc) Each tribe shall maintain a log that documents each malfunction and repair of the surveillance system (as defined in this section). The log shall state the time, date and nature of each malfunction, the efforts expended to repair the malfunction and the date of each effort, the reasons for any delays in repairing the malfunction, the date the malfunction is repaired and where applicable, any alternative security measures that were taken.

(dd) Each gaming operation shall maintain a surveillance log of all surveillance activities in the surveillance room. The log shall be maintained by surveillance room personnel and shall be stored securely within the surveillance department. At a minimum, the following information shall be recorded in a surveillance log:

(1) Date and time each surveillance commenced;

(2) The name and license credential number of each person who initiates, performs, or supervises the surveillance;

(3) Reason for surveillance, including the name, if known, alias or description of each individual being monitored, and a brief description of the activity in which the person being monitored is engaging;

(4) The times at which each video or audio tape recording is commenced and terminated;

(5) The time at which each suspected criminal offense is observed, along with a notation of the reading on the meter, counter or device specified in paragraph (f) of this section that identifies the point on the video tape at which such offense was recorded;

(6) Time of termination of surveillance;

(7) Summary of the results of the surveillance.

§ 542.16 What are the minimum internal control standards for electronic data processing?

(a) General controls. (1) Management shall take an active role in making sure physical and logical security measures are implemented, maintained and adhered to by personnel to prevent unauthorized access which could cause errors or compromise data or processing integrity.

(i) Management shall ensure that all vendor agreements/contracts will contain language that requires the vendor to adhere to the tribal and/or gaming operations minimum internal control standards.

(ii) Physical security measures shall exist over computer, computer terminals and storage media to prevent irregularities and loss of integrity of data and processing.

(iii) Access to systems software and application programs shall be limited to authorized personnel.

(iv) Access to computer data shall be limited to authorized personnel.

(v) Access to computer communications facilities or the computer system or access to information transmissions shall be limited to authorized personnel.

(vi) Standards in this paragraph (a)(1) shall be addressed in the system of internal controls for each applicable department within the gaming operation.

(2) The main computers (i.e., hardware, software and data files) for each gaming application (e.g., keno, race and sports, gaming machines, etc.) shall be in a secured area with access restricted to authorized persons, including vendors.

(3) Access to computer operations shall be restricted to authorized personnel to reduce the risk of loss of integrity of data or processing.

(4) Incompatible duties shall be adequately segregated and monitored to prevent error in general EDP/MIS procedures to go undetected or fraud to be concealed.

(5) Gaming and food/beverage personnel shall be precluded from having unrestricted access to the secured computer areas.

(6) The computer systems, including application software, shall be secured through the use of passwords or other approved means. Management personnel or persons independent of the department being controlled shall assign and control access to system functions.

(7) Passwords shall be controlled as follows unless otherwise addressed in the standards in this section.

(i) Each user shall have their own individual password; and

(ii) Passwords shall be changed at least quarterly with changes documented.

(8) Adequate backup and recovery procedures shall be in place, and if applicable, include:

(i) Daily backup of data files;

(ii) Backup of all programs;

(iii) Secured off-site storage of all backup data files and programs, or other adequate protection; and

(iv) Recovery procedures which are tested at least annually with documentation of results.

(9) Adequate system documentation shall be maintained, including descriptions of hardware and software, operator manuals, etc.

(b) If a separate EDP department is maintained or if there are in-house developed systems, the following standards shall apply:

(1) The EDP department shall be independent of the gaming areas (e.g., cage, pit, count rooms, etc.). EDP/MIS procedures and controls should be defined and responsibilities communicated.

(2) EDP department personnel shall be precluded from unauthorized access to:

(i) Computers and terminals located in gaming areas;

(ii) Source documents; and

(iii) Live data files (not test data).

(3) EDP/MIS personnel shall be:

(i) Restricted from having access to cash or other liquid assets; and

(ii) From initiating general or subsidiary ledger entries.

(4) Program changes for in-house developed systems should be documented as follows:

(i) Requests for new programs or program changes shall be reviewed by the EDP supervisor. Approvals to begin work on the program shall be documented;

(ii) A written plan of implementation for new and modified programs shall be maintained and include, at a minimum, the date the program is to be placed into service, the nature of the change, a description of procedures required in order to bring the new or modified program into service (conversion or input of data, installation procedures, etc.), and an indication of who is to perform all such procedures;

(iii) Testing of new and modified programs shall be performed and documented prior to implementation;

(iv) A record of the final program or program changes, including evidence of user acceptance, date in service, programmer, and reason for changes, shall be documented and maintained.

(5) Computer security logs, if generated by the system, shall be reviewed by EDP supervisory personnel for evidence of:

(i) Multiple attempts to log-on, or alternatively, the system shall deny user access after three attempts to log-on;

(ii) Unauthorized changes to live data files; and

(iii) Any other unusual transactions.

(c) If remote dial-up to any associated equipment is allowed for software support, the gaming operation shall maintain an access log which includes:

(1) Name of employee authorizing modem access;

(2) Name of authorized programmer or manufacturer representative;

(3) Reason for modem access,

(4) Description of work performed, and

(5) Date, time, and duration of access.

(d) Documents may be scanned or directly stored to WORM (''Write Once Read Many'') optical disk with the following conditions:

(1) The optical disk shall contain the exact duplicate of the original document.

(2) All documents stored on optical disk shall be maintained with a detailed index containing the gaming operation department and date. This index shall be available upon request by the Commission.

(3) Upon request by Board agents, hardware (terminal, printer, etc.) shall be provided in order to perform auditing procedures.

(4) Controls shall exist to ensure the accurate reproduction of records, up to and including the printing of stored documents used for auditing purposes.

(5) If source documents and summary reports are stored on re-writeable optical disks, the disks may not be relied upon for the performance of any audit procedures, and the original documents and summary reports shall be retained.

§ 542.17 What are the minimum internal control standards for complimentary services or items?

(a) Each gaming operation shall establish and comply with procedures for the authorization and issuance of complimentary services and items, including cash and noncash gifts. Such procedures shall include, but shall not be limited to, the procedures by which the gaming operation delegates to its employees the authority to approve the issuance of complimentary services and items and the procedures by which conditions or limits, if any, which may apply to such authority are established and modified, including limits based on relationships between the authorizer and recipient, and shall further include effective provisions for audit purposes.

(b) At least weekly, accounting, MIS or alternative personnel that cannot grant or receive complimentary privileges shall prepare reports that include the following information:

(1) Name of patron who received the complimentary service or item if the complimentary service or item exceeds $25.00;

(2) Name(s) of employee(s) who issued and/or authorized the complimentary service or item;

(3) The actual cash value of the complimentary service or item;

(4) The type of complimentary service or item (i.e., food, beverage, etc.); and

(5) Date the complimentary service or item was issued.

(c) The internal audit or accounting departments shall review the reports required in paragraph (b) of this section at least weekly. These reports shall be made available to the tribe, the tribe's independent regulatory body, and the Commission upon request.

§ 542.18 Who may apply for a variance and how do I apply for one?

(a) For this section only, a variance means an internal control standard that differs from and establishes a lesser degree of control than an internal control standard in this part.

(b) A Tribe may apply for a variance in its tribal MICS for Tier A operations if the Tribe has determined that:

(1) The gaming operation is unable to comply substantially with an internal control standard in this part; and

(2) The gaming operation develops a variance that will achieve adequate control for the standard which it seeks to replace.

(c) A Tribe seeking a variance shall submit to the Commission a detailed report which shall include the following information:

(1) An explanation of why the gaming operation is unable to comply substantially with the standard;

(2) A description of the proposed variance;

(3) An explanation of how the proposed variance achieves adequate control; and

(4) Evidence that the Tribe or its independent regulatory body has approved the variance.

(d) A Tier A gaming operation may apply for a variance if:

(1) The Tribe or its independent regulatory body has approved the variance; and

(2) It complies with paragraphs (b) and (c) of this section.

(e) The Commission may grant the request for a variance upon its sole discretion. Variance will not be granted routinely. The gaming operation shall comply with standards at least as stringent as those set forth in this part until such time as the Commission approves a request for a variance.

§ 542.19 Does this part apply to charitable bingo operations?

(a) This part shall not apply to charitable bingo operations provided that:

(1) All proceeds are for the benefit of a charitable organization;

(2) The Tribe permits the charitable organization to be exempt from this part;

(3) The charitable bingo operation is operated wholly by the charitable organization's employees or volunteers; and

(4) The annual gross gaming revenue of the charitable organization does not exceed $50,000; and

(5) The Tribe establishes and the charitable bingo operation complies with minimum standards which shall protect the integrity of the game and safeguard the monies used in connection with the game.

(b) Nothing in this section shall exempt bingo operations conducted by independent operators for the benefit of a charitable organization.

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Part IV

Department of Energy

Federal Energy Regulatory Commission

18 CFR Ch. I and Parts 161, 250, 284

Regulation of Interstate and Short-Term Natural Gas Transportation Services; Proposed Rules

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

[Docket No. RM98–12–000]

Regulation of Interstate Natural Gas Transportation Services

July 29, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing this notice of inquiry to seek comments on its regulatory policies for interstate natural gas transportation services in view of the changes that have taken place in the natural gas industry in recent years. Specifically, the Commission is seeking comments on its pricing policies in the existing long-term market and pricing policies for new capacity.

DATES: Comments are due November 9, 1998.

ADDRESSES: Comments should be submitted to the following address: Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT: Ingrid Olson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208–2015

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, NE, Washington, DC 20426.

Notice of Inquiry

In this Notice of Inquiry (NOI), the Commission is seeking comments on its regulatory policies for interstate natural gas transportation services in view of the changes that have taken place in the natural gas industry in recent years. The Commission is concerned that some of its policies, which were developed for a highly regulated market, need to be reexamined in light of the increasingly competitive natural gas industry. This NOI is broad in scope, and complements the Notice of Proposed Rulemaking in *Regulation of Short-Term Gas Transportation Services*, Docket No. RM98–10–000, (Short-Term Transportation NOPR or NOPR), issued today.

In the NOPR, the Commission is making specific proposals for changes in its regulation of short-term transportation services. The NOPR also addresses several long-term transportation issues that have a direct and significant impact on the short-term transportation policy proposals contained in the NOPR.[1] This NOI continues the Commission's review of its regulatory policies, and seeks comment on whether fundamental aspects of its pricing for long-term service and certificate pricing should be modified to be more effective in today's environment.

In the last several years natural gas markets have changed dramatically. As a result of the decontrol of gas prices at the wellhead by Congress[2] and the Commission's restructuring of pipeline services in Order No. 636,[3] gas markets have evolved from highly regulated markets to markets largely driven by competition and market forces.[4] Six years ago, pipelines were gas merchants and sold delivered gas to customers at Commission-regulated prices. Today, shippers can buy gas at the wellhead or from gas marketers, trade gas among themselves, and purchase pipeline capacity from marketers and other shippers in the secondary market, as well as from the pipeline. These changes have benefitted gas consumers by providing a wider range of options in pipeline services. These changes also require that the Commission consider whether the regulatory policies that were appropriate in the past, are well-suited to today's more competitive markets.

There are significant differences between short-term and long-term transportation, and they have been affected differently by the unbundling and restructuring of Order No. 636. The effects of unbundling have been more dramatic in the short-term transportation market, where numerous competitive alternatives for shippers have developed. These alternatives include purchasing capacity from the pipeline on an interruptible or short-term firm basis, purchasing capacity released by firm shippers, or purchasing delivered gas from a marketer or third party. This has led the Commission to propose changes to its regulation of short-term transportation in the companion NOPR. There are fewer alternatives in the long-term transportation market, and pipelines therefore retain a greater degree of

[1] As discussed below, in the NOPR, the Commission is proposing to eliminate the term matching cap of the right of first refusal, and is seeking comments on whether it should encourage term-differentiated rates.

[2] Wellhead Decontrol Act, Pub. L. 101–60, 103 Stat. 157 (1989).

[3] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); *order on reh'g*, Order No. 636–A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (November 27, 1992); United Distribution Companies v. FERC, 88 F.3d 1108 (DC Cir. 1996); *cert. denied* Associated Gas Distributors v. FERC, 117 S.Ct. 1723 (1997).

[4] *See, e.g.*, Arthur Andersen & Cambridge Energy Research Associates, *North American Natural Gas Trends*, at pp. 3, 8, 10, 51.

market power over some customers in the long-term transportation market.[5]

The trend in the natural gas industry since unbundling has been toward shorter-term contracts.[6] This places greater risks on the pipeline. Specifically, the long-term risk inherent in pipeline investment is the risk that the pipeline owner will not earn enough revenue during the pipeline's useful life to cover the total cost of the pipeline, including the variable cost of operating and maintaining it and an acceptable return on the investment.

In the past, shippers entered into long-term contracts because under those market conditions, the price risk to shippers associated with a long-term contract, *i.e.*, that the rates would increase during the term of the contract, was balanced by the fact that there was little or no supply risk. In the current market, however, the number of reliable alternatives to long-term pipeline transportation and gas supplies has increased, resulting in discounting of short-term transportation, while many shippers' own markets have become uncertain, due to retail unbundling.[7] Thus, an imbalance of risk between pipelines and shippers has developed in the long-term market, resulting in a bias toward short-term markets on existing capacity. This imbalance of risks has led shippers to be less willing to shoulder the price risk associated with long-term contracts.

While the trend in the industry has been toward shorter contracts, long-term contracts provide important benefits to pipelines and customers. Long-term contracts can provide revenue stability and reduce financial risks to the pipeline. This arguably lowers the pipeline's capital costs, to the benefit of its customers. Long-term contracts also act as an important risk-management tool for shippers, and ensure that there will be sufficient capacity available for release in the short-term market to provide competition for pipeline capacity in that market. Further, with removal of the price cap on short-term services as proposed in the companion NOPR published elsewhere in this issue of the **Federal Register**, long-term contracts offer price risk protection for captive customers.

As the Commission explains in the NOPR, it is concerned that some of its regulatory policies result in a bias toward short-term contracts. Specifically, the Commission states in the NOPR that the five-year matching cap in the right of first refusal and the use of the same maximum rate for service under long-term and short-term contracts result in asymmetry of risk and provide little incentive for a shipper to enter into a long-term contract with a pipeline. If a shipper enters into a long-term contract, it runs the risk that its rates will increase during the term of that contract. It can avoid that risk, and still be guaranteed to receive service indefinitely, by entering into a short-term contract with a right of first refusal.

Therefore, the Commission proposes in the NOPR to eliminate the five-year term-matching cap from the right of first refusal, and seeks comments on whether to encourage term-differentiated rates as a means of removing impediments to long-term contracts. Similarly, one Commission objective in the review undertaken in this NOI is to assure that the Commission's policies do not provide an artificial disincentive to long-term contracts, but are neutral with regard to long-term and short-term contracts.

The Commission's review undertaken in this NOI, however, is broader in scope, and is also directed at ensuring that the Commission's regulatory policies in general provide the correct incentives in the context of the realities of today's natural gas transportation market. This task is complicated by the fact that the realities of this market may vary from region to region or market to market, and the Commission's policies must be suited to a variety of circumstances.

For example, when long-term contracts expire and are not renewed, capacity turnback may be a problem on some pipelines or in some markets.[8] On the other hand, it has been projected that demand for capacity will increase in the future.[9] This indicates that market conditions may vary from market to market, and that while, in some markets, demand may be shrinking, and capacity turnback may be a consequence, in other markets, demand may be growing and expansions of capacity may be needed. These changes are likely to occur at the same time and no single development is likely to characterize the whole natural gas market. The Commission wants to ensure that its policies are not biased toward either short-term or long-term service, and provide accurate price signals and the right incentives for pipelines to provide optimal transportation services and construct facilities that meet future demand, but do not result in overbuilding and excess capacity. At the same time, the Commission wants to assure that its policies continue to provide appropriate incentives to producers.

Pricing of Existing Capacity. The Commission's statutory responsibility under the Natural Gas Act is to protect consumers of natural gas from the exercise of monopoly power by pipelines,[10] and to assure that rates for interstate transportation are just and reasonable. The Commission has proposed in the NOPR that removal of the price cap in the short-term transportation market is consistent with these statutory responsibilities. The Commission's proposals for regulatory change in the short-term market are intended to maximize competition in the short-term market, and at the same time protect customers from the exercise of market power.

An important aspect of the regulatory regime proposed in the NOPR is the continued use of cost-based ratemaking in the long-term market as a protection against the pipelines' exercise of market power. If pipelines could charge unregulated rates in the long-term market, then that protection would be eviscerated. Moreover, pipelines continue to be the only source of long-term transportation capacity, and without cost-based regulation for long-term transportation, pipelines would have an incentive to build less than the optimal amount of capacity in order to create scarcity, with the goal of driving up prices and profits. The retention of cost-based regulation for long-term transportation protects customers because it gives pipelines incentives to build new capacity when it is warranted, and thus limits the

[5] *See* Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 70 FERC ¶ 61,139 (1995), 60 FR 8356 (February 14, 1995).

[6] *See e.g.*, Order No. 636–C, 78 FERC ¶ 61,186, slip op. at 26 (1997), 62 FR 10204 (March 6, 1997). As discussed below, the Commission is seeking comments on whether the trend toward shorter-term contracts is a natural result of competition in gas commodity and pipeline capacity markets, or is a consequence of other factors, such as regulatory policies.

[7] *See* ''Future Unsubscribed Capacity,'' AGA LDC Caucus, December 1995, p.1.

[8] *See e.g.*, El Paso Pipeline Company, 72 FERC ¶ 61,083 (1995); Natural Gas Pipeline Company of America, 71 FERC ¶ 61,391 (1995). *See also* ''Future Unsubscribed Capacity,'' AGA LDC Caucus, December 1995. As discussed below, the Commission is seeking comments on the extent to which capacity turnback is likely to be a problem in the future.

[9] The Energy Information Agency (EIA) of the Department of Energy projects an increase in gas demand from 22.0 Tcf annually in 1996 to between 29.4 Tcf and 34.5 Tcf annually in 2020.

[10] *E.g., FPC* v. *Hope Natural Gas,* 320 U.S. 591, 610 (1944)(the primary purpose of the NGA is ''to protect consumers against exploitation at the hands of natural gas companies.''); *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 995 (DC Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988) (''The Natural Gas Act has the fundamental purpose of protecting interstate gas consumers from pipelines' monopoly power.'')

pipeline's ability to profit from withholding capacity by not building. The Commission, therefore, is not extending the proposal to remove the price cap to the long-term market. The Commission will retain cost-based regulation in the long-term transportation market to protect shippers against the exercise of market power by pipelines.

Rates must meet statutory requirements and should, at the same time, provide pipelines with the appropriate incentives to provide optimal transportation services. Ideally, these rates should protect customers from the long-term exercise of market power by pipelines, provide the appropriate incentives for new construction, reasonably ensure the financial viability of pipelines, and provide an adequate incentive for pipelines to operate efficiently. Cost-based rates should be determined in an administratively efficient manner and should be current, predictable, fair, and economically rational. The Commission is evaluating whether its existing pricing policies meet these goals. One purpose of this NOI is to obtain public comment on these objectives and the adequacy of Commission policy in achieving these objectives.

The need to re-examine the Commission's policies affecting long-term markets is even greater now as the Commission proposes in the NOPR to eliminate the price cap on pipeline short-term firm and interruptible transportation, and released capacity. The continued availability of viable regulated long-term recourse services will be one of the primary tools for mitigating the market power of capacity sellers in the short-term markets. The extent to which long-term services mitigate the market power of capacity sellers will depend on how well these services meet the existing and future needs of transportation customers, and thus are worth being purchased as an alternative to the short-term market.

Specifically, the Commission's current long-term pricing policies may be deficient by failing sufficiently to take into consideration long-term factors, focusing instead on short-term data such as test period results and the need to recover each pipeline's revenue requirement from its existing customers each year. This policy focuses on each pipeline's individual situation rather than emphasizing the most efficient pricing for the market as a whole. Further, by failing to consider the relationship of cost-of-service pricing to the market value of pipeline services, current regulatory policies often result in pipelines with dramatically different cost-of-service rates serving the same markets. In addition, this pricing policy assumes that as long as customers eventually receive refunds, prices can remain in effect for several years, subject to refund, without adversely affecting the customers or the market as a whole. All these aspects of the Commission's cost-of-service regulatory model may not reflect the realities and needs of the industry today.

The Commission is interested in exploring whether the current pricing policy may have played a role in price distortions in the California and Chicago markets and, if it did, whether it could lead to similar distortions in other Midwestern and Eastern markets in the near future. In the California market, Transwestern Pipeline Company [11] and El Paso Natural Gas Company (El Paso) [12] faced significant turnback of long-term firm capacity at the same time that Mojave Pipeline Company, Kern River Gas Transmission Co., and Pacific Gas Transmission Company (PGT) were constructing additional pipeline capacity to serve the California market. Because of the capacity turnback, El Paso filed to increase its rates to fully recover its annual revenue requirement from its remaining customers. In addition, El Paso argued for a higher return on equity because its business risks had increased. The Commission accepted this increase, subject to refund.

While El Paso, Transwestern, and the parties eventually worked out settlements, the high subject-to-refund rates remained in effect for a significant period. Thus, while the parties avoided the direct ramifications of the Commission's current pricing method, *i.e.*, the shifting of all unrecovered costs to the captive customers, El Paso charged high unreviewed rates pending final resolution before the Commission.

PGT, on the other hand, was fully contracted under long-term contracts. Thus, under the Commission's current pricing method, PGT was able to have relatively low rates while still recovering its Commission-authorized annual revenue requirement. Having relatively low rates placed PGT in the position of receiving requests for additional service which it had to refuse. PGT's solution to this was to expand its system to meet the additional demand for service and roll-in the cost of the expansion into its existing rates to minimize the rate impact on its expansion customers.

A similar sequence of events occurred in the Chicago market with Natural Gas Pipeline Company's turn-back rate filing [13] and the Northern Border expansion. In both instances, the Commission's policies permitted pipelines unable to retain sufficient capacity reservations to increase rates to captive customers, while permitting fully-booked and low-priced pipelines to build expensive expansion facilities that had a higher unit average cost than the average cost of the existing facilities serving the market. The Commission is seeking comments on whether its policies contributed to these price distortions, and, if so, whether and how its policies should be modified to avoid these types of price distortions in the future.

As discussed more fully below, the Commission is seeking comments on whether a type of cost-based ratemaking other than its traditional cost-of-service method may be more appropriate in today's market. Specifically, the Commission seeks comments on whether index rates or incentive rates may now be appropriate as the primary rate-setting methodology. In addition, the Commission seeks comments on whether, if traditional cost-of-service ratemaking is retained, modifications to the traditional method would result in improvements. For example, should there be changes in the straight fixed variable (SFV) rate design preference, the discount adjustment policy, or rate of return policies.

Pricing New Capacity. The Commission is also reviewing its policies for pricing of new capacity to assure that they provide the proper incentives for pipelines to build or not build new capacity to meet increased demand. The Commission seeks comments on these issues as discussed below. If price signals are correct, the problem of overbuilding to attract customers from other merchants may be obviated.

I. Pricing Policies in the Existing Long-Term Market

As explained above, the Commission intends to retain cost-based rate regulation for long-term transportation. The traditional cost-of-service rate regulation currently used by the

[11] Transwestern Pipeline Company, 72 FERC ¶ 61,085 (1995). Transwestern faced a turn-back of 457,281 MMBtu. Transwestern did not unilaterally file to increase its rates to reflect the turn-back in this proceeding. Rather, the right to do so was reserved by Transwestern as the explicit option in the event another accommodation could not be achieved.

[12] El Paso Natural Gas Company, 72 FERC ¶ 61,083 (1995). El Paso faced a total turnback of approximately 1,300,000 MMcf from PG&E, SoCal and others.

[13] Natural Gas Pipeline Company of America, 71 FERC ¶ 61,391 (1995). Although Natural noted that 3.6 Bcf of contracts were due to terminate, its rates reflected only 600,000 MMBTU of turn-back. *See* 73 FERC ¶ 61,050 (1995).

Commission is one type of cost-based ratemaking methodology, but there are other types of cost-based ratemaking, such as index rates or incentive rates. The Commission is reviewing its current cost-of-service ratemaking methodology to determine whether changes to that methodology could result in better price signals and contracts which would strengthen the long-term market.

First, the Commission is considering whether cost-based ratemaking options, other than the traditional cost-of-service model, would be more appropriate in today's market. As discussed below, the Commission is considering several types of index rates, that are based on factors other than only the pipeline's costs and volumes, such as the supply and demand characteristics of the market being served. Second, the Commission is considering whether, if traditional cost-of-service regulation is retained, modifications to the current methodology would result in improved rate regulation. Specifically, the Commission is considering whether it should reevaluate its preference for SFV, whether it should change its current discount adjustment policy, whether it should adopt a policy that shippers with long-term firm contracts should be guaranteed fixed rates, and whether the Commission should allow pipelines to recover any of the costs associated with unsubscribed capacity.

The Commission seeks comment on the specific pricing options discussed below, as well as other aspects of its current rate policies not specifically discussed here that commenters believe may aid in the Commission's deliberations. In addition, the Commission seeks comment on whether the trend toward shorter-term contracts is a natural consequence of competition in natural gas markets, including state retail unbundling programs, or whether it is contributed to in part by the Commission's pricing policies. In addition, the Commission seeks comment on whether there is a substantial basis for its concern that movement away from long-term contracting will have negative consequences.

A. Other Cost-Based Options

1. Index Rates

Index rates may be more responsive to changes in economic conditions, and may provide incentives for pipelines to cut costs and be efficient because they will not have to share those benefits as a result of a rate case.[14] Index or benchmark adjustments to effective rates can avoid much of the regulatory costs and delay involved in resolving cost-of-service, throughput, and capacity issues in a general rate case, although they require data collection and analysis to establish the index or benchmark adjustment. Also, to the extent that current conditions in the gas industry result in a pipeline's inability to recover its cost-of-service, establishing rates based upon an index or benchmark may be of value. There are a number of ratemaking methodologies based upon an index.

In Order No. 561,[15] the Commission adopted an index method of ratemaking for oil pipelines that uses the producer price index for finished goods and an industry cost-based efficiency adjustment to modify existing just and reasonable rates. The oil rule retains a traditional cost-of-service option for special circumstances. The Commission requests comments on whether a similar method for establishing index rates could be used for gas transportation rates, and whether any of the other types of indexes discussed in Order No. 561 should be considered. Specifically, the Commission seeks comments on whether there are differences in the gas industry that make use of such an index to set gas pipeline rates inappropriate, and whether it is significant that the makeup of the entities holding capacity on gas pipelines may be changing to more closely resemble oil pipelines, *i.e.*, more capacity held by pipeline affiliates. Also, the Commission seeks comments as to what rates should be utilized from which index or benchmark adjustments would be made.

Another possible index methodology would be one based upon the existing percent of the end-use price that transportation represents in selected competitive markets. Under this type of methodology, once the transportation percentage was determined, the allowable transportation rate would fluctuate with the end-use price in competitive markets, but the percentage itself rarely would be altered. Because there are differing transportation costs for pipelines in the same markets, implementation of this method might be difficult, and the Commission seeks comments on the feasibility and benefits of such a methodology.

Another index methodology would be to establish a rate per 100 miles based upon current construction costs. The index would adjust rates to reflect changes in the costs of construction. One issue here is whether the index should reflect the greatly varying costs of old, largely depreciated pipelines and new pipelines. Several separate rates could be established for different broadly-defined vintage categories. Such an approach could be administratively difficult, and could lead to widely differing rates for pipelines in the same geographic area, and again the Commission seeks comments on the feasibility and benefits of such an approach. The Commission is also interested in receiving other indexing proposals.

2. Incentive and Performance Rates

The Commission has long had an interest in performance-based and incentive regulation. The Commission invites comment on the adoption of performance-based or incentive regulation in light of the gas market developments since implementation of Order No. 636. Incentive rate proposals are intended to result in better service options at lower rates for consumers while providing regulated companies with the opportunity to a fair return. Incentive regulation is not intended for competitive markets. It is intended for markets where the continued existence of market power prevents the Commission from implementing light-handed regulation without harm to consumers. The Commission continues to believe that incentive rate mechanisms have potential to benefit both natural gas companies and consumers by fostering an environment where regulated companies that retain market power can achieve greater pricing efficiency and cost-effectiveness.

In the January 31, 1996 policy statement,[16] the Commission adopted new criteria for evaluating incentive rate proposals. Under this policy, incentive proposals must explicitly state the incentive performance standards, the mechanism for sharing benefits with customers, and a method for evaluating performance under the proposal, as well as state the specific term during which the incentive program would operate.

Although no pipeline has proposed incentive regulation since the Commission modified the requirements in the policy statement on alternatives to cost-of-service regulation, the

[14] On the other hand, because pipelines are not currently required to file rate cases on a regular basis, they may already have adequate incentives to cut costs. However, as discussed below, the Commission is seeking comments on whether it should require pipelines to undergo periodic rate review under section 5 of the NGA. Also, in the NOPR, the Commission is proposing to implement periodic reviews of the rates, terms, and conditions of recourse service rates to ensure that they remain a viable alternative to negotiated terms and conditions.

[15] FERC Stats. and Regs., Regulations Preambles, January 1991-June 1996, ¶ 30,985 (1993).

[16] Statement of Policy and Request for Comments, 74 FERC ¶ 61,076 (1996), 61 FR 4633 (Feb. 7, 1996).

Commission would like to reopen discussion on whether these alternatives might provide a more equitable sharing of cost savings, enhanced incentives for productive efficiency, or greater pricing flexibility to respond to new competitive realities.

At the outset, the Commission seeks comment on whether a performance-based incentive program is appropriate given the conditions of today's natural gas market, and why pipelines have not proposed an incentive rates program? Does the incentive rate program outlined in the Policy Statement provide an adequate frame work for pipelines to propose incentive rates? Should the Commission simply impose incentive rates of its own design? Is the current ability of pipelines to retain cost savings by simply avoiding a Section 4 rate case an adequate incentive to cut costs and innovate services? Does the cost structure of interstate pipelines lend itself to incentive/performance regulation? Is state experience with incentive/performance rates instructive given the fundamental differences in the cost structure of State regulated utilities compared to interstate pipelines, specifically the lack of purchased gas costs for interstate pipelines?

Assuming incentive and performance rates are appropriate, the Commission seeks comment on whether maximum rates should be based on individual pipeline costs exclusively or whether, in an era of growing competition, aggregate industry-wide measures should also be included. The Commission also seeks comment on what performance-based measures might be used to modify pipeline rates of return and how the rates of return should reflect performance. Commenters should also note whether any proposed performance-based or incentive regulation would require changes to currently reported data or additional market-monitoring requirements.

3. Financial Implications of Other Cost-Based Options

In considering the alternative ratemaking methodologies discussed above, the Commission is interested in obtaining comments on the financial impact these alternative methodologies may have on the pipelines. One such implication is the effect on regulatory assets. A regulatory asset is established when companies are provided with assurances that it is probable that they will be able to recover the deferred costs through future rates. Normally, absent a regulatory decision to allow out-of-period recovery of costs, the amounts would have to be expensed in the period incurred.

If some or all of the industry moves away from setting rates on the basis of jurisdictional pipelines specific costs, accounting standards require companies to eliminate from their financial statements all assets recognized solely due to the actions of regulators. Another impact of departing from cost-of-service ratemaking is that no more regulatory assets and liabilities can be created. Instead companies will have to include in net income any expenses/losses incurred and revenues/gains realized in the periods in which they occur.

In light of the above, the Commission seeks information on the following: What difficulties will companies encounter as a result of writing off regulatory assets (*i.e.,* difficulty in paying out its dividends, obtaining new financing, meeting bond coverage requirements)? Can a rate transition plan be devised that would avoid the write-off? What impacts do companies foresee of no longer being able to use special regulatory accounting principles (*i.e.,* the anticipated write-offs of regulatory assets and impairments losses for fixed assets)? How will the Commission's proposals for the short-term market affect pipelines' return or financial condition?

B. Market-Based Rates for Turnback Capacity

Another approach to ratemaking would be for the Commission to retain cost-based ratemaking as the general rule in long-term markets, but authorize market-based rates in certain circumstances, specifically, in the case of turnback capacity. A concern raised by the existence of turnback capacity is how the costs of such capacity can be recovered. One way of pricing turnback capacity would be to establish a two-step process where the capacity would be first offered for sale by the pipeline. If the pipeline could not market the capacity, the capacity could be deemed excess to the market's need and allowed to be priced in the future using market-based pricing principles.

The rationale would be that all existing and potential customers would first have an opportunity to acquire the capacity at a Commission-established cost-based rate, and further, that a pipeline could not be deemed to have market power over capacity that it cannot sell. As part of this approach, the pipeline would be denied the right to raise the price of its remaining contracted capacity to compensate it for any potential cost underrecovery associated with the capacity being priced on a market basis. While initially the capacity would be sold at a discount rate, if at all, this approach would provide pipelines with the opportunity to recover some, or possibly all, of the losses associated with the turnback capacity because, when market conditions changed and there was a demand for the capacity, the pipeline could continue to charge market-based rates for the capacity.

The Commission seeks comments on this proposal and suggestions for its implementation. Specifically, the Commission seeks comments on how long a pipeline should be permitted to charge market-based rates after a change in market conditions. Should the Commission reexamine the market power issue after one contract term, or after one or two years, or some other period? The Commission also seeks comments on the financial implications of this ratemaking option, and whether the financial implications are the same as those discussed in the preceding section.

C. Cost-of-Service Options

In the companion NOPR, the Commission is proposing to remove the price cap in the short-term market and, therefore, there is the need to provide mitigation of potential or actual market power of capacity sellers. As explained above, the Commission believes that the best method of mitigation is to provide Commission-regulated recourse rates to all shippers who desire such rate protection. The Commission is reevaluating the adequacy of the traditional cost-of-service ratemaking as a means of providing such recourse rates. Under the Commission's traditional cost-of-service ratemaking, the pipeline's rates are based on that pipeline's costs and the shippers' usage patterns. Thus, the level of each pipeline's rates is determined in part by the pipeline's costs, the timing of its recovery, and the level of usage of the pipeline. The Commission seeks comments on whether its traditional cost-of-service method continues to be appropriate for natural gas transportation services, and if so, whether the modifications discussed below, either individually or in combination, could result in more efficient and effective regulation.

One possible modification of the current system would be to use the highest available cost-based incremental rate as the system Part 284 open access rate for new customers. In *PG&E,*[17] the Commission determined that when turnback capacity, permanent capacity release, and new expansion capacity become available on a system with

[17] 82 FERC ¶ 61,289 (1998). See also the discussion in section II, *infra.*

incremental rates for similar services, the pipeline and the releasor may price the capacity at the incremental rate. In the *PG&E* case, the rate for the incremental facilities would ''roll down'' over time as more shippers were subject to the incremental rate. The basis for this decision is that a price found just and reasonable for one set of customers is just and reasonable for all subsequent customers receiving the same service.

The Commission seeks comment on whether the highest available cost-based incremental rate should be used as the system Part 284 open access rate for new customers, consistent with the rationale of *PG&E*. This policy would encourage customers to negotiate long-term contracts to ensure that their rates become ''locked in'' over the long term. Comments should also consider the revenue implications of such a policy. In particular, should the higher revenue from the new contracts at the incremental rate be used to offset the costs of unsubscribed capacity on other parts of the system? Or, should the pipeline be allowed to keep the high revenues garnered from the new contracts during the period between rate case filings?

Another ratemaking option would be to establish a maximum rate equal to the pipeline's cost-of-service divided by its capacity, or some fraction thereof, for example, 80 percent. This methodology would have the advantages of protecting captive customers from paying for extensive discounts to other customers, retaining an incentive for pipelines to add customers, and eliminating rate case gaming over throughput and billing determinants. On the other hand, the difficulties in establishing the cost-of-service and the capacity of the pipeline would still remain, and it may be very difficult for some pipelines to recover their costs under this methodology if the capacity fraction is too high. The Commission seeks comment on this approach.

The Commission also seeks comment on the role of periodic rate review in the ratemaking process. The recourse rates are a mitigation measure for the removal of the price cap in the short-term market, and the Commission is concerned that the recourse rate could become ''stale'' and not an adequate alternative to short-term rates. Under current Commission policy, the filing of a rate case is at the discretion of the pipeline. This policy allows the pipelines to time the filing of a rate case to coincide with a test period that maximizes the benefits to the pipeline of a rate increase filing. It can be argued that the period between rate cases represents an opportunity for pipelines to collect what are, in effect, incentive rates. The pipeline has the incentive to cut costs and operate more efficiently as well as to increase throughput over the level on which the rates are based. If it does so, it can reap the benefits of the additional revenue without sharing it with its customers. With pipelines no longer required to come to the Commission for a periodic rate review, the period where a pipeline can operate this way is at the option of the pipeline.

The Commission seeks comments on whether it should require that pipelines undergo periodic rate review under section 5 of the NGA, and if so, how such a requirement should be implemented.[18] Parties may comment on whether Section 5 proceedings can realistically be expected to operate as a substitute for Section 4 proceedings, and whether the collection of Form No. 2 or other data in such a way that the Commission could quickly and routinely identify large cost-of-service and billing determinant discrepancies would facilitate review.

The Commission also seeks comments on whether it should reevaluate its preference for a straight fixed variable (SFV) rate design. Under SFV rates, all the fixed costs of the pipeline service are recovered in the reservation charge. The usage charge recovers only the variable costs. While SFV rates have furthered the Commission's goal of achieving a national transportation grid, SFV has had other effects that may have contributed to the trend toward short-term contracts and capacity turnback. Shippers may be unwilling to sign long-term contracts when such contracts require a commitment to pay large reservation charges for a long period of time. This reluctance may be greater in this time of transition when LDCs are unsure how retail unbundling will affect their future capacity needs. Shippers may be unsure whether they can recover the majority of their costs in the release market. Thus, SFV rates may encourage some shippers to opt for short-term contracts to cover only peak periods, weakening long-term markets and thus the mitigation power such long-term markets are expected to provide to recourse shippers. The Commission seeks comments on how well SFV suits the needs of the market and whether it is unduly hampering the marketability of long-term firm contracts.

On June 26, 1998, the Public Service Commission of the State of New York (New York) filed a petition[19] asking the Commission to institute a rulemaking proceeding to determine whether changes in natural gas markets require the Commission to revisit its preference for the SFV rate design, and, if so, what changes in Commission policy are appropriate. New York advocates a shift away from SFV, and asserts that such a shift would promote development of a competitive transportation market. New York does not propose any particular alternative to SFV, but recommends that the Commission require pipelines to employ a rate design that recovers some or all of their fixed costs in the usage component of the two-part rate. The concerns raised by New York[20] are similar to the issues raised by the Commission's discussion above. These issues should be discussed by commenters in this docket.

The Commission is also seeking comments on whether it should change its current discount adjustment policy. The discount adjustment permits pipelines to shift revenue recovery from discounted transportation to customers who do not receive discounts. The Commission seeks comments on whether discount adjustments unfairly affect captive customers, and generally create unnecessary rate uncertainty for non-discounted customers. Parties may address whether permitting discount adjustments will be consistent with negotiated rates and terms and conditions; what would be a reasonable limit on a pipeline's ability to recover discounts; whether an absolute prohibition on recovering discounts would be fair, workable, and efficient; and what other types of rate

[18] In the NOPR, the Commission is proposing to implement periodic reviews of the rates, terms, and conditions of recourse service rates to ensure that they remain a viable alternative to negotiated terms and conditions. The review discussed here in this NOI would be broader in nature, and the Commission envisions that this review could involve review of all the pipeline data relevant in a section 4 rate case.

[19] Petition of the Public Service Commission of the State of New York for Rulemaking Proceeding Regarding Rate Design for Interstate Natural Gas Pipelines, Docket No. RM98–11–000.

[20] Specifically, New York states that the SFV rate design shields high cost pipelines from competition from low-cost pipelines because it provides for the collection of fixed costs through the demand charge regardless of throughput. In addition, New York states, as long-term contracts expire, the high reservation charge under the SFV rate design may reduce the marketability unsubscribed turnback capacity. New York argues that permitting parties to negotiate rates that deviate from SFV, while requiring recourse rates to be based on SFV, creates an unjustified rate disparity between customer groups, and allows pipelines to exercise market power over captive customers. Further, New York asserts that a move away from SFV may reduce the need for discounting, and would also discourage inflated equity ratios. New York states that Commission rate design policies should be harmonized with state retail access initiatives, and that it is concerned that SFV reservation charges may discourage the entrance of new suppliers to the retail markets.

mechanisms could be substituted for the current discount adjustment to improve the current practice.

The Commission seeks comments on other specific possible modifications to its cost-of-service ratemaking, as well as any other areas that could be reexamined, including the affect of the various options on a pipeline's ability to achieve a reasonable rate of return.

D. Other Pricing Issues

Several other aspects of the Commission's rate regulation in the long-term market are under review regardless of whether the Commission adopts any of the options discussed above. The Commission also seeks comments on whether it should consider changes in the policies discussed below.

1. Fixed Rates for Firm Contracts

Currently, long-term firm contracts usually do not equate to fixed rates, and this tends to discourage long-term contracting, weakening the long-term market. Absent a fixed-rate contract, firm shippers are offered long-term commitments with price uncertainty. Rates can increase during the term of the contract due to increased costs, including increases in the pipeline's operating costs, rate of return, or diminished demand for capacity. Rates can also increase if expensive new capacity is rolled into the existing rate base without sufficient increases in throughput to offset the cost of the facilities. Currently, with few exceptions, shippers cannot reduce their firm capacity holdings until their contracts expire, even if the price charged for that capacity increases substantially.

The possibility that rates can increase unpredictably during the contract term creates risk. This undermines the value of long-term contracts as a way to mitigate future price risk and discourages long-term contracts. While pipelines are permitted to negotiate customer-specific rates under the Commission's negotiated rate program, it is unclear whether this program provides workable rate certainty or whether this opportunity is available on all pipelines.

In the companion NOPR, the Commission is proposing to allow pipelines and shippers to negotiate terms and conditions of service within certain limits. The Commission requests comments on whether this service flexibility, coupled with existing authority to negotiate rates addresses this concern. Also, the Commission seeks comments on whether the Commission should adopt a policy that with firm contracts shippers should have fixed rates. Specifically, the Commission is seeking comments on what changes to the cost-of-service should be reflected in rates for existing firm contracts, i.e., whether changes in physical plant, taxes, operations and maintenance expenses, and related items should be allowed to affect firm contract rates. The Commission is also seeking comments on whether, in the alternative, this should be left as a contracting matter between the pipeline and its customers. The Commission is also considering whether it should allow existing pipelines that negotiate fixed-rate, long-term contracts to shift future cost increases to other customers, and seeks comments on this issue as well.

Another option would be to permit shippers to reduce their firm capacity if the pipeline increased the reservation charge or, if the Commission moves away from the SFV rate design, any part of the rate. Comments should address pipeline cost recovery issues as well as the rate impact of these proposals.

2. Costs Associated with Unsubscribed Capacity

Even if the Commission changes its regulatory policies for short-term and long-term transportation, there may be cases where the rates will not recover the embedded costs of the pipelines' facilities. The Commission seeks comments on whether it should allow pipelines to recover some or all of these costs, and if so, what approach to adopt.

As discussed above, one approach would be to authorize market-based rates for unsubscribed capacity. Another method could be to follow the lead of the electric industry and impose a non-bypassable access charge on transportation customers.[21] This charge would be independent of the volumes the shipper placed on the system or grid. This could be applied on a system-by-system basis, or on a grid basis. Another method would be to institute a volumetric usage charge designed to recover the fixed costs of the system. This would be similar to ''uplift charges'' as discussed in the electric ISO filings.[22] A third possible method would be to allow pipelines to bank costs, such as depreciation expenses, for future recovery. A fourth possible method would be to permit pipelines to design rates based on less than the total pipeline capacity.

The comments should address these options, and any others, as well as how, as a practical matter, these methods could be implemented. In addition, the Commission is seeking comments on whether capacity turnback is a significant problem in long-term transportation markets, and whether it is likely to be a problem in the future, particularly in light of some projections for the growth of the gas market.[23]

II. Pricing Policies for New Capacity

Some of the discussion above would apply to new capacity as well as to existing capacity. There are, however, issues unique to the pricing of new capacity, and new capacity presents an opportunity for pipelines and customers to balance appropriately the risks associated with the cost of new facilities. Problems resulting from asymmetry of risk between shippers and pipelines in the long-term transportation market[24] that can lead to a bias favoring short-term contracts can be avoided with regard to new pipeline capacity if the issue of allocation of risk is resolved properly before the pipeline is built. The best time to settle the allocation of risk for the costs of new capacity is before construction, and it is crucial to allocate risk and potential rewards at that time. Those who bear the risks should stand to receive the rewards for the risks taken.

A well-balanced policy could help avoid creation of new capacity with unbalanced risks and returns. A well-coordinated certification and pricing policy should also provide proper incentives for pipelines to invest in new facilities that are needed to meet increased demand, and avoid problems of excess capacity that may be caused by construction of facilities to compete for existing market share. In addition, pricing and certification policies should provide incentives to producers so that sufficient quantities of gas will be produced, and to consumers of gas, so that the choice of gas is an economically viable option. The proper incentives to all the parties in the gas market will benefit the market as a whole. For these reasons, the Commission seeks comments on certain issues specifically related to the pricing of new capacity.

A. Risk Allocation

The Commission is seeking comments on whether and how to encourage pipelines and customers to negotiate pre-construction risk and return-sharing

[21] *See e.g.*, Pacific Gas & Electric Co., 77 FERC ¶ 61,204 at 61,794&n.5 (1996); Order No. 888, slip op. at 271.

[22] *See e.g.*, New England Power Pool, 83 FERC ¶ 61,045, slip op. at 22–25 (1998).

[23] The Energy Information Agency (EIA) of the Department of Energy projects an increase in gas demand from 22.0 Tcf annually in 1996 to between 29.4 Tcf and 34.5 Tcf annually in 2020.

[24] See the discussion in the companion NOPR.

agreements. Customers could commit to life-of-the-facilities contracts, fairly short-term contracts, or anything in between. Short-term contracts involve greater risks for the pipeline as to total cost recovery of the new facilities, and this should be reflected in the parties' contract. Pre-construction negotiations and resulting contracts should appropriately and specifically balance risks and return regarding such matters as what price should be paid for early contract termination and cost collection if the term of the contract is less than the life of the facilities.

However, if pipelines and customers do not agree on the allocation of risk and return, the Commission seeks comments on whether it should decide the issue before construction, and not change the risk allocation in later rate cases unless extraordinary circumstances exist, or not approve the construction. Specifically, the Commission seeks comments on what action, if any, the Commission should take to ensure rate and contract certainty for customers and pipelines. Should this include guarantees against future rolling-in of costly expansions, future changes in O&M expenses, or any other future changes? The Commission is also seeking comments on the advantages (or disadvantages) of allowing pipelines and customers to negotiate pre-construction risk and return-sharing agreements.

B. Rate Treatment for New Capacity

The Commission's pricing policy, *Pricing Policy For New and Existing Facilities Constructed by Interstate Natural Gas Pipelines* (Pricing Policy Statement), [25] is intended to minimize pre-construction risk by providing pipelines and their customers with as much up-front assurance as possible about how new capacity will be priced so they can make informed decisions about the amount of capacity to build and to buy. In the Pricing Policy Statement, the Commission adopted a presumption in favor of rolled-in rates when the rate increase to existing customers from rolling-in the new facilities is 5 percent or less and the pipeline makes a showing of system benefits. [26]

In *PG&E Transmission, Northwest Corporation* (*PG&E*), [27] the Commission announced a new policy for rate treatment of permanently released capacity, and new expansion capacity. Prior to the *PG&E* order, each of these types of capacity was subject to different pricing policies. Turnback capacity was usually priced at the system Part 284 rate. Release capacity was priced at the maximum stated rate for the released service. New expansion capacity was priced pursuant to the Pricing Policy Statement, either rolled-in or incremental depending on a variety of factors, including the 5 percent impact test. However, in *PG&E*, the Commission determined that when permanently released capacity, and new expansion capacity become available on a system with incremental rates for similar services, the pipeline and releasor may price the capacity at the incremental rate. The rationale of that decision can also apply to turned back capacity.

This policy has significant implications for long-term pricing. First, *PG&E* has created a uniform pricing approach for unsubscribed and unwanted capacity. Second, the pricing level chosen by the Commission is a form of replacement cost, or incremental cost pricing. This approach effectively limits the pricing differences between generations of customers to the term of their contracts. The rates for new capacity and services establish the higher rate; over a period of time, the system rate effectively rolls into and decreases the higher rate. Older services' rates are stabilized to reflect the deals that were struck at the time. As the contracts gradually expire and the lower cost pre-expansion capacity is included in the new system (formerly incremental) rate, that rate will decline, eventually becoming the rolled-in rate if no other expansions occur.

The Commission also seeks comments on the interrelationship of its at-risk policy and the *PG&E* policy. Although the *PG&E* policy provides clear market benefits, it may raise other issues with respect to incrementally-priced, at-risk pipelines. By permitting pipelines to charge new or renewing shippers on existing pipeline facilities the higher incremental rate, it could be argued that the pipelines are being permitted to place some of the economic risks of the new facilities onto those new or renewing shippers. In other words, if the new incrementally-priced facilities are underutilized, the pipeline would be permitted to mitigate its unrecovered costs through the rates charged to the new or renewing shippers on the existing pipeline.

On the other hand, there are benefits to the *PG&E* policy. One benefit is that it creates a strong incentive for customers to sign long-term contracts. Only through long-term contracts could customers be assured of locking-in the pricing associated with a given vintage of pipeline capacity. Once their contracts expire, customers would need to reacquire capacity at a potentially newer and higher priced vintage. The Commission seeks comments on whether the Commission's *PG&E* policy should be applied to at-risk pipelines.

C. The Effects of Depreciation on Long-Term Pricing

An appropriate depreciation rate for new facilities is established as part of the initial rate in a certificate case, and is, therefore, generally an issue related to new capacity, although a depreciation rate may be reviewed and changed in a later rate case.

In the past, within the context of a highly regulated environment, the Commission based the utility assets' economic depreciable life on the physical life of the asset, and recommended the straight line method of depreciation for allocating the assets' costs to periods benefitted. As changes in the industry occurred, it was evident that other factors, such as obsolescence due to new processes and techniques, environmental constraints, and competing markets were driving the determination of the economic depreciable life of pipeline facilities, and the Commission based the depreciable life on the useful life of the asset.[28] More recently, in initial rate cases for newly constructed facilities, the Commission has tended to equate economic life to the terms of the pipelines' long-term transportation contracts in setting depreciation rates for initial rates in the certificate process.[29] In this scenario, the life of the new facility is established by the contract term so that the new plant would be fully depreciated by the end of the contract.[30] This method, however, is not used in section 4 rate cases.

The physical lives of pipeline facilities can be over 40 years, and the economic lives as approved by the Commission in individual cases have generally been at least 20–25 years. However, current contracted terms may be as short as 10 years. Where the depreciation rate is based on contract term, initial customers ultimately pay the entire asset's costs in higher rates over a shorter period of time, even

[25] 71 FERC ¶ 61,241 (May 31, 1995).

[26] In the discussion of New Capacity Certification Issues above, the Commission has raised the question of whether this policy should apply where the facility is constructed to serve an affiliate.

[27] PG&E Transmission, 82 FERC ¶ 61,289 (1998).

[28] *See e.g.*, Memphis Light, Gas and Water Division v. FPC, 504 F.2d 225 (D.C. Cir. 1974).

[29] Tennessee Gas Pipeline Company, *et al.*, 55 FERC ¶ 61,484 (1991), approving depreciation rate based on the length of the contract with the shippers for whom the facilities were constructed.

[30] Of course, as noted above, the depreciation rate may be reviewed and changed in subsequent rate cases.

though the asset will physically provide benefits for longer than the initial contract term and to other customers.

This policy gives prospective shippers an opportunity to influence a significant part of their rates (*i.e.*, the depreciation component) by their choice of contract length. Continuation of this policy, or a broader application of it, could also help resolve the ''need'' issue discussed below by encouraging a greater shipper commitment before capacity is built. The Commission could both encourage longer term contracting for new capacity and shelter existing ratepayers from capacity turnback by declaring that new pipeline costs are fully recoverable over the contract term that supports its construction. However, on the other hand, such a policy could make the rates too high to make the project economically viable, and also results in a situation where later ratepayers would not pay any depreciation component for use of the facilities.

The Commission seeks comments on what criteria it should use to determine a depreciation period and rate for ratemaking purposes. Parties may address some or all of the following questions.

Given that the industry will stay in a partially cost-based rate regulated environment (*i.e.*, for determining recourse rates), on what criteria should the Commission base a depreciation rate? Would customers be willing to sign up for life-of-the-facilities contracts, thus promoting long-term service? Is it fair to require initial customers who sign up for less than the life-of-the-facilities contracts to pay for all costs of the asset over that shorter term since future customers may use and benefit from the facilities? If the initial customers are unwilling to pay the full costs, should the pipeline be built?

If use of the economic life is more suitable to foster fairness between new and existing customers, how should the economic life or benefit period be determined? Should the economic life be viewed as the expected period of time customers will use the asset or should it be viewed as the known period of time that customers contracted for using the asset? What amount of depreciation, if any, should be allocated to short-term services? What criteria should be used to make this determination? Will the criteria be sufficiently objective to avoid claims of cross-subsidization? How should depreciation be treated when some of the rates are market-based? To what extent does depreciation flexibility aid pipelines having cost recovery problems? Lastly, how should capacity be priced after it has been fully depreciated by its first generation of customers?

For cost-of-service purposes, these questions are not easily answered. For general purpose financial accounting and reporting, the Commission has required pipelines to depreciate facilities over their economic useful life and record regulatory assets and liabilities for the differences between ratemaking depreciation and accounting depreciation.[31] What are the implications of different depreciation rates for cost-of-service rate purposes versus accounting purposes if some portion of pipeline rates is not based on traditional cost-of-service ratemaking? Will pipelines be able to continue to record the difference as a regulatory asset or liability? What about income tax related issues?

V. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues discussed in this notice of inquiry, and any related matters or alternatives that commenters may wish to discuss. An original and 14 copies of comments must be filed with the Commission no later than November 9, 1998. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM98–12–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

Additionally, comments should be submitted electronically. Commenters are encouraged to file comments using Internet E-Mail. Comments should be submitted through the Internet by E-Mail to comment.rm@ferc.fed.us in the following format: on the subject line, specify Docket No. RM98–12–000; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number and E-Mail address of a contact person; and attach the comment in WordPerfect® 6.1 or lower format or in ASCII format as an attachment to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions or comments on electronic filing using Internet E-Mail should be directed to Marvin Rosenberg at 202–208–1283, E-Mail address marvin.rosenberg@ferc.fed.us.

Commenters also can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM98–10–000 on the outside of the diskette.

By direction of the Commission.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–20996 Filed 8–10–98; 8:45 am]

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[31] See Kern River Gas Transmission Company, 58 FERC 61,073; Mojave Pipeline Company, 58 FERC 61,074 (1992); Florida Gas Transmission Company, 62 FERC 61,024 (1993), Order Granting and Denying Rehearing and Granting Clarification FERC 61,093 (1993); TransColorado Gas Transmission Company, 67 FERC 61,301 (1994), Order Granting in Part and Denying in Part Rehearing and Granting Clarification, 69 FERC 61,066 (1994); Sunshine Interstate Transmission Company, 67 FERC 61,229 (1994); and Mojave Pipeline Company, 69 FERC 61,244 (1994), Order Granting Rehearing in Part, Denying Rehearing in Part and Modifying Prior Order, 70 FERC 61,296 (1995).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161, 250, and 284

[Docket No. RM98–10–000]

Regulation of Short-Term Natural Gas Transportation Services

July 29, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing an integrated package of revisions to its regulations governing interstate natural gas pipelines to reflect the changes in the market for short-term transportation services on pipelines. Under the proposed approach, cost-based regulation would be eliminated for short-term transportation and replaced by regulatory policies intended to maximize competition in the short-term transportation market, mitigate the ability of firms to exercise residual monopoly power, and provide opportunities for greater flexibility in the provision of pipeline services. The proposed changes include initiatives to revise pipeline scheduling procedures, receipt and delivery point policies, and penalty policies, to require pipelines to auction short-term capacity, to improve the Commission's reporting requirements, to permit pipelines to negotiate rates and terms of services, and to revise certain rate and certificate policies that affect competition.

DATES: Comments are due November 9, 1998.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC, 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208–2294

Erica Yanoff, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208–0708

Ingrid Olson, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. (202) 208–2015.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, NE, Room 2A, Washington, DC 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202-208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, La Dorn System Corporation. La Dorn Systems Corporation is located in the Public Reference Room at 888 First Street, NE, Washington, DC, 20426.

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Notice of Proposed Rulemaking

Five years have passed since Congress, in the Wellhead Decontrol Act, completed the decontrol of natural gas prices. Six years ago the Commission, in Order No. 636, unbundled the purchase of gas from the purchase of gas transportation. Since then, the natural gas market has changed from a largely regulated market to one increasingly driven by market forces. In order to continue to fulfill its statutory duties to ensure just and reasonable rates in the rapidly evolving gas market of today, the Commission has engaged in a comprehensive, critical examination of the regulatory assumptions and procedures that it has been using to determine whether other regulatory approaches would better fit the needs of this changing marketplace.

Since Order No. 636, the natural gas marketplace has fundamentally changed. Active short-term markets have begun to develop. Shippers are trading gas at market centers on a daily or sometimes an intra-day basis with prices varying from day-to-day. Prior to Order No. 636, the majority of contracts were long-term with less price volatility. As local distribution companies (LDCs) unbundle the gas commodity from transportation, new players, such as electric cogenerators, industrial end-users, and small businesses (such as restaurants) are entering the gas marketplace with gas and transportation needs different from those of the LDCs that previously transported and sold the majority of gas. Increasingly, LDC unbundling is even bringing homeowners into the gas marketplace. These new entrants often use marketers or other facilitators to arrange for their gas supplies on a delivered basis.

The use of transportation capacity also has changed. Before Order No. 636, shippers could acquire transportation only from the pipeline. They could buy gas from the pipeline at the city-gate either on a short-term or long-term basis, acquire long-term firm capacity from the pipelines, often with 20-year contracts, or purchase short-term interruptible capacity. In today's market, shippers have additional options. They can acquire capacity from other firm capacity holders through the capacity release market. They also can obtain capacity indirectly by purchasing gas bundled with transportation from producers, marketers, or aggregators for one delivered price (often called a gray market sale).

The changes in the short-term market have caused the Commission to closely examine its regulatory structure to see whether it provides a good fit with the developing short-term market. The Commission has received comments on the impact of these changes through a number of proceedings, among them a prior Notice of Proposed Rulemaking (NOPR) on the secondary market,[1] a request for comments on whether pipelines should be permitted to

[1] Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,520 (Jul. 31, 1996).

negotiate terms of service,[2] and an industry conference on issues and priorities in the gas industry.[3]

Upon review of the changes in the market and the comments it has received, the Commission is concerned that its current regulatory approach, which relies on a constant maximum rate in the short-term market, may not be the best approach in light of the variability in pricing in the short-term market. Due to the variability in transportation value, the current approach may not provide the best protection against the exercise of market power during peak and off-peak periods. Or, the protection it does provide may come at the expense of a more efficient capacity market during peak periods, when shippers are most in need of a market that works efficiently.

The Commission recognizes that despite all the competitive improvements in the short-term market, the short-term market still may not be fully competitive. Thus, the Commission must continue to have a regulatory presence in the short-term market to protect against the exercise of market power and undue discrimination.

The Commission is, therefore, proposing in this NOPR a different approach for regulating the short-term transportation market which is designed to permit the market to function efficiently while continuing to protect shippers against the exercise of market power. This approach has a number of objectives. It is designed to improve competition in short-term markets by facilitating the trading of capacity, so that shippers will have a larger number of capacity alternatives from which to choose. By expanding options, it seeks to help reduce the number of captive customers. Additionally, it seeks to provide the opportunity for greater flexibility in pipeline contracting practices so that pipelines can design services that better meet the needs of existing and new players in the gas marketplace.

The proposal uses different regulatory structures for short-term and long-term markets. Long-term transportation prices (i.e., transportation of one-year or longer) would continue to be regulated under a cost-based regulatory regime to protect against the exercise of pipeline monopoly power. For short-term transportation services, however, cost-based regulation would be eliminated. In its place, the Commission proposes to regulate the short-term market through regulatory policies that are intended to maximize competition in the short-term transportation market, to mitigate the ability of firms to exercise residual monopoly power, and to improve the ability of market participants and the Commission to monitor the market for exercises of monopoly power or undue discrimination. The goal of this approach to the short-term market is to ensure that the Commission's regulatory policy does not inhibit competitive market forces from creating efficient capacity markets, while still providing captive customers and others with protection against the exercise of market power in the transportation market.

Specifically, to maximize competition (which is the best protection against the exercise of market power) the Commission is proposing in this NOPR to revise pipeline nomination and scheduling procedures, and flexible receipt and delivery point policies so that capacity release can compete on a more equal footing with pipeline capacity. To further mitigate the exercise of market power and the potential for undue discrimination, the Commission is proposing to require that all short-term capacity be sold through capacity auctions. To improve shippers' and the Commission's ability to monitor the marketplace the Commission is proposing changes to its reporting requirements. To improve competition across the pipeline grid, the Commission is making proposals to change pipeline penalty procedures so that penalties, although necessary to deter conduct inimical to system operations, do not unnecessarily limit shippers' competitive alternatives.

At the same time, the Commission recognizes that changes in the short-term market also influence shippers' decisions in the long-term market. For example, the value of long-term capacity lies in the guarantee of capacity at a relatively stable price as compared with buying capacity at the more volatile short-term price. Long-term contracts, therefore, are a means by which shippers and pipelines can manage the risks inherent in the short-term market.

To foster greater innovation in pipeline services and to permit pipelines and shippers to better allocate the risks of long-term contracts, the Commission is proposing to allow pipelines' greater flexibility in negotiating contracts with individual shippers, subject to criteria that will protect captive customers against the risk of undue discrimination. Further, to create a more efficient marketplace, regulatory policies should not affect the allocation of risk between acquiring short-term or long-term capacity. As part of this integrated package, therefore, the Commission is proposing changes to some of its policies governing long-term contracts to ensure that these policies do not unfairly bias shippers' contracting decisions. The Commission also is considering whether changes to its policies regarding authorization for new construction are needed so that these policies do not unnecessarily limit competition.

The Commission recognizes that the impact on the long-term market of the changes in the short-term market go beyond the proposals outlined above. Therefore, in a Notice of Inquiry (NOI) issued contemporaneously with this NOPR, the Commission asks for additional comment on the future direction of its policies for pricing of long-term capacity.

I. Reexamination of the Transportation Market

A. The Developing Short-term Market

Natural gas markets have developed rapidly since wellhead price deregulation and unbundling of pipeline merchant and transportation services. In many ways, the gas market performs very well, without the loss of reliability that many feared when Order No. 636 was being contemplated.[4]

Gas commodity markets have arisen, along with market mechanisms to enable consumers to manage price risk for the gas.[5] There are monthly and growing daily spot markets for gas supplies which enable shippers not only to buy their own gas supplies at the wellhead, but to trade gas among themselves on a daily or even more frequent basis. Many of these spot markets are organized around market centers that facilitate trading of gas across pipelines as well as providing a variety of new services, such as storage, wheeling, parking, lending, electronic gas trading, and tracking of gas title

[2] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 FR 4633 (Feb. 7, 1996), 74 FERC ¶ 61,076, at 61,242 (1996).

[3] Issues and Priorities for the Natural Gas Industry, PL97–1–000 (conference held May 29–30, 1997).

[4] *See* Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, Order No. 636, 57 FR 13267, FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,408 (Apr. 8, 1992), Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,570 (Aug. 3, 1992) (concerns about providing transportation service equal in reliability to bundled sales service).

[5] *See* S. Walsh, A Hot (and Cold) New Investment Opportunity, Washington Post, July 4, 1998, C12 (Business) (discussing development of new weather derivative to enable companies to hedge against abnormal weather patterns).

transfers.[6] Active forward markets also have developed to enable gas consumers to hedge against price risk. The New York Mercantile Exchange (NYMEX) launched its natural gas futures contract in 1992, and it is very heavily traded.

Along with the development of a more liquid commodity market, shippers' transportation options have expanded. In the past, shippers could purchase capacity only from the pipeline and had, for the most part, only two transportation choices: long-term firm capacity or interruptible service. Pipeline offerings have expanded as well, with pipelines offering short-term firm transportation service, pooling,[7] hub services,[8] parking and loan services,[9] and both short-term and long-term storage services.[10]

Non-traditional players also have entered the capacity market, so that today firm shippers holding pipeline capacity include electric utilities (21% of total pipeline firm capacity), industrial end-users (5%), marketers (17%), pipelines (7%), and others, including producers (6%) in addition to the traditional LDCs (44%). While many of these shippers still hold pipeline contracts longer than a year, short-term firm contracts are rising in significance. Among the shipper groups, marketers are the largest users of short-term capacity, with over three-quarters of the total.[11]

In today's market, shippers also have the added option of buying firm capacity released by other shippers in a variety of ways (such as on a fixed, or volumetric basis, or with other release conditions, including provisions for handling capacity recalls). Since its inception in 1992, capacity release transactions have been growing dramatically.[12] For instance, the amount of capacity held by replacement shippers for the 12 month period ending March 1997, totaled 7.4 quadrillion Btu, a 22% percent increase over the previous 12 month period and almost double the level for the 12 months ending March 1995.[13] While the amount of capacity held by replacement shippers declined during the heating season, EIA reports it still represents a sizable amount.[14] Despite the growing use of released capacity, interruptible pipeline service also continues to be a viable service option, maintaining a relatively constant share of throughput.[15] As in the case of released capacity, EIA reports that interruptible service is available during the heating season.[16]

In addition to acquiring capacity from pipelines and releasing shippers, purchasers in the short-term market have other capacity options. Implicit in the Commission's decision to unbundle the gas commodity from transportation was a recognition that the market would develop so that customers who did not want to assume the responsibility of purchasing or transporting their own gas could purchase delivered gas from marketers or third parties with the marketer providing all or a portion of the needed transportation, for example to a nearby market center.[17] Capacity rights holders can now sell gas as a commodity in downstream markets at market-based prices.

Further, as a result of Commission initiatives, the gas industry, through the Gas Industry Standards Board (GISB), has developed standards that make it easier to move and trade gas on individual pipeline systems and across pipeline systems.[18] These standards establish a daily, along with an intra-day, nomination schedule which permit shippers to adjust their nominations to conform to changes in weather and other circumstances. The Commission recently adopted GISB standards providing for three intra-day nomination opportunities.[19] These standards also significantly enhance shipper flexibility, for example, by giving shippers the ability to aggregate gas supplies from numerous sources in a pipeline pool for nomination purposes and by allowing shippers to assign priority rankings to gas packages.

These changes, operating together, have changed the character of short-term markets. Five years ago, most gas was purchased during bid week under monthly contracts and transportation was arranged at the same time on a monthly basis. Transactions occurring outside of bid week were unusual and were referred to as the aftermarket. Today, daily markets for gas and capacity are developing rapidly. Shippers now trade gas on a daily or even an intra-day basis at various market centers and pipeline interconnect points or at pipeline pooling points. For example, at pipeline interconnect points or at pools, there may be repeated sales of the same gas between producers and marketers before the gas is scheduled for transportation. As described in a recent proceeding, shippers can use pooling to effectuate gas exchanges (pool to pool transfers) as a means of enhancing supply and pricing options and of market hedging.[20] For example, a shipper may buy gas from a pool as insurance against a change in its system requirements and then sell that gas to another pool if the load does not develop in its market.

Shippers also can take advantage of trading opportunities by making daily or intra-day changes to their gas nominations to react quickly to changing weather, changing prices or supply sources, or other circumstances. For instance, a shipper that loses a supply source can submit an intra-day nomination to change its receipt point for gas so that it can purchase gas from an alternate supply source. The reports in trade publications of daily gas prices at delivered markets are further evidence of the increasing scope of the developing short-term market.[21]

The developing gas market, however, is in some respects still in its infancy and there are still impediments, both regulatory and non-regulatory, to the

[6] Department of Energy/Energy Information Administration, Pub. No. DOE/EIA–0560(96), Natural Gas 1996 Issues and Trends, Chapter, The Emergence of Natural Gas Market Centers (1996).

[7] *See* Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996) (requiring pipelines to provide pooling services).

[8] *See* Moss Bluff Hub Partners, 80 FERC ¶ 61,181 (1997) (firm storage and interruptible hub services); Egan Hub Partners, L.P., 77 FERC ¶ 61,016 (1996) firm storage and interruptible hub services).

[9] *See* Mojave Pipeline Company, 79 FERC ¶ 61,347 (1997); Colorado Interstate Gas Company, 83 FERC ¶ 61,273 (1998).

[10] *See* Koch Gateway Pipeline Company, 66 FERC ¶ 61,385 (1994) (firm and interruptible storage); New York State Electric Gas Corporation, 81 FERC ¶ 61,020 (1997) (issuing certificate).

[11] Department of Energy/Energy Information Administration, Pub. No. DOE/EIA–0618(98), Deliverability on the Interstate Natural Gas Pipeline System 88–89 (1998).

[12] *Id.* at 82 (representing about 16% of the gas delivered for market).

[13] *Id.* at 83.

[14] *Id.* at 85–86 (2,960 trillion Btu from November to March 1996–97).

[15] *Id.* at 85 (about 16% of total throughput for the 12 months ending March 31, 1997).

[16] *Id.* at 87 (2,000 TBtu moved during heating season).

[17] *See* Order No. 636, FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,410.

[18] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), III FERC Stats. & Regs. Regulations Preambles ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), III FERC Stats. & Regs. Regulations Preambles ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

[19] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–H, 63 FR 39509 (Jul. 23, 1998), 84 FERC ¶ 61,031 (July 15, 1998).

[20] El Paso Natural Gas Company, 81 FERC ¶ 61,174, at 61,760 (1997) (approving a limit on pool to pool transfers because pipeline could not handle the volume of transactions under new scheduling timeline).

[21] *See, e.g.*, Gas Daily, March 2, 1998, at 1–2; Natural Gas Intelligence, Jan. 5, 1998, at 4; Natural Gas Week, Jan. 12, 1998, at 12, 17, 20–21.

development of a well-functioning market. Price information, which is crucial to a well-developed market, could be improved. While the Commission requires the posting of information on capacity release transactions, posting of pipeline discount transactions occurs well after-the-fact and cannot be used by shippers to make daily market decisions. Moreover, it is difficult for shippers to obtain accurate information about delivered gas transactions or the value of transportation inherent in such transactions. Shippers are left to personal communication or trade publications to determine prices at receipt and delivery points. Acquiring market information through personal communication is time consuming and expensive, particularly for small customers who would have difficulty canvassing a large enough number of sources to obtain sufficient market information. Each trade publication uses different reporting methods. Some mix long and short-term transactions and some report price ranges while others report averages, and most do not report quantities traded.

Also, capacity markets are fragmented. Different regulatory rules apply to pipeline sales of interruptible and firm capacity, capacity obtained through release transactions, and capacity used as part of delivered gas transactions. For example, the nomination and scheduling procedures and rate regulation differ among pipeline capacity, released capacity, and delivered gas transactions. In addition, different rights may apply depending on the type of capacity a shipper tries to acquire. Shippers purchasing released capacity from certain firm shippers may have to rely on alternate receipt or delivery points, and the use of such points are sometimes restricted by pipelines' tariffs.

All of these factors increase the shippers' transaction costs by increasing the difficulty and risk of doing business in the short-term market. Absent good price and capacity information, shippers cannot easily compare capacity alternatives or obtain full, comparable information about the alternatives available at any time. This inhibits their ability to make informed decisions about acquiring gas and capacity and prevents them from finding the best gas and capacity deals available. These costs may be particularly meaningful for small customers, who do not have the time and resources to unearth, through personal contacts, the information they need to make informed choices.

In the developing short-term market, market forces impact regulated services. The growing emphasis on daily transactions means that customers are more concerned with the daily price of transportation capacity. For example, many short-term decisions are based on the delivered price for gas (including transportation) on a daily basis. Often narrow differences in delivered prices may affect shippers' decisions.

The existence of a market price for gas at all points along the pipeline grid has created a market-driven value for transportation between receipt and delivery points. In effect, the implicit value of transportation between two such points is the spot price of gas at the delivery point minus the spot price of gas at the receipt point.

This market driven value can fluctuate widely on a daily basis. As shown in the following example, many such valuations remain near zero for long periods of time, only to rise during periods of peak demand. On this illustration, the market-driven value of transportation represents the difference between the spot price for gas at the upstream hub in Louisiana and the delivered price for gas in the New York downstream market. In other words, the price for delivered gas in the downstream New York market reflects the spot price for gas at the upstream hub plus the value of the transportation needed to deliver the gas to the downstream market. The market value of transportation can then be compared with the cost-based, regulated maximum interruptible rates for the three pipelines transporting from Louisiana to New York (represented by the dotted lines).[22]

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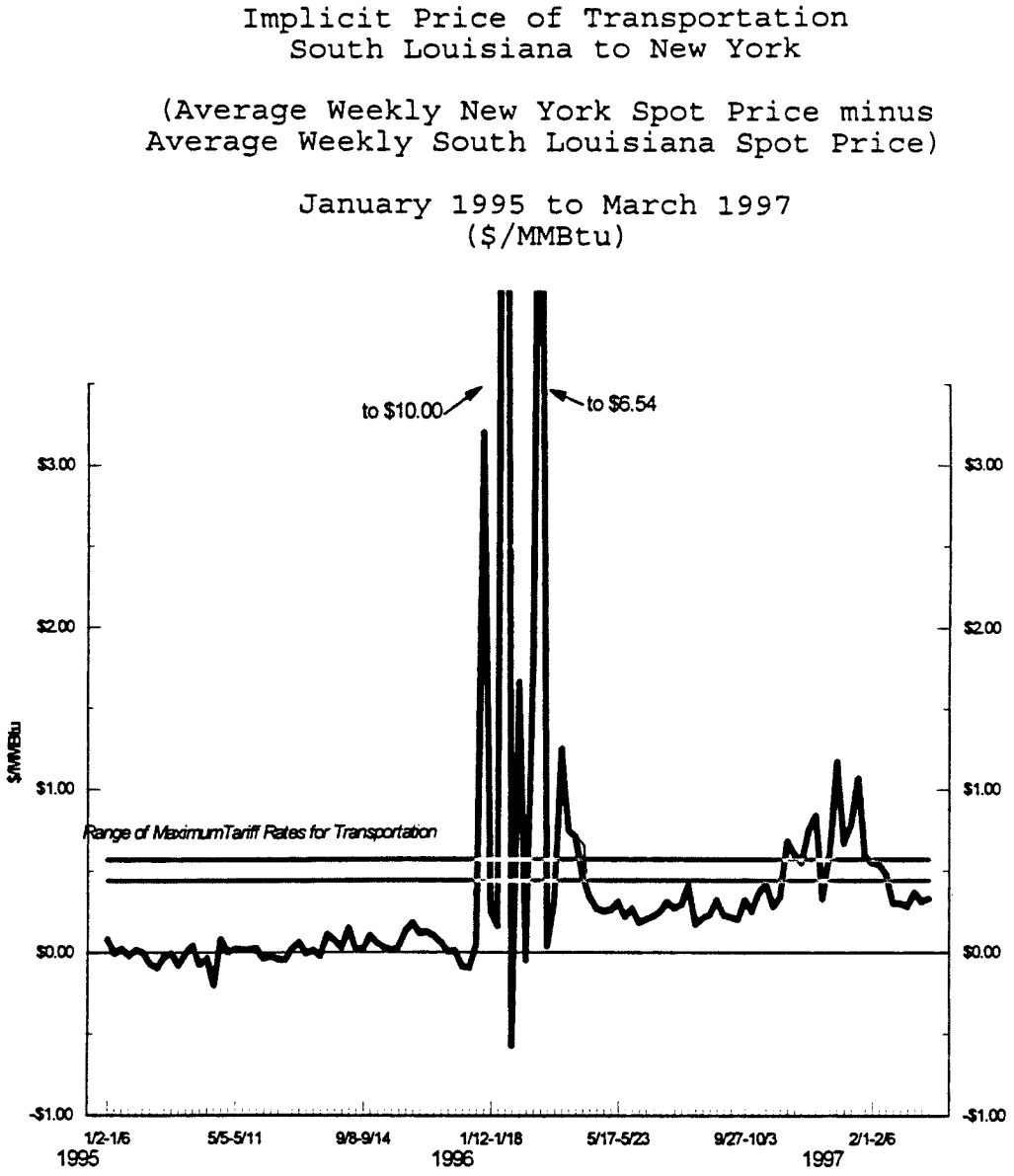
[22] The source for the spot price data is the Gas Daily Weekly Weighted Average Prices ($/MMBtu). The source for the maximum interruptible tariff rate is from PIPELINE Grid published by the Petroleum Information Corporation Logistics Solution. The range of tariff rates includes the interruptible rates from Columbia Gas Transmission Corporation ($.45/MMBtu), Tennessee Gas Pipeline Company ($.57/MMBtu), and Transcontinental Gas Pipe Line Corporation ($.44/MMBtu).



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This illustrates that the value of transportation during the peak winter period of 1995–1996 rose to $10/MMBtu (20 times the maximum daily tariff rates of between $.44 and $.57/MMBtu) and during the 1996–1997 winter to over $1/MMBtu (2 times the maximum tariff rate). During non-peak periods, the value of transportation was uniformly below the maximum daily tariff rate. While the illustration may not portray precise transportation values,[23] it nonetheless does provide a picture of the fluctuation in transportation values over time.

The fluctuation of transportation values raises questions about whether the Commission's current rate policies are attuned to the realities of the developing short-term market. The Commission currently establishes a daily maximum rate for pipeline services and capacity release by taking the pipelines' annual rate and converting it to a daily rate (by dividing the yearly rate by 365). But this single rate does not reflect the variability of daily pricing in the short-term market. While the $10 value during the 1995–1996 may not be repeated, transportation values during the next winter were double the maximum rate.

These data on delivered prices, and derived transportation values, do not establish either the presence or absence of market power. Delivered markets for gas can, and probably do, coexist with the continued exercise of market power over transportation. Pricing by a pipeline with market power would exhibit the same pricing variability as shown in the illustration, with higher prices during periods when demand is greatest. Also, even though prices during off-peak periods are below the maximum rate, that does not guarantee that market power cannot be exercised.

The existence of a delivered market does not, in and of itself, establish that the market is operating efficiently. Regulatory impediments, such as poorly designed penalty structures or the maximum rate cap, may create transaction costs, reducing market efficiency and raising prices. The price

[23] For instance, gas from markets other than Louisiana may have affected delivered prices in New York, and the data contain unexplained anomalies, such as transportation values of less than 0, indicating that the price of gas was lower in New York than at the receipt point in Louisiana. During that time, either no gas moved from Louisiana to New York or, if gas did move, the markets were not clearing properly or the price data were not accurate.

cap, for instance, can create a disincentive for firm capacity holders to make capacity available for release during peak periods, because the capacity holder is unable to realize the market value for its capacity. This can create a less efficient market by depriving other shippers of the ability to obtain capacity when they place a greater value on the capacity than the shipper holding it.[24] The buyer's alternative is to try and purchase delivered gas. But the market for delivered gas may not be as efficient as giving the buyer the added option of purchasing transportation capacity in an open and transparent market in which the buyer can decide for itself whether it obtains greater value by purchasing delivered gas or using its own gas contracts and obtaining transportation separately.

In sum, the short-term market is changing, with greater emphasis on daily transactions and daily prices for the gas commodity both at origin and delivered markets which vary with demand. The constant maximum rate approach to regulation does not appear to fit well in this new fast-paced market and may result in a less efficient market, with increased transaction costs. Yet, market power over transportation continues to exist and must be addressed.

B. Implications for Commission Regulatory Policies of the Changing Nature of Short-term Markets

The development of active commodity markets at both ends of the pipeline poses a significant challenge to the Commission's traditional method of rate regulation. The current maximum rate provides some regulatory protection for shippers during peak periods, because it prevents pipelines from exercising monopoly power at least to the extent that shippers cannot be charged prices above the maximum rate. Even during off-peak periods, the maximum rate provides some protection because it protects some shippers against discriminatory prices that might otherwise exceed the cap. During off-peak periods, some shippers still place a high value on moving gas, and the price cap limits the price such shippers can be forced to pay. Moreover, the Commission permits pipelines to price discriminate (at prices below the maximum rate) during off-peak periods to provide benefits to captive customers who hold long-term firm contracts. The added revenue the pipeline generates by selectively discounting helps to reduce the reservation charges owed by the captive firm shippers.[25]

As the short-term market continues to grow, maximum rate regulation in the short-term market may become an increasingly more ineffective method of regulating the short-term market. Maximum rate regulation may not provide shippers with the most effective protection against the exercise of market power. Moreover, the protection it does provide may come at too great a cost in efficiency.

The rate cap may, for instance, result in misallocation of capacity where those shippers placing the greatest value on the capacity are unable to obtain it. During peak periods, pipelines can only sell capacity which is not under contract or used by those shippers holding firm capacity. Thus, a pipeline may have little capacity to sell on a peak day. Even if the pipeline did have capacity to sell, a particular shipper placing the highest value on the capacity may be unable to obtain that capacity. Under current Commission rules, when demand for capacity exceeds the supply available, and all shippers bid the maximum rate, the pipeline awards its capacity using a queue based on contract execution date or on a *pro rata* basis. In either case, the shipper placing the greatest value on the capacity may not obtain capacity or not obtain as much capacity as it needs and for which it is willing to pay.

The shipper's other alternative is to try to obtain capacity from firm capacity holders, but in this market the price cap may not provide much protection to the purchasing shipper. The price cap applies to released capacity. But, the price cap has little effect on delivered gas transactions, in which the transportation value may exceed the maximum rate.

There is little hard empiric evidence on how extensive the delivered market is, but the existence of delivered gas transactions during peak periods suggests that, due to the price cap, capacity holders with available capacity will choose to use that capacity to make delivered transactions, where the profit opportunity is greater, rather than releasing the capacity, where the price is capped. In addition, a pending proceeding raises the question whether shippers have developed other methods for avoiding the maximum rate that are difficult to detect and prevent on a systematic basis.[26]

Attempting to regulate the transportation component of delivered gas transactions would be difficult. But even if this market could be effectively regulated, it is not clear that such regulation would be beneficial. If capacity transactions could not occur above the price cap, then, as described above, capacity would not be allocated efficiently; those customers most needing gas during peak periods would be unable to obtain the gas they need and the market would not clear efficiently.

In addition, as described earlier, the price cap may reduce the efficiency of the delivered gas market itself by raising transaction costs, thus resulting in higher delivered prices. Because unbundled sales of capacity by releasing shippers cannot be made above the maximum rate, the market may not operate in as open, transparent, or efficient a manner as is possible. Information for delivered gas is not publicly posted and shippers relying on word of mouth may not be able to easily locate all available sources of transportation. The difficulty of locating potential sellers and obtaining accurate price information may lead some customers to pay higher than necessary prices.[27] For instance, during the winter of 1996 when gas prices rose dramatically, while the market worked well to prevent shortages and ensure that customers received gas, it could have worked more efficiently. According to the trade press, the delivered prices for gas in Chicago on the same day ranged from $20.50 to $46.00 per MMBtu.[28] In an efficient market, one would not expect such a wide differential in prices, but would expect transactions in the same market to clear at roughly similar prices. The Commission seeks input from the industry on whether the price cap creates transaction costs and prevents

[24] *See* Mary L. Barcella, How Commodity Markets Drive Gas Pipeline Values, Public Utilities Fortnightly, Feb. 1, 1998, 24, 25 (price cap limits shippers' incentive to release capacity and can result in shutting out other shippers needing capacity).

[25] During off-peak periods, the pipeline can price discriminate by offering discounts to some customers that are greater than those offered to other customers. This practice brings in more revenue than the pipeline would earn if it could only charge the same price to all customers. The additional revenue benefits the firm capacity holders because, in the pipelines' rate case, the increased revenue reduces the reservation charges firm shippers might otherwise pay. *See Associated Gas Distributors* v. *FERC* (D.C. Cir. 1987) (selective discounting by a monopolist justified on equitable grounds because it would reduce captive customers' contributions to fixed costs).

[26] Consumers Energy Company, 82 FERC ¶ 61,284 (1997). *See* Inside FERC's Gas Market Report, December 1, 1995, at 14 (discussing various methods of avoiding the price cap).

[27] For example, in the automobile market, the time and expense of comparison shopping may result in some customers paying higher prices than others.

[28] *See* Gas Daily, February 2, 1996, at 1.

the development of an efficient short-term market.

Maximum rate regulation may have an unintended effect by reducing the capacity available during peak periods, the time at which the industry would most benefit from having as much pipeline capacity available as is possible. As a result of the maximum rate cap, firm capacity holders may not find it sufficiently profitable to make their capacity available. It may be that due to state restrictions not all local distribution companies (LDCs) may be able to make delivered gas transactions off-system. Thus, they may not make capacity available during peak periods if they cannot receive the market price for their capacity.

For instance, an LDC might have a peak shaving capability (storage or liquified natural gas (LNG)) that costs more to operate than the maximum transportation rate. The LDC might be willing to release its transportation capacity and use the peak shaving device instead if the price it could receive for pipeline transportation exceeded its cost to operate the peak shaving device. By using its peak shaving device instead of transportation, the shipper would be expanding the amount of transportation capacity available for resale during a peak period. But if the price cap prevented the shipper from obtaining a price higher than the cost of turning on the peak shaving device, and the shipper could not sell the gas on a delivered basis, the shipper would use its transportation capacity, thus depriving other shippers (without peak shaving) of the opportunity to acquire needed transportation capacity. Thus, maximum rate regulation may actually reduce the amount of pipeline capacity available for sale during peak periods. A restriction on the amount of available capacity would cause peak period prices to be higher than they would be without the cap. Comments should address whether the price cap has these effects and whether it does significantly limit the amount of capacity available in the short-term market.

Maximum rate regulation during peak periods also may increase shipper imbalances and penalties. During peak periods, penalties affect the value of transportation.[29] In a cold snap, a shipper may be willing to pay a penalty for overrunning its contract demand to obtain the gas it needs. If that shipper faced a $100/MMBtu penalty, it might be willing to pay any amount for capacity up to $100 to avoid the penalty. For example, if the value of capacity in an efficient market were $80, the shipper willing to pay a $100 penalty would be better off by $20 if it obtained capacity instead. But, as described above, the price cap may reduce the efficiency of the marketplace, limiting the shipper's ability to obtain the capacity it needs. The shipper, therefore, may choose to overrun its contract demand and pay the penalty. In this situation, the price cap may result in increasing shipper imbalances, thereby increasing the penalty revenue paid to pipelines, and perhaps decreasing the reliability of the system.

During off-peak periods, the maximum rate cap does not affect the efficiency of the market because market values do not appear to reach the maximum rate ceiling. The rate cap, however, may not provide sufficient protection against the exercise of market power. During off-peak periods, pipelines and releasing shippers are not required to sell available capacity at prices less than the maximum rate.[30] By limiting the supply of capacity during off-peak periods, pipelines or releasing shippers may be able to charge monopoly prices because even a monopoly price may be less than the daily maximum rate. Since pipelines are permitted to price discriminate at rates below the maximum rate, they may charge shippers, at least those without other choices, higher prices than would prevail in an efficient competitive market. Although the Commission has permitted pipelines to price discriminate by discounting below the maximum rate, it may be that the benefits for captive customers holding long-term transportation contracts come at too great a cost to other shippers or that the benefits even to captive customers no longer warrant continuation of this policy.

In summary, the interface between the regulated and unregulated sectors of the gas industry has become much more complicated in the last five years. Regulatory policies that worked well in one market setting may not work as well today. For this reason, the Commission is reassessing its current policies and proposing changes.

II. Proposed Change in Regulatory Approach

The Commission's regulatory policies must be attuned to the realities of the market it is regulating. As became clear during the period when wellhead prices were regulated, consumers receive little benefit from artificially low regulated prices if such prices distort the market and create shortages so consumers cannot acquire gas when they most need it.[31] Moreover, in fashioning regulatory policies, it must be recognized that market power varies over a continuum between perfect competition at one end of the continuum and a single firm monopoly with impenetrable entry barriers at the other. Thus, a regulatory approach appropriate for pure monopoly markets may not be the best method for regulating the markets where market power, while not absent, may be partially disciplined by market forces.

The changes to the short-term market raise the question of whether the Commission needs to change its regulatory philosophy. Prior to unbundling, maximum rate regulation in the short-term market was more effective, because the short-term market essentially was limited to the pipelines' interruptible transportation service.

However, as the short-term market continues to develop, the continuation of maximum rate regulation in the short-term market may become increasingly troublesome. First, maximum rate regulation, by its very nature, inefficiently allocates capacity because those shippers placing the greatest value on capacity may not be able to obtain it. Therefore, during peak periods, when the market is under the most stress, the rate cap may result in a less efficient and more opaque market in which shippers cannot acquire capacity they need or must pay higher prices for delivered gas than would have prevailed in a more efficient short-term market. Second, maximum rate regulation may not be the most effective tool for preventing the exercise of market power, particularly for transactions during off-peak periods. Thus, while the ostensible goal of Commission regulatory policy is to protect shippers against the exercise of monopoly power by the pipelines, the current system of maximum rate regulation may no longer be the best method for meeting this goal.

[29] *See* Industry Surveys the Damage as Winter's Strength Runs Out, Natural Gas Intelligence, April 22, 1996, at 1, 4 (penalties started to be a real factor in determining the price of gas in the Midwest).

[30] *See* El Paso Natural Gas Company, 83 FERC ¶ 61,286 (1998) (pipeline not required to discount below the maximum rate); *Southern California Edison Company* v. *Southern California Gas Company*, 79 FERC ¶ 61,157 (1997), *reh'g denied*, 80 FERC ¶ 61,390 (1997) (no requirement that pipelines or shippers offer discounts below the maximum rate).

[31] See *Transcontinental Gas Pipe Line Corporation* v. *State Oil and Gas Board*, 474 U.S. 409, 420 (1986) (Natural Gas Act's artificial pricing scheme is a major cause of imbalance between supply and demand); Atlantic Refining Company v. Public Service Commission of N.Y., 360 U.S. 378, 388 (1959) (rate regulation should ensure reasonable rates consistent with the maintenance of adequate service).

A. A Different Model for Regulating the Short-term Market

To respond to the emerging short-term market, the Commission is proposing in this NOPR a change in regulatory focus to better reflect the way in which short-term gas markets function and to do a better job of protecting against the exercise of market power and helping to foster a more competitive commodity market. The Commission, however, recognizes that the ability to exercise market power still exists in the short-term market and, therefore, any regulatory approach it adopts must continue to provide effective protection against the exercise of market power.

To do this, there are several criteria that a regulatory approach must satisfy. It should maximize efficient competition among releasing shippers and between releasing shippers and the pipelines, because competition and efficient markets are the best overall protection against the exercise of market power. It should include policies that will mitigate any residual market power and monitor for its continued exercise. It should fairly balance the interests of those customers that purchase long-term capacity and those who choose to acquire transportation in the short-term market. And, it should promote innovation in service offerings to attract new customers.

The Commission believes its statutory objectives can better be met by a regulatory model that recognizes the distinction between short-term and long-term markets. Therefore, in the short-term transportation market, the Commission proposes to replace the reliance on maximum rate regulation [32] with a regulatory approach focusing on creating competitive alternatives for shippers, developing policies to mitigate residual market power, and monitoring the marketplace for the exercise of market power. In the long-term transportation market, the Commission proposes to continue to rely upon regulated cost-based rates to protect against the exercise of monopoly power by the pipelines. Price regulation for the long-term transportation market will ensure continued protection for captive customers with long-term contracts with the pipeline. It will also help discipline the potential exercise of market power in the short-term market by enabling shippers to purchase long-term capacity at regulated rates.

The Commission fully recognizes that pipelines still possess monopoly power in the transportation market as a result of economies of scale and barriers to entry. This is particularly true in the long-term market where the pipeline may be the only source of capacity. The Commission also recognizes that simply because competition exists for the gas commodity at receipt and delivery points on the grid does not mean that the transportation between all points is necessarily fully competitive.

On the other hand, in the short-term market, the Commission's capacity release and flexible receipt and delivery point policies, together with other market changes such as pooling, hub and market center services, and storage services, have increased the competitive alternatives available to buyers of capacity. While these measures have not resulted in effective competition everywhere throughout the pipeline grid, it cannot be disputed that they have increased the level of competition and reduced the ability of pipelines to exercise monopoly power. Thus, while a regulatory presence is still needed in the short-term transportation market, the Commission may not need to continue to regulate this market as if each pipeline was still a single firm monopoly.

At the same time the Commission is proposing to eliminate maximum rate regulation in the short-term market, it is proposing several initiatives in this NOPR to maximize competition in the short-term market, minimize the potential for the exercise of market power, and monitor the marketplace for the continuing exercise of market power. To maximize the extent of competition, the Commission is proposing a number of measures to create more efficient competition among capacity offerings so that shippers will have more choice in obtaining capacity. The Commission is proposing to create more uniform nominating procedures for released capacity so that it can better compete with capacity from the pipelines and delivered gas transactions. The Commission further is requesting comment on whether changes in regulatory policy are needed to maximize shippers' ability to segment their capacity to provide greater competitive alternatives. To further improve competition in the short-term market across the pipeline grid, the Commission is suggesting potential methods of reforming penalty procedures to ensure that different penalty processes across pipelines do not limit shippers' flexibility in using capacity or otherwise distort shippers' decisions about how best to use capacity.

As an additional measure to mitigate potential market power, the Commission is proposing the use of capacity auctions for all short-term capacity. A properly designed capacity auction can protect against the exercise of market power by limiting the ability to withhold capacity and to engage in price discrimination.

To monitor the marketplace, the Commission is proposing to establish reporting requirements to provide capacity and pricing information to all shippers. This information will have the further benefit of making competition more efficient by providing the pricing information that a competitive market needs for shippers to make informed decisions about their capacity purchases. All of these proposals are addressed in more detail in Parts III and IV of this NOPR.

In addition to these proposals for monitoring the short-term market, the Commission proposes to conduct a generic review of the operation of the short-term market without a price cap after two winter heating seasons.

Because the proposed regulatory approach differs between short-term and long-term services, there is a need to define the period encompassed by each. The Commission is proposing to define short-term transactions as all transactions of less than one year. The Commission has traditionally drawn the line between long-term and short-term transactions at one year.[33] A term of one year corresponds with naturally repeating weather and planning cycles for production, transportation, and storage. A term of one year also corresponds with the period used to calculate long-term rates.

The Commission, however, requests comment on whether a shorter period, such as five months, should be used. If a period of less than one year were chosen, it could either be a discrete period (e.g., November through March) or could refer to any transaction with a term of less than the chosen period. A five month period, for instance, would generally correspond to the length of time of the heating season.[34] The use of a period of less than one year could reduce the outlay that any shipper would have to make in order to buy

[32] Minimum rates would be retained.

[33] 18 CFR 284.221(d)(2) (right of first refusal applies to contracts with a term of one year or more); Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636–A, 57 FR 36128 (Aug. 12, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,950, at 30,627 (Aug. 3, 1992).

[34] In defining short-term for the purposes of capacity release transactions, the industry, through the Gas Industry Standards Board, defined short-term releases as releases of less than five months. 18 CFR 284.10(b)(1)(v), Capacity Release Related Standards 5.3.2.

capacity at cost-based rates to avoid the potential exercise of market power. [35]

B. Legal Basis for the Proposed Regulatory Change

The Commission's statutory responsibility under the Natural Gas Act (NGA) is to establish rates that are just and reasonable and that protect consumers of natural gas from the exercise of monopoly power by pipelines.[36] In addition, the Commission has the obligation, under the Wellhead Decontrol Act, to structure its regulatory framework to ''improve [the] competitive structure [of the natural gas industry] in order to maximize the benefits of [wellhead] decontrol.'' [37]

The courts have recognized that the Commission needs to be able to develop flexible pricing programs that accommodate its regulation to the needs of the marketplace. The Commission is not bound to ''use any single pricing formula'' in determining just and reasonable rates,[38] and cost-based regulation can be relaxed when the overall ''regulatory scheme'' ensures that rates are within a zone of reasonableness.[39] The case law makes clear that flexible rate regulation is permissible as long as, on balance, the benefits of the program outweigh the potential risks, and the Commission takes reasonable measures to protect against the exercise of market power, even though not every transaction would be free of market power.[40] In *Environmental Action* v. *FERC,* the court approved a flexible pricing program, which fostered efficient trading of energy and transmission service, even though the program created a risk that market power could be exercised over captive customers. Given the benefits of effective trading and the protections adopted by the Commission to limit the potential exercise of market power, the court concluded that the Commission acted reasonably in approving the program despite the potential risks.[41]

The Commission believes the model it is proposing satisfies the Commission's statutory obligations by achieving the appropriate balance between the benefits to be garnered from efficient trading in the short-term market and the protection needed against the exercise of market power. As discussed earlier, removing maximum rate regulation from the short-term market provides significant benefits by allowing markets to efficiently allocate capacity in an environment in which cost-based solutions do not accommodate the volatile price changes in the industry.

The potential risk of this approach is that it could give pipelines or shippers greater latitude to exercise market power during peak periods. Although competition clearly has increased in the short-term market, the Commission is not making a finding that the short-term market is sufficiently competitive to satisfy its traditional market power analysis. Nor is the Commission making a finding that the proposals in this NOPR will necessarily create a fully competitive market. Rather, as discussed below, the proposed approach in this NOPR is intended to place effective limits on the ability of pipelines and shippers to exercise market power by enhancing competitive options in the short-term market, mitigating market power by limiting the ability to withhold capacity and price discriminate, and monitoring the marketplace.

The proposed approach should provide benefits to all shippers—both those holding long-term capacity, and those purchasing short-term capacity. Long-term capacity holders would still be protected by the cost-based rate in the long-term market and would benefit by being able to realize the value of their long-term capacity. Shippers relying on the short-term market would not be unreasonably harmed since the proposals in the NOPR are designed to protect them against the withholding of capacity and price discrimination, both during peak and off-peak periods. At the same time, short-term shippers would benefit because the proposals would help to create a more efficient marketplace during peak periods, with capacity allocated to those valuing it most, prices undistorted by regulatory allocation priorities, clearer price signals, and more open, transparent, and efficient capacity allocations. These benefits are fully described below.

The approach proposed here also appears better suited than other potential approaches for responding to the changing dynamics of the short-term market. The Commission, however, requests comment on whether this proposal is the best approach for protecting against market power given the realities of the short-term market. Commenters should address whether the Commission should seek evidence to determine whether it can make a finding that the market is competitive or pursue other regulatory approaches.

1. Protection Against the Exercise of Market Power by Pipelines and Shippers

The Commission's primary responsibility is to protect against the exercise of monopoly power by pipelines. Even under the current maximum rate approach, such protection is not absolute. Pipelines are able to price discriminate below the existing price cap.

The approach proposed here seeks to control the pipelines' exercise of monopoly power in a different way, by enhancing the competition from firm shippers releasing capacity, by requiring pipeline capacity to be sold through an auction that limits the ability to withhold capacity, and by monitoring the marketplace for evidence of the exercise of monopoly power. Moreover, the proposed approach would reduce the ability of pipelines to withhold future capacity (by not expanding their systems) in order to increase price and earn a supra-competitive rate of return. If pipelines sought to limit capacity in order to earn high returns on short-term transactions, shippers could purchase long-term capacity at cost-based rates and capture the profit opportunities in the short-term market for themselves by releasing the capacity. Further, any revenues from short-term sales would be accounted for in the pipeline's next rate case ensuring that the long-term benefits of increased revenue from sales of short-term capacity go to the long-term firm capacity holders. The Commission also could act under section 5 of the NGA in cases where monitoring revealed that

[35] For instance, under a five month definition, the maximum charge a shipper would have to incur to purchase long-term capacity would be the current monthly rate times five.

[36] *FPC* v. *Hope Natural Gas Co.,* 320 U.S. 591, 610 (1944); *Associated Gas Distributors* v. *FERC,* 824 F.2d 981, 995 (D.C. Cir. 1987), *cert. denied,* 485 U.S. 1006 (1988) (''The Natural Gas Act has the fundamental purpose of protecting interstate gas consumers from pipelines' monopoly power.'').

[37] Natural Gas Decontrol Act of 1989, H.R. Rep. No. 101–29, 101st Cong., 1st Sess., at 6 (1989); Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation Under Part 284 of the Commission's Regulations, Order No. 636, 57 FR 13267 (Apr. 16, 1992), FERC Stats. & Regs. Regulations Preambles [Jan. 1991–June 1996] ¶ 30,939, at 30,932 (Apr. 8, 1992).

[38] *Elizabethtown Gas Company* v. *FERC,* 10 F.3d 866, 870 (D.C. Cir. 1993) (approving market-based rates).

[39] *See Farmers Union Central Exchange* v. *FERC,* 734 F.2d 1486, 1509–10 (D.C. Cir. 1984).

[40] *Environmental Action* v. *FERC,* 996 F.2d 401, 408, 411 (D.C. Cir. 1993) (approving flexible pricing program to permit efficient trading of electric power).

[41] As the court stated:

We acknowledge that the flexible pricing that fosters trading among members of the Pool also permits price discrimination especially against captive utilities. Yet, given the benefits of this trading, the limited number of captive members, and the provisions for monitoring transactions and remedying any abuses of market power, we do not find that the Commission acted arbitrarily when it approved the use of flexible prices despite their admitted risk.

996 F.2d at 411.

the market rate is not just and reasonable.[42]

The approach proposed here also can be expected to limit the exercise of market power by firm capacity holders. Releasing shippers face competition from other releasing shippers and from the sale of pipeline firm and interruptible service. Firm capacity holders should not be able to withhold capacity to raise price, because if they do not use their capacity it then becomes available either as interruptible or short-term firm capacity from the pipeline. The proposed auction would then require the pipeline to sell that capacity at a market-determined price. The auction also would limit the ability of firm capacity holders to unduly discriminate. Moreover, the pipelines' ability to build additional capacity is a final protection against releasing shippers' exercise of market power. If the pipeline observes shippers earning high returns from constrained capacity, the pipelines have every incentive to try to capture those returns by building additional capacity to satisfy that demand.

2. Protection for Shippers Relying on Long-term and Short-term Capacity

While the Commission has an obligation to consider the interests of all shippers, its paramount obligation is to protect long-term firm capacity holders that cannot risk going without long-term capacity.[43] Interruptible or short-term shippers, by definition, take the risk that they may be unable to acquire capacity.[44] The proposed regulatory model would protect those shippers holding long-term capacity, while at the same time not putting short-term shippers at unreasonable risk and perhaps even providing them with benefits.

Under the proposed approach, shippers holding long-term capacity would continue to receive the traditional protection accorded them because long-term capacity would still be subject to cost-based regulation. Indeed, removal of the price cap for short-term transactions should benefit long-term capacity holders, because it would permit them to recover more of their reservation charges during peak periods. For those shippers holding long-term contracts that are unable to sell delivered gas, the price cap currently limits their ability to recover their reservation charges by releasing capacity during peak periods when capacity is valuable. On the other hand, during off-peak periods, competition from other releasers or the pipeline may limit a shipper's ability to recover its reservation charges. At the same time, interruptible or short-term shippers benefit from the competition during off-peak periods because they pay prices lower than what the pipeline charged when it was the sole supplier of capacity. Thus, removal of the rate cap would permit long-term firm capacity holders to realize the full value of their transportation capacity during both peak and off-peak periods.

Even if a long-term firm capacity holder is unable to release its own capacity during a peak period, it may benefit if the pipeline can charge competitive rates for peak period capacity. In the pipeline's next rate case, the revenue received from such sales would be used to reduce the reservation charges for firm customers.

Nonetheless, the Commission expects that the proposed regulatory model would not put shippers in the short-term market at unreasonable risk and may even benefit them. These shippers would have the option of buying long-term capacity at regulated cost-based rates, which should help to limit the potential exercise of market power in the short-term market. Pipelines would continue to be required to sell long-term capacity to anyone offering the maximum rate regardless of the rates bid for short-term capacity. Further, to ensure that long-term capacity is available, the Commission would examine closely pipeline refusals to construct taps requested by customers as well as pipeline refusals to construct new capacity when demand for new construction exists.

This model also should work to the benefit of short-term customers during both off-peak and peak periods. During peak periods, the price cap offers only limited protection against the exercise of market power, and may actually create inefficiency which reduces short-term shippers' ability to obtain capacity when they need it. During peak periods, when capacity is constrained, short-term customers currently run a significant risk that they may be unable to obtain capacity from the pipeline even if they place the highest value on that capacity. If they instead seek to acquire capacity through a delivered gas transaction, they receive little protection against the exercise of market power and the price for such gas may be higher than it would be in a more efficient market. By removing the price cap, but at the same time offering initiatives for enhancing competition among capacity alternatives, the approach proposed in this NOPR should be more effective than the current system in creating a transparent and efficient short-term market in which shippers, even on peak, can acquire gas and capacity at efficient market-clearing prices.

During off-peak periods, the rate cap provides little protection against the exercise of market power, because pipelines and shippers are not required to sell capacity at rates below the maximum rate. The proposals for increasing competition and the auction ought to limit the pipelines' ability to exercise market power or price discriminate so all short-term shippers would be paying prices closer to a competitive level.

3. Alternative Approaches for Regulating the Short-Term Transportation Market

The approach proposed in this NOPR appears better suited than other possible methods of dealing with the dynamics of the short-term transportation market.

An alternative approach would be to continue the current maximum rate system, but allow pipelines and firm capacity holders to seek removal of the cap in the short-term market upon a demonstration that they cannot exercise market power. In effect, this approach presumes market power is present and requires the parties to try to predict, through market concentration data or other approaches, whether market power will be exercised if the rate cap is removed. This is essentially the approach the Commission uses with respect to market power in its Alternative Rate Design policy, which focuses on the exercise of market power in the long-term market for pipeline capacity.[45]

The approach of screening for market power is certainly a possible alternative, but it would move the Commission in a direction very different from the one

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[42] *See* Elizabethtown, 10 F.3d at 870 (Commission can use its section 5 authority to assure that market-based rates are just and reasonable); Environmental Action, 996 F.2d at 411 (emphasizing provisions for monitoring market-based rates to protect against exercise of market power).

[43] *See Maryland People's Counsel* v. *FERC,* 761 F.2d 768 (D.C. Cir. 1985); *Maryland People's Counsel* v. *FERC,* 761 F.2d 780 (D.C. Cir. 1985) (remanding special marketing program because it excluded core captive customers); Environmental Action, 761 F.2d at 411 (permitting flexible pricing program even though there was some possibility of discrimination against captive utilities).

[44] *See American Gas Association* v. *FERC,* 912 F.2d 1496, 1518 (D.C. Cir. 1990). The court remanded the Commission's decision to permit pre-granted abandonment of all long-term contracts, because of a concern about the pipeline's ability to exercise monopoly market power over long-term capacity holders. The court, however, found that holders of interruptible and short-term services did not need similar protection against the exercise of pipeline monopoly power.

[45] Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 FR 4633 (Feb. 7, 1996), 74 FERC ¶ 61,076 (1996).

proposed here. The approach proposed here does not rely on a finding of a lack of market power, relying instead on regulatory measures to reduce or limit the exercise of market power.

The market power screen, in contrast, would require the Commission to make a finding of lack of market power in each relevant market. This not only could be a time consuming and daunting task to undertake on an industry-wide basis, but it might have to be repeated periodically as contracts expire or the competitive circumstances on individual pipelines change. The market power screen approach also was developed to isolate market power in circumstances in which the pipeline is the sole source of capacity, and it, therefore, imposes a relatively heavy evidentiary burden on pipelines seeking market-based rates. Such a screen may not be discriminating enough or the most appropriate means of dealing with market power in the short-term market where more competition is clearly present. The use of the traditional market power screen, therefore, might suggest the presence of market power in areas that ought to be found reasonably competitive.

Moreover, in cases where the concentration data do not satisfy the market power screen, the market analysis approach would continue to rely on maximum rate regulation which, as discussed earlier, may not be very effective in protecting against market power in the short-term market and also promotes more inefficient short-term markets. The Commission, however, requests comment on whether a modified version of the market power screen could and should be developed for the short-term market that would be easier to administer and could determine whether market power is a significant problem.

Another cost-of-service option would be to attempt to develop a cost-based, seasonal rate design that would better approximate pricing activity that would occur during peak and off-peak periods. But price swings can be very large on a daily, weekly, or monthly basis, making the development of a rate structure that would accurately reflect competitive market conditions particularly difficult. Moreover, if the price cap is raised high enough to accommodate peak period competitive prices, this approach is little different than simply removing the rate cap, since it would afford firms with market power substantial latitude to exercise that power at prices below the price cap.[46]

Of the regulatory options available, the proposed regulatory model appears to create the best balance between achieving the Commission's objectives of preventing the exercise of market power and creating a regulatory environment that fosters a competitive, efficient commodity market that is fair to all shippers. This approach would free the short-term market from regulatory impediments that prevent the market from responding to the competitive supply and demand forces that may result in competitive prices exceeding the price cap. At the same time, the proposals to increase competition in the short-term market should help to keep the prices for most transactions within reasonable levels. Because firm shippers would be better able to release capacity in competition with the pipelines, the pipelines' ability to exercise market power would be limited. At the same time, firm shippers' ability to exercise market power would be restrained because, if they tried to withhold capacity to raise prices, the pipelines would be required to sell that capacity at market clearing prices. The proposed auction also would restrain the ability of both pipelines and firm shippers to exercise market power and to unduly discriminate in the allocation of capacity. Further, the overall scheme of the proposal limits the pipelines' ability to charge monopoly prices because shippers can discipline the pipelines' exercise of market power by purchasing long-term capacity at cost-based levels.

C. Interrelated Proposals for Regulatory Change

The principal focus of the regulatory changes proposed in this NOPR is on improving efficiency and competition in the short-term transportation market. Yet, the regulation of long-term transportation service is an integral part of the Commission's proposal because continued regulation of long-term services is an important back-stop to protect against the pipelines' exercise of market power. Long-term and short-term transportation services are linked in other ways since the value of purchasing long-term capacity lies in its ability to insure shippers against the risk of price swings in the short-term market. Thus, the changing nature of short-term markets has a concomitant effect on how shippers use the long-term market and, likewise, actions affecting long-term contracts can affect the short-term market. For example, if a pipeline can attract more shippers to its system, the long-term rate will be reduced, which, in turn, would limit the ability of pipelines to raise price in the short-term market. On the other hand, policies discouraging shippers from entering long-term contracts could reduce the extent of competition in the short-term market. Because of the relationship between short-term and long-term services, the Commission also is proposing in this NOPR initiatives to improve competition and innovation in the market for long-term services and to ensure that its regulatory policies in the long-term market do not bias shippers' purchasing decisions.

The Commission is proposing to give pipelines more flexibility in negotiating rates and terms of service with individual shippers. Allowing greater flexibility in contract terms for long-term service can be an important element in the allocation of risk between pipelines and potential customers. Permitting negotiation of services will provide an incentive for pipelines to innovate and create additional value in transportation service.[47] Also, negotiated rates and services may permit the pipelines to attract new customers, which would reduce reservation charges for existing customers.

On the other hand, allowing the pipelines to negotiate individual terms of service creates the possibility of discrimination against captive customers as well as a risk that such terms could degrade competition in the short-term market by limiting the range of capacity alternatives available to shippers. To fully realize the benefits from negotiated services while reducing the risks, the Commission is proposing to permit pipelines and shippers to enter into contracts for negotiated services, while also proposing criteria to protect against the risks of undue discrimination or impairment of the competitiveness of the short-term market.

Further, to ensure that contracting decisions are made efficiently, regulatory policies should not unfairly bias shippers' contracting decisions. Some Commission policies, like the right of first refusal, may well create an asymmetry in the risks facing pipelines and capacity purchasers and bias shippers towards shorter term contracts. The Commission, therefore, is proposing certain changes in regulatory policy to

[46] *See* Environmental Action, 996 F.2d 401 (approving a flexible pricing program for an electric power pool with a rate ceiling based on the most valuable and expensive transportation service).

[47] In unregulated and even in regulated industries, sellers often create innovative service options for individual customers while still providing a basic service to all. For instance, telecommunication firms provide specialized services for small and large businesses while still providing standard service to the public.

eliminate provisions that may tilt shipper decisions towards the purchase of short-term capacity.

The construction of new capacity also affects competition in the short-term market. For instance, the ability of shippers to purchase long-term capacity at cost-based rates is a protection against the exercise of market power in the short-term market. The Commission is, therefore, considering changes in certificate policy so that these policies do not unnecessarily inhibit competition.

In addition, to better reflect the changing nature of services in the short-term market and to consolidate pipeline reporting requirements under Part 284, the Commission is proposing to reorganize Part 284 to put the regulations into a more logical order.[48]

III. Creating Greater Competition Among Short-Term Service Offerings

Increasing competition is the best antidote to market power. As long as buyers have good alternative sources of capacity, no seller can exercise market power, because any attempt to raise price above the competitive level will result in the buyer moving to another seller.[49] Prior to Order No. 636, the pipeline was the only source of both long-term and short-term capacity. The Commission's establishment, in Order No. 636, of the capacity release mechanism has significantly increased competition on most pipelines both between the pipeline and shippers and among shippers themselves.

But there remain means of enhancing competition and improving the substitutability of capacity alternatives. Three such improvements are to make nomination and scheduling procedures more uniform for all short-term services; provide shippers with a greater ability to segment capacity and use alternate receipt and delivery points so transportation alternatives are more comparable; and employ auctions for all capacity to limit the ability of pipelines or shippers to withhold capacity or discriminate. In addition, the Commission is proposing changes to its reporting requirements to ensure that comparable information about pipeline and release transactions is provided. Improved information enables shippers to make more informed capacity choices while it also permits the Commission and the industry to monitor transactions for the potential exercise of market power in the event the Commission's efforts to mitigate market power are not successful. The Commission is committed to take appropriate and timely action in individual cases to deal with the exercise of market power. To this end, the Commission is in the process of considering improvements to its procedures for handling complaints.[50]

A. Nomination Equality

In order to foster a more competitive short-term market, all forms of transportation—pipeline interruptible and short-term firm capacity, released capacity, and delivered sales transactions—must be able to compete on as equal a basis as possible. While there are obviously differences in rights associated with the different types of capacity, the Commission is concerned that differences in nomination and scheduling procedures for capacity release inhibit the ability of capacity release transactions to compete with pipeline capacity. The Commission, however, requests comment on whether the existing differences in nomination and scheduling procedures for capacity release transactions reflect important differences in the nature of the services that should be preserved.

Under current regulations, pipelines can sell their interruptible and short-term services at any time and shippers can schedule such services at the earliest available nomination opportunity. Similarly, capacity holders making delivered sales can nominate and schedule at every available opportunity. In contrast, nomination and scheduling opportunities under capacity release transactions currently are significantly circumscribed.

Under Commission regulations, shippers currently submit their daily nominations at 11:30 a.m. to take effect at 9 a.m. the next gas day. Pipelines presently are required to provide shippers at least one intra-day nomination change after the 11:30 a.m. nomination, although many pipelines provide additional intra-day nomination opportunities. While a pipeline may sell interruptible or short-term firm service and permit the recipient of that service to submit a nomination at the earliest available nomination opportunity, shippers consummating a release transaction must do so prior to 9 a.m. and can only submit a nomination at 11:30 a.m. for the next gas day. They cannot consummate a release transaction later than 9 a.m., nor can the replacement shipper utilize an intra-day nomination opportunity to submit a nomination for the current gas day.

The disparate treatment of capacity release transactions, if left uncorrected, promises to become even more severe as a result of the industry's agreement to enhance intra-day nomination opportunities. In a final rule issued on July 15, 1998,[51] the Commission adopted the consensus agreement of the Gas Industry Standards Board (GISB) to expand shippers' intra-day nomination opportunities by establishing three synchronized intra-day nomination periods across the grid. Under the industry's schedule, the three synchronization times are 6 p.m. (for the next gas day), 10 a.m. and 5 p.m. (for the current gas day). A shipper obtaining short-term firm or interruptible capacity from the pipeline, or making a delivered sales transaction, will be able to submit a nomination at any of these intra-day nomination opportunities. Significantly, however, a replacement shipper cannot acquire released capacity immediately prior to these intra-day nomination times and nominate at these times. The replacement shipper must consummate a capacity release deal by 9 a.m. and must wait a full day before it can flow gas under the release transaction.

In order to place capacity release transactions on a more equal footing with pipeline services, the Commission is proposing, in proposed section 284.13(c)(1)(ii), that pipelines provide purchasers of released capacity, like shippers purchasing capacity from the pipeline, with the opportunity to submit a nomination at the first available opportunity after consummation of the deal. This will enable shippers, for instance, to acquire released capacity at any of the nomination or intra-day nomination synchronization times and nominate gas coincident with their acquisition of capacity.

In some cases, pipelines currently require replacement shippers to pass a credit-worthiness check and execute contracts prior to nominating. Under the proposed regulation, such requirements could not prevent a replacement shipper from nominating when it completes the release transaction. Proposed section 284.13(c)(1)(ii) would provide that a pipeline that requires the replacement shipper to enter into a contract must

[48] The references in this NOPR to proposed regulatory changes are to the new regulatory sections. References to existing regulations are to the existing regulatory framework.

[49] Market power can be exercised in two ways. A holder of capacity may withhold capacity from the market to drive up the price that all shippers pay for the remaining capacity, or it can price discriminate by charging captive customers more than those customers with more alternatives. In either case, however, competition will prevent the exercise of market power.

[50] *See* Compliant Procedures, Docket No. RM98–13–000 (issued contemporaneously with this NOPR).

[51] Standards For Business Practices Of Interstate Natural Gas Pipelines, Final Rule, 63 FR 39509 (July 23, 1998), 84 FERC ¶ 61,031 (Jul. 15, 1998).

issue the contract within one hour of submission of the transaction [52] and that the requirement for contracting must not inhibit the ability to submit a nomination at the time the transaction is complete.

Pipelines have available several procedures which they can use to protect themselves against the credit risk of the replacement shipper. The pipelines can institute procedures under which replacement shippers receive pre-approval of their credit-worthiness or receive a master contract, like those used for interruptible shippers, permitting the replacement shipper to nominate under that contract at any time.[53] For replacement shippers that do not have a master contract, the pipeline could provide a contract number for nominating as soon as the pipeline is notified of the release transaction. For replacement shippers that have not received pre-approved credit, the releasing shipper may agree to be liable for any usage charges incurred by the replacement shipper while the pipeline conducts the credit-worthiness check.[54]

B. Segmentation and Flexibility of Receipt and Delivery Points

1. Background

In Order No. 636, the Commission established two principles that are important to creating efficient competition between holders of capacity and the pipelines: segmentation of capacity and the ability of shippers to use alternative receipt and delivery points. Segmentation refers to the ability of firm capacity holders to subdivide their capacity into segments to enhance the value of the capacity and the capacity holders' ability to compete with the pipeline. In the example used in Order No. 636, a shipper holding firm capacity from a primary receipt point in the Gulf of Mexico to primary delivery points in New York could release that capacity to a replacement shipper moving gas from the Gulf to Atlanta while the New York releasing shipper could inject gas downstream of Atlanta and use the remainder of the capacity to deliver the gas to New York. In order for such a transaction to work, both the releasing and replacement shippers need the right to change their receipt and delivery points from the primary points in their contract to use other available points.

Without the ability to segment and use alternate points, the New York releasing shipper in the example would not be an effective competitor to another shipper holding firm primary point capacity at Atlanta. The ability to segment capacity and use alternate points, therefore, provides a potential replacement shipper who wants to ship to Atlanta with additional capacity options. It can buy from the releasing shipper holding primary point capacity in Atlanta or from the New York releasing shipper or any other shipper holding capacity downstream of Atlanta.

However, under current Commission policies, the ability of the releasing shipper in New York to compete with the pipeline or with the shipper in Atlanta may be limited. Under the Commission's current policies, the releasing shipper in New York only has a secondary delivery point right at Atlanta, which is inferior to the primary point right of the releasing shipper holding primary point rights at Atlanta. In other words, if the pipeline is unable to make both deliveries to Atlanta, the shipper with the primary right at Atlanta will be given delivery priority over the releasing shipper in New York or the replacement shipper buying capacity from the New York shipper, each of which only has secondary point rights at Atlanta. To the extent that this is a possibility, capacity from the releasing shipper in New York is not equal in quality or fully competitive with the capacity from the shipper holding primary point rights at Atlanta.

Receipt and delivery point flexibility is not applied consistently across pipelines, and pipelines do not treat different types of segmentation similarly. During the restructuring proceedings mandated by Order No. 636, the Commission permitted certain pipelines to adopt tariff provisions under which releasing shippers would lose their rights to primary receipt or delivery points if replacement shippers changed primary points under the release.[55] The Commission permitted such restrictions where the pipelines had pre-existing tariff provisions that did not permit shippers' primary receipt and delivery point CD rights to exceed their mainline rights. To prevent the possible loss of primary point rights, the releasing shipper would have to include a condition in the release prohibiting the replacement shipper from changing primary points. The Commission, however, sought to minimize the effect of this restriction on segmented releases by adopting a policy for segmented releases under which:

> the releasing and replacement shippers must be treated as separate shippers with separate contract demands. Thus, the releasing shipper may reserve primary points on the unreleased segment up to its capacity entitlement on that segment, while the replacement shipper simultaneously reserves primary points on the released segment up to its capacity on that segment.[56]

Under this policy [hereinafter referred to as the *Texas Eastern/El Paso* policy], the releasing shipper could protect its delivery point rights by choosing Atlanta as its primary receipt point and New York as its primary delivery point, while the replacement shipper designate its primary receipt point as the Gulf and Atlanta as its primary delivery point. However, it is not clear whether all pipelines adhere to this policy.[57]

Even on those pipelines following the *Texas Eastern/El Paso* policy, replacement shippers face limitations on their ability to change primary receipt and delivery points.[58] However, even at the time the Commission permitted those pipelines with pre-existing tariff restrictions on receipt and delivery point rights to continue such restrictions, it was skeptical about the justifications for imposing such limits.[59] In fact, the Commission rejected applications to impose similar

[52] The current regulations require pipelines to issue contracts within one hour. 18 CFR 284.10(b)(1)(v), Capacity Release Related Standards 5.3.2.

[53] The Commission previously issued a proposed rule suggesting that pipelines use pre-approved credit-worthiness procedures for replacement shippers. Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,520 (Jul. 31, 1996). In the comments on the proposal, the pipelines, in general, did not object to the use of pre-approval for credit-worthiness or master contracts. Tenneco Energy objected only to the use of master contracts, arguing that because capacity release is a firm service, the pipeline needs prior notice of the specific terms of the release including the firm transportation quantity, the zones of the release, and the rights to primary and secondary points.

[54] Releasing shippers already are responsible for all reservation charges under the Commission's capacity release regulations. 18 CFR 284.243(f).

[55] *See* Transwestern Pipeline Company, 62 FERC at 61,659, 63 FERC at 61,911–12 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993).

[56] Texas Eastern Transmission Corporation, 63 FERC ¶ 61,100, at 61,452 (1993). El Paso Natural Gas Company, 62 FERC ¶ 63,311, at 62,991. *See also* Transwestern Pipeline Company, 61 FERC ¶ 61,332, at 62,232 (1992).

[57] *See* Colorado Interstate Gas Company FERC Gas Tariff, First Revised Volume No. 1, Third Revised Sheet No. 254 (replacement shippers are not permitted to change primary points and can nominate only the original primary or at secondary points).

[58] For example, if the replacement shipper seeks to change its primary receipt point right from the Gulf to another point, then the releasing New York shipper might lose the ability to return to its primary Gulf receipt point at the end of the release.

[59] *See* Transwestern Pipeline Company, 62 FERC at 61,659, 63 FERC at 61,911–12 (1993); El Paso Natural Gas Company, 62 FERC ¶ 61,311, at 62,982–83 (1993).

restrictions by pipelines without pre-existing restrictions.[60] In these cases, the Commission required pipelines to permit replacement shippers to change primary points without releasing shippers losing their right to return to their original primary point at the end of the release. As the Commission explained in *Northwest*:

> Northwest's restriction on replacement shippers' ability to designate primary receipt or delivery points different from those of the releasing shipper unless the releasing shipper agrees to relinquish the original primary point could operate to limit or impair capacity release transactions. A releasing shipper may be unwilling to enter into a short term release if, in so doing, it loses priority to its primary receipt and delivery points for the remainder of a 20 year contract. Replacement shippers may be reluctant to bid on mainline capacity if they cannot be assured of receipt and delivery point capacity at available points (not subject to bumping by shippers coming later in time).[61]

Under both the *Texas Eastern/El Paso* and *Northwest* policies, replacement shippers can change primary points only if the new point is available and is not fully subscribed. In addition, shippers can only change to available points that are within the capacity path for which they paid. Pipelines, therefore, are not required to permit shippers to change primary points if doing so would mean that the pipeline's mainline capacity would be oversubscribed.

During the restructuring proceedings, the Commission addressed segmentation only in the context of release transactions. It did not address whether a shipper could segment capacity, for instance, by delivering gas to Atlanta and then shipping to New York for its own use. It is not clear whether pipelines permit such transactions. Even if pipelines do permit the segmented transaction, the shipper may be unable to designate both Atlanta and New York as primary delivery points.

In the Commission's NOPR on secondary market transactions (Secondary Market NOPR),[62] the Commission requested comment on whether it needed to provide more flexibility for shippers and replacement shippers to change primary points. Most shippers supported providing more flexibility, arguing that a shipper using capacity on a secondary basis within the primary path has the same rights afforded transportation between primary points. The pipelines, however, opposed increased flexibility, arguing that allowing releasing shippers to return to previously vacated points would require the pipeline to hold otherwise available capacity in reserve for shippers without collecting reservation charges for that capacity.

2. Is There a Need To Revise Policies To Improve Competition Between Primary and Alternate Point Capacity?

Shippers' rights to segment and use receipt and delivery points clearly differ across pipelines. In today's gas market, shippers are acquiring capacity from multiple sources and need the ability to use their capacity more flexibly. The issue is whether, in operation, the current system fairly allocates capacity so no changes need to be made to the policies or whether changes are necessary to maximize the extent of competition in the short-term market. The concerns involve two interrelated areas: segmentation policy, including priorities for primary and secondary points, and the confirmation process between pipelines and between pipelines and other entities, such as LDCs.

The first concern, as discussed above, is whether on some pipelines, replacement shippers may be unable to use certain receipt or delivery points as primary points under segmented release transactions and whether this significantly limits shippers' flexibility or raises transaction costs. These limitations would be more severe on pipelines that do not follow the *Texas Eastern/El Paso* policy by permitting both releasing shippers and replacement shippers on segmented releases to hold primary point capacity equal to their contract demand.

On some pipelines, delivery or receipt point priorities may be used to determine priorities over constrained mainline capacity even if both shippers have equal firm rights over the constrained mainline. For example, if pipelines are unable to schedule competing firm nominations, the pipelines may give higher priority to shippers moving between primary firm points over shippers moving to secondary points even if both sets of shippers have equal firm rights past the area that has become constrained.[63] It is not clear how frequently pipelines use receipt or delivery point priority to allocate mainline capacity in the event of constraints or whether the use of such an allocation policy significantly limits shippers' flexibility.

Second, confirmation practices may affect the allocation of primary and secondary capacity at interconnects between two pipelines (which includes interconnects between interstate and intrastate pipelines and interstate pipelines and local distribution companies). Suppose there are two shippers with firm capacity on pipeline A that covers an interconnect with pipeline B, but shipper 1 holds the interconnect as a primary delivery point and shipper 2 as a secondary delivery point. Further, suppose there is insufficient capacity to effect both deliveries and shipper 1 holds only interruptible capacity on pipeline B, while shipper 2 holds firm capacity on pipeline B.

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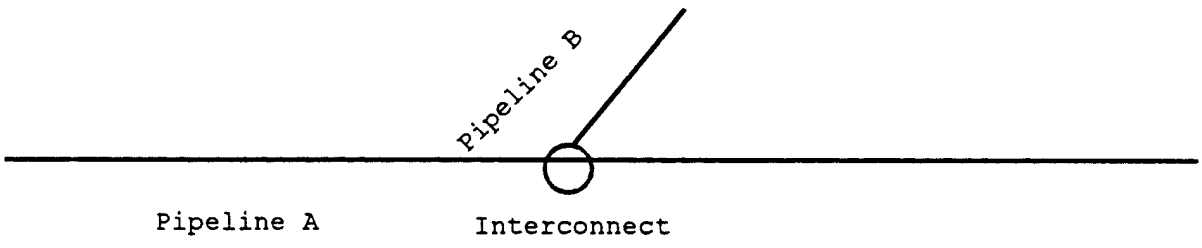

[60] *See* Northwest Pipeline Company, 63 FERC ¶ 61,124, at 61,806–08 n.72 (1993).

[61] Northwest Pipeline Company, 63 FERC ¶ 61,124, at 61,807 (1993). *See also* Questar Pipeline Company, 62 FERC ¶ 61,192, at 62,306 (1993).

[62] Secondary Market Transactions on Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 61 FR 41046 (Aug. 7, 1996), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,520 (Jul. 31, 1996).

[63] *See* El Paso Natural Gas Company, 81 FERC ¶ 61,174 (1997) (because the pipeline does not assign receipt point rights, it effectively allocates constrained mainline capacity based on whether customers are nominating to primary or secondary delivery points).

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Shipper 1: Pipeline A—Firm Primary at Delivery Point; Pipeline B—Interruptible at Receipt Point

Shipper 2: Pipeline A—Firm Secondary at Delivery Point; Pipeline B—Firm Secondary at Receipt Point

If both pipelines independently allocate capacity according to their tariff-based priorities before seeking confirmation, neither shipper would be able to flow, even though shipper 2 has firm capacity on both pipelines.[64]

In some contexts, however, gas flows may be determined by the decision of the downstream party as to which gas it will accept.[65] If that were the case in the above example, shipper 2 would flow gas because it had the priority right on downstream pipeline B.

The confirmation practices of pipelines in this situation are not specified in Commission regulations or pipeline tariffs. Thus, the result in this situation is not predictable, which may raise the costs of doing business.

The Commission is seeking comment on whether the current system works efficiently or whether changes to the current practices are needed. The comments should focus on: (1) How the current system works, particularly with respect to any differences between interconnections between pipelines and interconnections between pipelines and LDCs; (2) whether the current system impedes efficient competition and flexibility or raises transaction costs, and if so, whether the problem results from current Commission policies, from a failure to understand and adhere to those policies, or from a lack of uniform application of Commission policies; and (3) whether changes in policies would help to enhance competition and reduce the ability of pipelines or shippers to exercise market power. To help focus comments, the Commission will lay out below some options which commenters can consider. The first set of options deal with segmentation and receipt and delivery point priority issues, while the second deals with issues relating to pipeline confirmation procedures.

First, the current system under which receipt and delivery point priorities are determined on a pipeline-by-pipeline basis could continue. This option would be appropriate if current policies do not unfairly restrict competition or if non-uniform rules are necessary due to pipelines' differing operational capabilities.

Second, all pipelines could be required to conform to the *Texas Eastern/El Paso* requirement that, in a segmented release, both releasing shippers and replacement shippers can designate available primary receipt and delivery point capacity rights equal to their contract demand. This would help to increase efficient competition by giving buyers a better opportunity to substitute capacity acquired through segmented releases for pipeline capacity or capacity provided by a shipper with primary point capacity.

Third, to further expand the extent of efficient competition, all pipelines could be required to adhere to the *Northwest* approach under which replacement shippers could change primary point rights to any available point without the releasing shippers losing their right to return to their initial primary point at the end of the release. The pipeline could still sell the vacated point to another shipper during the term of the release. The *Northwest* policy also could be extended beyond release situations to permit a shipper to segment its own capacity. As described earlier, a shipper with firm capacity with a primary receipt point in the Gulf of Mexico and a primary delivery point to New York would be able to deliver gas to Atlanta as a primary delivery point, while choosing a receipt point downstream of Atlanta as a primary receipt point for making a delivery to New York as a primary delivery point.

Fourth, pipelines could be required to provide all shippers with firm capacity rights over the mainline with equal rights to flow gas past a mainline constraint point.[66] This would increase shipper capacity options by giving released capacity flowing to secondary points priority at a mainline constraint point along the shipper's path equal to pipeline capacity or released capacity flowing to primary points.

This principle could be expanded so that all shippers with firm capacity would have equal rights to receive or deliver gas at all points along their path. This would provide a shipper moving to a secondary delivery point along its path rights to deliver at that point equal to shippers buying pipeline capacity or shippers buying released capacity which have that point as a primary delivery point. Such an approach would ensure that all capacity along the mainline path would compete equally, giving shippers seeking capacity more capacity alternatives from which to choose. A possible conflict might arise if the receipt or delivery point could not accommodate all the receipts or deliveries sought by the shippers. It is not clear how frequently such a problem would occur.

Fifth, a monetary value could be developed for all receipt and delivery points so that shippers could choose to pay for additional primary point rights, especially those outside their contract path. Under this approach, shippers would be able to buy unsubscribed primary receipt and delivery point rights independent of mainline transportation. One issue under this approach would be to determine a value for additional receipt and delivery point rights. One option is to take a strictly cost-based approach in which the pipelines would have to establish the cost of making or receiving deliveries. Another might be to conduct an auction for all available points.

The previous options deal with ways of enhancing the ability of shippers with mainline capacity at secondary points to compete with capacity from the pipeline or other shippers at primary points, but do not address confirmation practices across interconnect points. One possible approach would be for the pipelines to seek to confirm all transactions before they apply tariff-based priority rules, and to require that, in the confirmation process, pipelines must seek to maximize the flow of firm transportation across an interconnect. Thus, in the example given above, shipper 2 holding firm capacity on both the upstream and downstream pipeline would get priority over shipper 1, since shipper 1 holds only interruptible transportation on the downstream pipeline.[67]/ Another potential option would be for priority through pipeline interconnect points to be determined based on which shipper has the take-away capacity on the downstream pipeline. The Commission requests comment on these options as well as the submission of other proposals for handling confirmations that would create greater substitutability between primary and secondary releases and lower the associated transactions costs

[64] Pipeline A would allocate the delivery point right to shipper 1, whose primary firm right has priority over shipper 2's secondary firm right. Pipeline B would allocate the receipt point right to shipper 2, whose firm capacity right has priority over shipper 1's interruptible capacity. Thus, the capacity allocations would not match and neither would be confirmed.

[65] See, e.g., *Southwest Gas Corporation* v. *El Paso Natural Gas Company*, 63 FERC ¶ 61,111 (1993) (finding that allocation of delivery point rights had not abrogated Southwest's delivery point priority since Southwest controlled the capacity to take gas away from the delivery point). This case would seem to suggest that the confirmation by the LDC takes precedence over upstream primary or secondary delivery point rights.

[66] *See, e.g.*, Northwest Pipeline Company, 67 FERC ¶ 61,095 (1994) (mainline constraints allocated according to path rights rather than point rights). As this case illustrates, even on web or displacement systems, capacity path rights may be defined.

[67] See text accompanying note 64, *supra.*

while still fairly allocating capacity among shippers.

C. Capacity Auctions

Auctions are often used as effective methods of selling goods and services. A well-structured auction can assure that pipeline capacity is allocated to the party placing the greatest value on the capacity and can assure fairness in the allocation process by preventing price discrimination or favoritism by the capacity seller. An auction provides customers with equal opportunities to acquire capacity, preventing the pipeline or releasing shipper from treating different bidders differently. Auctions also have value because they provide the market with accurate information on the value of capacity.

If a market is perfectly competitive with a sufficiently large number of capacity holders, and equal access to market information, an auction would not be necessary to limit the exercise of market power, because market power would not be present. But, even in that case, an auction may help reduce the transaction costs of trading capacity. Any attempt to charge more than a competitive price would result in the potential buyer looking elsewhere for capacity.

The current regulations seek to protect against pipeline exercise of market power by requiring pipelines to sell capacity when they have received an offer at the maximum tariff rate. This requirement prevents the pipelines from withholding capacity at the maximum rate in order to raise prices. The current regulations, however, do not require pipelines to sell capacity at a discounted rate. Thus, pipelines may be able to exercise market power at rates below the maximum rate because the pipeline is not obligated to sell capacity (can withhold capacity) at less than the maximum rate.

In markets where market power is present, an auction that limits capacity withholding can be an effective method of limiting the exercise of market power and creating a more efficient market. In today's market, during peak periods, the price cap may restrict shippers' ability to obtain capacity from the pipelines or may result in shippers paying a higher price than necessary for delivered gas either because releasing shippers exercise market power or because the market simply is not transparent enough for potential buyers to be able to locate and negotiate with alternative capacity sources. During off-peak periods, shippers similarly may have to pay more than necessary to obtain capacity if pipelines or releasing shippers can withhold capacity or price discriminate. Placing all available capacity in an auction would help ensure that shippers will pay lower prices both during peak and off-peak periods, because the auction process helps to ensure that prices reflect competitive market forces rather than resulting from the exercise of market power or shippers' inability to obtain accurate market information.

1. Proposed Auction Requirement

To help prevent the exercise of market power, the Commission is proposing, in revised § 284.10(c)(5), to require all available short-term pipeline firm and interruptible capacity and released capacity to be allocated through an auction process. The proposed auction requirement applies to all sales of short-term pipeline capacity, both interruptible and firm, and released capacity. Thus, all capacity sold for a term of less than a year (or whatever other time period is chosen to define short-term capacity) would be sold through an auction process. Using an auction process for all capacity, during both peak and off-peak periods, is necessary to limit the exercise of market power and to allow the market to determine the value of capacity.

The Commission is proposing that pipelines adhere to the following principles in designing an auction:

- all available short-term capacity must be sold through an auction;
- daily capacity from the pipeline must be allocated based on the auction without the establishment of a reserve or minimum bid price;
- all eligible shippers must be permitted to bid with no favoritism shown to pipeline affiliates or other shippers;
- the procedures and rules for each auction, including the auction schedule, must be disclosed in the pipeline's tariff in advance of the auction and must be applied in each auction;
- capacity must be allocated based on established criteria and parameters known in advance to all bidders and the same criteria and parameters must apply to pipeline and released capacity;[68] and
- shippers must be able to validate that the auction was run properly either through the posting of information sufficient to permit them to validate that the winners were selected appropriately or through the use of other mechanisms, such as an independent third-party, which will validate the results.

The requirement of an auction for short-term capacity still leaves the question of whether to retain the current bidding procedure for long-term capacity release transactions.[69] Pipelines are not subject to any auction or bidding requirements in selling long-term capacity. To ensure comparability, the Commission, therefore, proposes to permit shippers to release capacity on a long-term basis without going through a bidding process. As is the case for the pipelines, no sales of long-term capacity can exceed the pipeline's maximum rate.

The proposal for auctions of capacity raises issues about auction design that will be discussed below. The first issue is whether to permit pipelines or releasing shippers to establish a reserve or minimum price below which they are not obligated to sell capacity. The second is how to design the auction to work most efficiently.

2. Reserve Prices

The Commission is proposing two different auction methodologies for pipeline capacity. For capacity sold for one day, the Commission is proposing a daily auction in which pipelines cannot establish a reserve price. Pipelines would not be required to sell below the minimum rate (variable cost) in their tariffs. For auctions of longer than one day, pipelines would be permitted to establish reserve prices.

Prohibiting pipelines from establishing a reserve price would limit their ability to withhold capacity. Requiring pipelines to auction their daily capacity, without a reserve price, should be sufficient to prevent them from withholding capacity for longer short-term transactions, for instance, a deal for three months' worth of capacity. The pipeline should not be able to demand a monopoly price for three months' worth of capacity because shippers would not pay that price. A shipper would pay only the amount that it would expect to have to pay if it purchased the capacity in the daily auction plus a premium for the insurance value of locking-in the capacity and price for a set period of time.

For capacity available for periods of longer than one day, pipelines could establish reserve prices. Pipelines may have a legitimate basis for believing that the market value for their capacity on a single day is less than what the capacity will be worth at a later date or if the capacity ultimately was sold on a longer-term basis.

The auctions of pipeline capacity would work in the following manner. When a pipeline has firm capacity

[68] *See* 18 CFR 284.10(b)(1)(v), Capacity Release Related Standards 5.3.3 and 7.3.14 (three methods for valuing bids, highest rate, net revenue, and net present value).

[69] *See* CFR 284.243(e).

available for more than one day, for instance six months beginning on July 1, the pipeline could establish a reserve price for the six month block of capacity. If that capacity was not sold by June 30, the pipeline would have to sell the capacity for July 1 through the auction process for that day. The pipeline, however, could continue the reserve price for shippers willing to bid on the six month (less one day) block of capacity. This process would continue until the capacity is sold.

The daily auction also would apply to available pipeline storage capacity. But comments should address whether a daily auction for storage capacity is practical, whether different rules should apply to storage capacity, and whether storage capacity needs to be included in the daily auction to prevent capacity withholding.

The Commission is proposing that all short-term releases of capacity by firm shippers take place through the auction to ensure that capacity is allocated on a non-discriminatory basis to the purchaser placing the greatest value on the capacity. Releasing shippers would be permitted to place reserve prices on their capacity, because they have a legitimate basis for retaining capacity for their own use. For instance, firm shippers may need to reserve capacity to meet unanticipated weather changes, to replace depleted storage, or to change to a substitute supply to ensure reliable service. Moreover, firm capacity holders should not be able to withhold capacity because, under the proposal, if a firm capacity holder does not nominate (use) its capacity, the pipeline would be required to sell the unnominated capacity as interruptible or short-term firm capacity through the auction.

The Commission, however, requests comment on a number of aspects of its proposed approach to reserve prices. Commenters should address whether requiring pipelines to sell capacity at the bid price for only one day is sufficient to limit the pipeline's ability to withhold capacity. Commenters should address the question of the price at which capacity should be sold. For example, should all shippers pay the market-clearing price (lowest price necessary to get capacity)[70] or should each shipper pay the price it bids?

Commenters also should address whether the proposed requirement to sell pipeline daily capacity without a reserve price could cause cost-recovery problems for some pipelines. If shippers on a pipeline where capacity is not sufficiently constrained relied exclusively on the daily auction, the revenue received may be insufficient to cover the pipeline's costs allocated to interruptible and short-term firm capacity.[71] The daily auction without a reserve price also may affect the ability of pipelines to resubscribe firm capacity at maximum rates as contracts expire, which could cause cost recovery problems. If the pipeline is expected to be uncongested, shippers may prefer to rely on the daily auction rather than resubscribing to firm capacity.

On the other hand, it may be that most pipelines are sufficiently constrained so that the daily auction requirement will not limit their ability to recover their costs.[72] The proposal to limit the requirement to sell capacity without a reserve price to one day may itself reduce the risk to pipeline cost recovery. Some shippers may be unwilling to take the risk of not having firm capacity.

In addition, on some pipelines, the requirement for a daily auction may give large customers greater leverage over pipelines in negotiating renewal contracts. When a large customer's firm contract expires, it may well decide not to renew that contract and to submit low bids for capacity in the daily auction. If the purchaser is the principal, if not the only, shipper for a large block of pipeline capacity, it could be reasonably confident that it would not be outbid by other shippers.

There are potential approaches to address these kinds of cost recovery problems if they materialize, without rejecting the benefits of an auction process. One set of possibilities is for pipelines to charge a fixed access charge to all customers using its system to recover fixed costs or a volumetric usage charge designed to recover the fixed costs of the system. These are similar to methods that are being considered in connection with congestion pricing in the electric industry.[73]

Another alternative is to allow the pipeline to set a reserve price in the daily auction that is above variable costs, but below the current maximum rate. In effect, this would be a minimum price floor below which the pipeline would not have to sell. The price floor could be established by using the dollar amounts associated with specified cost-of-service elements, such as rate of return, or could be established at a percentage of the maximum rate. This approach would still provide shippers with protection against the exercise of market power and would prevent the pipeline from discriminating in the prices it charges to specific customers while permitting the pipeline a reasonable opportunity to recover its fixed costs. However, preventing the pipelines from price discriminating may still result in cost recovery problems.

Another approach would be to limit the auction only to transactions above the maximum rate (as converted to a daily rate). The current regulations require a pipeline to sell capacity at the maximum rate to all shippers, thus preventing the pipeline from withholding capacity at the maximum rate to derive a higher price. A requirement that pipelines must auction capacity at the market clearing price, whenever such prices exceed the maximum rate, would continue the protection in the current regulations. It would protect against the pipelines' withholding capacity to raise price and would prevent them from price discriminating between shippers, because all shippers would pay the market clearing price. It also would help to ensure that the pipelines' opportunity to recover their cost-of-service is not impaired. However, such an approach would not help to constrain the pipelines' ability to exercise market power at prices below the existing cap.

Commenters should address the merits of the potential methods for dealing with situations in which the requirement to sell capacity without a reserve price would result in cost recovery problems for pipelines. Commenters also should address whether solutions should be determined on a pipeline by pipeline basis or whether there needs to be a uniform approach applicable to all pipelines.

3. Auction Design

The Commission recognizes the need for the auction to work quickly and efficiently.[74] Shippers buying capacity

[70] The market clearing price is the price at which all available capacity is sold and no shipper bidding that price or higher would be denied capacity.

[71] Pipelines are generally considered to be natural monopolies because they have very large fixed costs, with significant economies of scale. Thus, it is less expensive to have one pipeline provide service than to have two or more pipelines compete over the same route. However, when a natural monopolist is at the efficient size, where the cost of producing one additional unit (marginal cost) equals the price that a customer is willing to pay (demand), that price is not sufficient to cover the average costs of the firm. *See* R. Posner, Economic Analysis of the Law, 251–264 (2d ed. 1977).

[72] Many pipelines, however, may be at less than efficient size and, therefore, be sufficiently congested that they will be able to recover their costs.

[73] These options are discussed in the NOI on long-term services which is being issued contemporaneously with this NOPR.

[74] Shippers have complained that the Commission's current bidding process for capacity release is too cumbersome and slow. *See* Secondary

Continued

not only want the ability to consummate deals quickly, they also want the assurance they can acquire capacity in sufficient time to finalize their gas supply arrangements. The current system, which takes four hours, and must be completed the day prior to nominations,[75] is inadequate to meet the needs of the market.

An electronic auction, designed properly, can be efficient and can operate faster than the current process of sending facsimiles and using telephones to arrange deals. Electronic auctions used for trading stocks and other commodities demonstrate this efficiency.

There are a variety of auction formats that would meet the Commission's criteria as well as provide the speed the market requires. The Commission ultimately would decide on the proper auction format. It could do so either through this rulemaking, through a subsequent proceeding, or by reviewing proposals on a pipeline-by-pipeline basis, and it requests comment on which approach would be preferable. To assist the Commission in evaluating potential auction formats, comments should focus on the details of how the auction or multiple auctions should be conducted and on whether a uniform auction format should be applied to all pipelines.

For example, different auction formats could be used for intra-day, daily, monthly, and longer auctions.[76] Auctions for capacity of one day or less could be held as part of each intra-day nomination opportunity or could be held continuously, every hour during the business day. Consideration also should be given to establishing standardized parameters for recall or other conditions in order to facilitate trading for daily or intra-day capacity. To further expedite the daily auction, it could be integrated with the nomination process using a computerized auction process.

To accomplish such integration, releasing shippers could submit nominations establishing the minimum or reserve price or prices at which they would be willing to sell some or all of their capacity. For capacity the shipper wanted to use, it could establish a very high reserve price while for capacity it clearly wanted to release it could establish a zero reserve price. Bidders would submit nominations with the price they are willing to pay. Pipelines would be required to offer the released capacity along with their own available capacity. The pipeline would then apply Commission-approved procedures to determine a market clearing price and all bidders submitting bids above this price would be automatically scheduled.

Auctions for periods longer than a day could use a different format, while auctions of monthly capacity could employ posting and bidding periods that would coincide with the industry's monthly gas purchasing cycle. Longer posting and bidding times might be needed for auctions of greater than one month.

The Commission also requests comment on whether alternatives to the comprehensive auction described above would be sufficient to protect against the exercise of market power. One possibility would be only to require pipelines to sell available interruptible capacity to the highest bidder. While such an approach would not cover capacity releases or sales of pipeline firm capacity, it may be sufficient to ensure that capacity is not withheld from the market to raise price. For instance, it would protect against the incentives present in a duopoly or oligopolistic market in which firm shippers and the pipeline recognize a mutual interest in withholding capacity. If the releasing shipper tried to withhold capacity by not releasing it, the pipeline, under this option, would be forced to sell the resulting interruptible capacity to the highest bidder. Pipelines already are generally required to allocate interruptible capacity based on price when they are unable to satisfy all nominations for interruptible service at the maximum rate.[77] While this proposal would expand the requirement to all transactions, it could be implemented using the same process.

The information the Commission is proposing to require pipelines to provide is intended to enable the market to effectively monitor transactions. Indeed, the knowledge that information will be provided to the market should itself act as a check against anticompetitive transactions.

D. Information Reporting and Remedies for the Exercise of Market Power

1. Reporting Requirements

In creating a competitive marketplace, information plays a crucial role. Equal access to relevant information is necessary for shippers to make informed decisions about capacity purchases and for markets to perform efficiently. Market information also is needed so that the Commission and shippers can monitor transactions to determine if market power is being exercised.

The information needed by the market, both for decision-making and monitoring purposes, falls into three general categories: information on capacity availability, information on the structure of the market, and information on capacity transactions, such as rates, contract duration, and contract terms. Information on the amount of capacity available at receipt and delivery points and on mainline segments as well as on the daily amount of capacity that pipelines schedule at these points will help shippers structure gas transactions and cast light on whether shippers or the pipeline may be withholding capacity. To assess market structure, shippers and the Commission need to know who holds or controls capacity on each portion of the pipeline system so they can determine the number of potential sources of capacity. Transactional information provides price transparency so shippers can make informed purchasing decisions as well as permitting both shippers and the Commission to monitor actual transactions for evidence of the possible exercise of market power.

The current regulations already require the posting of much of the needed information. The proposals here would require expansion of these current reporting requirements, but such expansion appears justified to give shippers the information they need both for competitive and monitoring purposes. Moreover, in some cases, the proposals are designed to ensure that the same information is provided for competing types of capacity. For instance, detailed information on capacity release transactions, including the releasing and replacement shipper names, the rate paid, and points covered by the release are already being posted at the time of the transaction.[78] In contrast, pipelines are only required to file limited information on their discount transactions well after the transaction has taken place.[79]

Market NOPR, IV FERC Stats. & Regs. Proposed Regulations at 33,244.

[75] 18 CFR 284.10(b)(1)(v) (1997), Capacity Release Related Standards 5.3.2.

[76] The Commission's current regulations, for instance, provide for longer posting and bidding periods for transactions of five months or longer than for shorter-term transactions. 18 CFR 284.10(b)(1)(v), Capacity Release Related Standards 5.3.2.

[77] *See* Sea Robin Pipeline Company, 81 FERC ¶ 61,041, at 61,225 (1997); Pacific Gas Transmission Company, 76 FERC ¶61,258 (1996).

[78] 18 CFR 284.10(b) (1)(v), Capacity Release Related Standards 5.4.1, 5.4.3.

[79] 18 CFR 284.7(c) (6).

a. Information on Available Capacity. For capacity availability, the current regulations require posting of information about the amount of operationally available capacity at points and on the mainline.[80] But, in order to effectively determine whether capacity is being withheld, information also is needed to show the total design capacity of the point or segment and the amount scheduled on a daily basis. The Commission proposes in proposed section 284.14(d) to add this information to the posting requirements.

The Commission also proposes, in proposed § 284.14(d) to require pipelines to post information on planned and actual maintenance or system outages that would reduce the amount of capacity available. While some pipelines currently post such information, it is not currently a Commission requirement. Shippers can better make decisions about their use of capacity if they know whether the available capacity will be reduced on a particular day. Such information will also help in monitoring capacity withholding by revealing reasons for reductions in scheduled quantities.

b. Information on Market Structure. With respect to the structure of the marketplace, pipelines currently file with the Commission, and post on their Internet web sites, an Index of Customers, which (under § 284.106(c)(3) of the regulations, new § 284.14(b)) provides information on the names of shippers holding firm capacity, the amount of capacity they hold, and the duration of their contracts. But the Index of Customers does not provide information on the capacity path held by the shipper, so the data cannot be used to determine which shippers can compete in providing capacity on segments of the pipeline. The Commission, therefore, proposes to add a requirement, in proposed section 284.14(b), to include in the Index of Customers the receipt and delivery points held under the contract, the zones or segments in which the capacity is held, and the shipper's contract number. The contract number is needed on the Index of Customers as well as on the report of capacity release transactions so capacity can be traced through release transactions to reveal how much total capacity each shipper holds. Since the current capacity release requirements do not include the contract number, the Commission is proposing to require that the number be provided.

In addition, to permit effective monitoring of the capacity held on pipelines, it is necessary to know affiliate relationships, which may affect the amount of capacity held by a single parent entity. The Commission, therefore, proposes to add a requirement in proposed section 284.14(b) that pipelines disclose in the Index of Customers any affiliate relationship between the pipeline and the holder of capacity and any affiliate relationship between holders of capacity. Additionally, the Commission would require disclosure of affiliate transactions in capacity release transactions.[81]

The Commission also is proposing to expand its affiliate regulations to provide more information to permit monitoring and self-policing of affiliate transactions. The Commission is proposing to add a new section 161.3(i) and revise section 284.286(c) to require pipelines to post on their web sites organizational charts, and job descriptions, including the names of senior employees,[82] for the pipeline, its marketing affiliates, and gas sales operating units.[83] The pipeline would not be required to include employees whose duties are purely clerical or those who do not have access to information concerning the processing or administration of requests for service (such as employees who operate or repair the pipeline facilities). The Commission also is proposing to include in the Internet posting the list of the operating personnel and facilities shared by the interstate pipeline and its marketing affiliate or gas sales operating unit. The pipelines currently provide this information in their tariffs, under § 250.16(b)(1), and this requirement will make all affiliate information easily available on the Internet. The Commission has adopted a similar requirement in the electric industry to help monitor, and protect against, improper communications between transmission and wholesale merchant function employees.[84/]

In addition, in the current market, shippers may be using agents or asset managers to manage their capacity and such managers may be given wide latitude over the way in which capacity is used. The Commission, therefore, is proposing to add a requirement in § 284.14(b) that pipelines disclose such agents or asset managers when they control 20% or more of capacity in a pipeline rate zone, as well as the rights of the agent or asset manager with respect to managing the transportation service. This information would help to show the degree of control over pipeline capacity that an agent or asset manager may exercise.

c. Transactional Information. Pipelines already provide transactional information for their own capacity transactions and for capacity release transactions, although the type of information and the manner of accessing it differ. For capacity release transactions, pipelines provide via the Internet the names of the releasing and acquiring shippers, the price, the receipt and delivery points under the deal, the quantity of capacity traded, and the duration of the deal.[85] This information is posted immediately upon consummation of the transaction. The information provided about pipeline transactions is not as complete, nor is it as timely or as easy to access. Pipeline discount reports are filed, but not posted, 15 days after the close of the billing period applicable to the transaction and include only the rate paid and the maximum rate, but do not include any information on volumes, the receipt and delivery points under the transaction, or the duration of the deal.[86]

To assure parity of transactional information, the Commission proposes, as described, to require the pipelines to provide the same information about their transactions as is currently provided about capacity release transactions. The Commission recognizes that some pipelines and shippers have previously expressed concern about posting information on shipper names to preserve

[80] 18 CFR 284.8(b) (3); 18 CFR 284.10(b) (1) (iv) (1997), Electronic Delivery Mechanism Related Standards 4.3.6; 18 CFR 284.10(b) (1) (v), Capacity Release Related Standards 5.4.13.

[81] Some pipelines now require disclosure of affiliate transactions for capacity release transactions. 18 CFR 284.10(b) (1) (v), Capacity Release Related Standards 5.4.3. This requirement would become mandatory for all pipelines under this proposal.

[82] Senior employee would be defined as an employee who supervises non-clerical employees engaged in transmission/reliability or gas marketing functions.

[83] Contemporaneously with this NOPR, the Commission is issuing a final rule adding a requirement to 18 CFR 161.3 requiring pipelines to post the names and addresses of their marketing affiliates on their web sites. Reporting Interstate Natural Gas Pipleline Marketing Affiliates on the Internet, Docket No. RM98–7–000. For the NOPR, see Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Notice of Proposed Rulemaing, 63 FR 27526 (May 19, 1998), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,530 (May 13, 1998). Should the Commission adopt the regulations proposed in this NOPR, the changes could be consolidated with the requirement for posting affiliate names and addresses.

[84] American Electric Power Service Corporation, 83 FERC ¶ 61,357 (1998).

[85] 18 CFR 284.10(b)(1)(v), Capacity Release Related Standards 5.4.1, 5.4.3.

[86] 18 CFR 284.7(c)(6).

confidentiality. However, shipper names currently are posted for capacity release transactions and the Commission is unable to see how other shippers can effectively monitor transactions for favoritism if names are not provided.

In many cases, much of the transactional information would be provided in a properly designed, transparent short-term capacity auction. To ensure that the information is provided, the Commission is proposing to add a new section, 284.14(c), that would require pipelines to post on their Internet web site, and provide downloadable files of, transactional information about their own capacity transactions and released capacity transactions. For firm service, the Commission proposes that the pipelines provide contemporaneously with the execution of the contract, the same information already posted for capacity release transactions: the parties to the contract; the contract number for the shipper receiving service and for the releasing shipper; the rate charged under each contract; the duration of the contract; the receipt and delivery points and mainline segments covered by the contract; the contract quantity; any special terms and conditions applicable to the contract; and any affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper. For interruptible transportation, the following information on a daily basis would be required: the name of the shipper; the rate charged; the receipt and delivery points and mainline segments over which the shipper is entitled to nominate gas; the quantity of gas the shipper is entitled to nominate; and any affiliate relationship between the shipper and the pipeline.

2. Remedies if the Exercise of Market Power Is Found

While the Commission's proposals should enhance efficient competition and mitigate market power, the Commission is committed to take remedial action when pipelines or shippers exercise market power. Because the facts of each such case would be different, it is difficult to describe in advance the type of remedy the Commission would impose if market power is being exercised, and not all remedies would be appropriate in every case. As a general matter, the Commission's preference would be to use a structural remedy that would enhance efficient competition. Examples of such remedies would include revising contractual provisions that inhibit competition, strengthening the capacity auction requirement, requiring pipelines to build taps to increase access to capacity, or conducting auctions to determine whether sufficient demand exists for additional construction. Another potential remedy would be to use a benchmark for regulating price increases based on price changes in comparable competitive markets.[87] Reimposition of some form of price cap also would be a possible option if other available remedies are not adequate. Commenters should address the potential remedies suggested here as well as suggest other possible remedies.

IV. Penalties and Operational Flow Orders

A major goal of the changes proposed in this NOPR is to improve competition in the short-term market both to improve the efficiency of the market and to protect against the potential exercise of market power. To improve efficiency and competition across the pipeline grid, the Commission previously has adopted standards, promulgated by GISB, as well as the Commission's own standards governing business practices and electronic communication. But these standards have only partially addressed the effect that pipeline operational flow orders, tolerances, and penalties have on competition across the pipeline grid.

Penalties and operational flow orders (OFOs) are necessary tools to deter shipper behavior that threaten the integrity of the pipeline system. At the same time, they have a significant effect on efficiency and competition by restricting shippers' abilities to effectively use their transportation capacity. As just one example of the interrelation between penalties and the short-term market, penalty levels can affect the value of capacity in the short-term market; shippers needing gas might be willing to buy transportation capacity at any rate less than the penalty they would have to pay if, for instance, they overran their contract entitlement. In this section, the Commission considers reforms to its policies for regulating OFOs and transportation penalties to ensure that they can continue in their legitimate role of protecting pipeline integrity, while not unnecessarily limiting or restricting competition in the marketplace.

These policies have their origin in the regulatory reforms instituted by the Commission in Order No. 636. To promote competition in the sales and transportation markets, Order No. 636 required that pipelines unbundle sales and transportation services. The bundled sales service provided considerable flexibility for the pipeline in how it would meet the requirements of its customers, particularly on peak days. In the implementation of Order No. 636, the Commission was particularly concerned that the unbundled transportation services be as reliable as the bundled sales service the pipelines previously provided.

To address that concern, the Commission accorded each pipeline considerable discretion and authority to operate its system to ensure its reliability, particularly during peak and emergency times. One important tool the Commission has sanctioned is the use by pipelines of OFOs that can restrict service or require shippers to take particular actions. As examples, Commission-sanctioned OFOs can: reduce or eliminate tolerances for imbalances or contract overruns; institute severe penalties; restrict intra-day nominations; restrict or eliminate the use of secondary receipt and delivery points; and restrict firm storage withdrawals and eliminate interruptible storage withdrawals.

Another means the Commission has provided pipelines to protect system reliability is the approval of tariff penalties designed to deter shippers from creating imbalances or from overrunning contract entitlements. The Commission has approved particularly high penalties, with little or no tolerance for imbalances or overruns, applicable during peak or emergency periods to protect pipeline reliability. The Commission also has approved penalties, usually at lower dollar levels and greater tolerances, applicable during non-peak times to help ensure that shipper imbalances or overruns do not create emergency conditions on a pipeline that could have been prevented or minimized.

The Commission believes that a review of present policies and pipeline practices in these areas is appropriate as part of the new approach to pipeline regulation proposed in this NOPR— and particularly its objective of promoting competition in the short-term market.

On initial review, it appears that some pipeline practices and Commission policies regarding penalties can inhibit competition not only with respect to transportation, but also in the sale of natural gas. For example, an OFO that eliminates a secondary receipt point for a shipper may eliminate the shipper's access to alternate suppliers with the lowest priced gas or force the shipper to

[87] *See* Buckeye Pipe Line Company, 53 FERC ¶ 61,473, at 62,683 (1991) (basing price changes in non-competitive markets on the changes in competitive markets).

points where it has no purchase or sales agreements. An OFO that limits or eliminates a shipper's storage withdrawals may require the shipper to purchase more costly gas on the spot market if the OFO allows the shipper to shift to new points. The longer OFOs are in effect, the more restrictive they become. Across all customers, OFOs may fragment markets by making it impossible for many potential sales of gas or transportation services to take place.

High penalties on contract overruns or imbalances as well as low or no tolerances during peak periods may also operate to limit and distort market forces. For example, not all shippers have immediate access to metering information on their imbalances or even the volumes of gas they receive at their delivery points. This lack of information may adversely affect shippers in several ways. For example, to avoid overrun and/or imbalance penalties, shippers may not maximize use of pipeline transportation, and shippers may contract for more transportation capacity than they need. Also, the lack of information on imbalances and delivered volumes may inhibit shippers from trading imbalances or transportation capacity that could alleviate or prevent system operational problems.

The presence of severe penalties/tolerances during peak or emergency periods also may preclude other uses of market forces that could alleviate or prevent system operational problems. For example, a shipper that delivers more gas than nominated into a pipeline when the pipeline is short of gas would help to maintain system integrity. Yet, under most currently approved tariff provisions, the shipper could be penalized for doing so.

Moreover, Commission-authorized penalties may provide an opportunity for shippers to engage in a form of penalty arbitrage. For example, during the 1995–96 winter there was a shortage of natural gas to serve Chicago markets. Shippers reacted by intentionally overrunning contract entitlements on those pipelines and LDCs that had the lowest penalties for contract overruns. [88] In that situation, penalties appeared to have skewed choices shippers might otherwise have made. The consequence was that pipelines in the Chicago area appear to have entered into bidding wars for the highest overrun/imbalance penalties, with penalties for large variances running as high as $200/dth.[89]

The fluctuation of transportation values also supports a reexamination of Commission policies on OFOs and penalties. As discussed earlier, the value of transportation varies widely. For example, as shown on the earlier graph, during the winter of 1996–1997, the value of capacity was double the maximum rate, while during the winter of 1995–1996, spikes occurred on several occasions to much higher levels, with the highest value reaching $10/MMBtu.[90]

The fluctuation in short-term transportation values during peak periods suggests the need to increase opportunities, as much as practicable, for shippers to obtain transportation services at the lowest competitive price during such times. Yet, the pipelines' current OFO and penalty structures may restrict shippers' options more than is necessary.

Current pipeline tariff provisions for remedying monthly imbalances of a shipper—often described as ''cash-outs''— also appear to inhibit market forces and may be otherwise unfair. Under these provisions, shippers are allowed to cash-out net monthly imbalances using an average monthly price. That procedure invites shippers to game the system within the month. For example, a shipper may take more than it delivers when gas prices are high and deliver more than it takes when gas prices are low. At peak, such behavior may imperil system-wide reliability and unnecessarily trigger OFOs and emergency penalties that restrict or eliminate market forces. Such gaming also promotes inefficient use of pipeline capacity. For example, to the extent gaming is substantial on a pipeline, the pipeline is likely to react by imposing stricter imbalance tolerances and higher penalties. Moreover, gaming by some shippers is subsidized by other shippers. A pipeline's tolerance and penalty levels are often a function of the amount of storage it has retained; a pipeline with more storage can tolerate greater imbalances. But all shippers pay for storage in their firm rates. Accordingly, if a pipeline reduces tolerances and raises penalties due to the behavior of some shippers, the firm shippers lose the flexibility for which they are paying.

The apparent problems associated with current OFO and penalty tariff provisions suggest the need to reorient policy away from penalties and towards promoting the opportunities for shippers to avoid penalties and to prevent penalty situations, particularly by allowing shippers to avail themselves of remedies that the marketplace can provide. Such remedies would include the trading of imbalances, the provision of timely information about system imbalances so shippers can better anticipate adverse operational conditions and avoid possible penalties, and no harm no foul rules under which shippers will not be penalized for actions that help maintain the operational integrity of the pipeline system. Stated in other terms, while there may always be a need for penalties and OFOs, the adoption of policies that promote the opportunity for shippers to avoid penalties and prevent penalty situations, particularly by reliance on market forces, may be the most efficient means of ensuring the reliability of a pipeline's system operations. Towards this end, the Commission, in Order No. 587-G, recently required pipelines to permit shippers to offset imbalances across their own contracts and to trade imbalances with other shippers.[91]

Accordingly, the Commission proposes to revise section 284.13 of its regulations to establish the following policies. First, the Commission proposes to require each pipeline to provide, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of its system as a whole. The adoption of this policy is a critical first step to enhancing the opportunities of a shipper to avoid penalties and help prevent penalty situations. Second, to ensure greater shipper flexibility, the Commission proposes to require that pipelines have in place only those transportation penalties that are necessary and appropriate to protect system operations. Third, the Commission proposes to require that pipelines provide services, to the extent operationally feasible, that facilitate a shipper's ability to manage imbalances, which will also help the shipper avoid penalties and prevent penalty situations. Finally, the Commission proposes to require pipelines to adopt incentives and procedures that will minimize the use and potential negative impact of OFOs.

As discussed below, the Commission solicits comments on these proposed policies. The Commission also invites

[88] *See* Industry Surveys the Damage as Winter's Strength Runs Out, Natural Gas Intelligence, April 22, 1996, at 1; Freezer Burn, Gas Daily's NG, April 1996, at 30.

[89] *See* Panhandle Eastern Pipeline Company, 78 FERC ¶ 61,202, at 61,876 (1997)(penalties ranging from $25 per Dth for variances of 5–10% to $200 for variances over 50%).

[90] *See* text accompanying note 22, *infra.*

[91] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587-G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

comments on its assessment, set forth above, of current OFO and penalty tariff provisions on which the proposed policies are based. Specifically, the Commission solicits comments on how well these current tariff provisions protect the integrity of system operations, the extent to which such provisions have created the problems discussed above, and whether changes to such tariff provisions are warranted.

A. Pipelines Should Provide, on a Timely Basis, as Much Imbalance and Overrun Information as Possible

The Commission proposes to require each pipeline to provide, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of its system as a whole. Providing such information is a critical first step to a new Commission approach to penalties. To begin with, such information, by itself, would help shippers avoid overruns and imbalances. Moreover, providing each shipper with information on the precise level of its deliveries and imbalances would help the shipper maximize the use of its transportation rights on the pipeline system. Such information could also allow the pipelines to reduce the level of penalty-free tolerances and so reduce system costs (e.g., storage capacity to provide such tolerances). Finally, such information together with information on system imbalances would facilitate trading of imbalances and capacity or other self-help measures that in turn could alleviate or prevent conditions that imperil system integrity.

Under the proposed regulation, § 284.13(c)(2)(iv), the pipeline would not be required to install real time meters. The burden on the pipeline would be limited to distributing on a timely basis—i.e., so that the shipper has a reasonable opportunity to avoid penalties—the information the pipeline currently has on deliveries and imbalances at each shipper's delivery point as well as system imbalances. The pipeline would be required to establish a system that notifies each shipper individually of the imbalance/delivery information that the pipeline possesses or to give shippers access to such information via the Internet. The pipeline could post relevant system imbalance information more generally. The obligation that such information be provided on a timely basis would vary from pipeline to pipeline, depending on the pipeline's penalties. For example, a pipeline that imposes imbalance penalties only on a monthly basis would have a different obligation to provide imbalance information to its shippers than a pipeline that imposes daily imbalance penalties.

During technical conferences in individual cases, relating to proposals by pipelines to institute or increase penalties, many pipelines have provided assurances that they were moving toward better metering on their system. On the other hand, customers have complained of the imposition of penalties because existing metering equipment was insufficient to provide them with timely information on deliveries and imbalances. An important question raised by the proposed policy is the manner in which, if at all, the Commission should address the situation in which a shipper has receipt or delivery points at which there is not the type of metering and related equipment that would provide the shipper with timely information on its deliveries and imbalances. The Commission sets forth below two options and solicits comment on them.

One option, which would be a departure from the proposed policy set forth above, is to require the pipeline to install the equipment that would provide all shippers with timely information on imbalances and deliveries. Important questions that should be addressed when considering this option are, first, the extent to which such equipment is not in place today and, second, the extent to which the shippers without such equipment desire the information that would be provided. For example, the Commission is aware that marketers and producers have voiced complaints about the lack of timely information on deliveries and imbalances. Those complaints suggest that there may be more of a problem in obtaining timely information at receipt points than at delivery points.

A closely related and critical question is the cost of purchasing and installing the equipment that will provide timely information. Those costs must be compared in some manner to the benefits of providing the equipment. The question of costs raises a host of other related questions. For example, who should pay for the equipment—the pipeline (who could recover the costs in generally applicable rates) or the shipper? Is it appropriate to require all shippers to have access to such information? For example, it may be cost effective only for large shippers. Should the Commission require the metering needed to provide timely information only at those receipt/delivery points where the gas volumes are large enough to cover the equipment costs, and exempt the remaining receipt/delivery points? If so, what alternatives are appropriate for receipt/delivery points of small shippers to provide some parity of treatment?

A second option would be to forbid a pipeline from imposing a penalty for an overrun/imbalance that does not threaten system reliability unless the pipeline has metering equipment to measure the imbalance/overrun and notifies the shipper in a timely manner of the imbalance/overrun. The intent of this option is to give a pipeline an incentive to install only the metering equipment associated with imbalances or overruns that may imperil system integrity. The option also would prevent penalties that a shipper would have been in a better position to avoid with timely information.

This option also raises the question of who should bear the costs of the enhanced metering and related facilities. Another relevant concern is the extent to which the option could be implemented—is there an objective basis to determine which penalties are required, and in what situations, to prevent realistic threats to a pipeline's system integrity?

The Commission solicits comments on its proposal, the alternative options, and the related questions. The Commission also solicits other alternative proposals that commenters believe merit consideration.

B. Transportation Penalties Must Be Necessary and Appropriate to Protect System Operations

The Commission proposes to require that pipelines have in place only those transportation penalties that are necessary and appropriate to protect system operations. The Commission has authorized extremely high overrun and imbalance penalties for several pipelines on the basis that doing so was required to protect system integrity.[92] The Commission questions whether there is necessarily a connection between the high level of penalties that have been authorized and the level that is necessary to ensure system reliability. Also, the Commission is aware that some pipelines have penalties that are at the same level during peak and non-peak periods and may be imposed regardless of whether the pipeline is faced with emergency conditions.[93] In light of these considerations, the Commission solicits comments on

[92] *See* Northern Natural Gas Company, 77 FERC ¶ 61,282, at 62,236 (1997); Panhandle Eastern Pipeline Company, 78 FERC ¶ 61,202, at 61,876–77 (1997), *reh'g denied*, 82 FERC ¶ 61,163 (1998).

[93] *See* Tennessee Gas Pipeline Company, 81 FERC ¶ 61,266, at 62,312; *reh'g denied*, 83 FERC ¶ 61,063, at 61,335 (1998) (contrasting a penalty based on spot pricing which varies penalty levels in response to market conditions with other pipelines with fixed penalty levels).

whether currently effective penalties are the most appropriate and effective penalties to protect system operations. The Commission also solicits comments on the specific criteria the Commission should rely on in determining what penalty provisions would be the most appropriate and effective.

There are many specific options the Commission may pursue in this area on which comments are requested. One option would be to require, on an industry-wide basis, penalties that are not set at specific dollar levels, but instead reflect the varying gas commodity prices that are available to the shipper—for example, a regional index plus an adder. The use of such indices could allow a more effective deterrence based on current market conditions. For example, a penalty based on commodity prices might eliminate a recurrence of the situation during the 1995–96 winter in the Chicago market where shippers sought to overrun contract entitlements on the pipeline system with the lowest stated dollar penalty.

A related option is for the Commission to establish procedures that would allow all segments of the natural gas industry to form a consensus, to the extent practicable, on penalty tariff provisions that could be uniform either on a national or regional basis. Such provisions could:

- define the particular penalties and to whom they would apply;
- implement cash-out provisions on all pipelines;
- set tolerance levels;
- determine the time periods when the penalties would be applicable;
- define the time periods to notify shippers of penalties; and
- allow make-up and/or trading of imbalances.

A prominent concern underlying this option is to eliminate the gaming where a shipper shifts capacity use among pipelines to overrun its rights on the pipeline that has the lowest level of penalties. Setting uniform standards for penalty provisions should reduce this gaming problem and the incentive for a pipeline to adopt ever more onerous penalty provisions to avoid having the least onerous penalties in an area or region.

Another objective underlying this option is to eliminate the adverse effects on competition that are caused by the fact that penalty provisions vary from pipeline to pipeline. Such variation gives rise to administrative costs and uncertainty and acts as a disincentive for shippers seeking alternative suppliers of gas and transportation services.

The Commission has successfully prompted, by adopting recommendations of GISB, the standardization of many of the operating rules of interstate pipelines to enhance competition. In that regard, the Commission stresses that the intent of this option is not to determine standardized penalty provisions as part of the rulemaking, but rather to initiate a process in which a consensus may be achieved. The Commission solicits comment on whether the industry could develop such standards through GISB or whether the Commission would need to establish its own process for developing the standards.

A variant of the last option is to establish procedures that would also include state representatives that could facilitate the coordination of (a) penalty provisions used by interstate pipelines with (b) penalty provisions that are used by state regulated entities—LDCs, Hinshaw and intrastate pipelines. The Commission believes that such coordination would better address the problem of gaming as well as enhance competition in both the sales and transportation of natural gas. State regulators are particularly invited to comment on the desirability of this option as well as to suggest procedures to implement it.

In addressing the proposals to develop a consensus process, commenters should provide their views on the practical extent to which certain types of penalty provisions can be standardized. For example, it may be impractical to adopt particular levels of penalties or tolerances on a national or even regional basis, given the different operational characteristics of each pipeline. The Commission also seeks alternative proposals to developing a consensus process that would address the goals, described above, of eliminating gaming and the administrative costs and uncertainty that arise due to the fact that penalty provisions vary from pipeline to pipeline.

Another option would be to provide an automatic credit to shippers for a significant portion of the imbalance or contract overrun penalty revenues a pipeline collects. Such a credit would not be provided to those shippers that incurred the imbalance or overrun penalty. Current Commission policy is not to provide an automatic credit, but to take such penalty revenues into account in a rate case to develop a pipeline's revenue requirement. Customers of pipelines have often complained that such an approach is inappropriate when pipelines are no longer required to file rate cases on a periodic basis. Those customers argue that to the extent the penalty revenues are not reflected in rates, penalty provisions act as a profit center for pipelines. Crediting penalty revenues would eliminate an incentive for pipelines to propose unnecessarily high levels of penalties or provisions that unduly restrict the transportation rights of a shipper.

The Commission invites comments on the extent to which there is a need to provide an automatic credit of penalty revenues. The Commission is particularly interested in comments on the extent to which penalties are, or are not, a significant source of pipeline revenues. The Commission is also concerned that the crediting of penalty revenues to specific non-offending shippers may be difficult to implement. The Commission seeks comments on whether such crediting can be implemented without substantial administrative cost. The Commission also solicits proposals for a specific mechanism for crediting penalty revenues.

Another option on which the Commission solicits comments is the desirability of revising the manner in which a shipper's cash-out payment is determined. As discussed, current cash-out procedures establish a payment based on the average price of gas for a given month, which has induced shippers in some instances to game the pipeline system to take advantage of changes in the price of natural gas. A revision that could eliminate such gaming would be to require the pipeline to provide a running imbalance of each shipper for each day of the month. The imbalance would be defined not in volumes, but in imbalance revenues, which would be the product of the shipper's volumes of imbalance that particular day times that day's gas index price. One concern this option raises is whether it would require pipelines to install additional or enhanced meters and, if so, whether the costs of doing so would outweigh the benefits of resolving the problems associated with the gaming of the system.

The Commission solicits comments on its proposal, the alternative options, and the related questions. The Commission also solicits other alternative proposals that commenters believe merit consideration.

C. Pipelines Must Provide Services, to the Extent Operationally Feasible, That Facilitate Imbalance Management

An expansion of the number of imbalance management services would reduce the need for penalties and the imposition of unnecessary penalties.

The Commission has recently taken a first step in this direction in Order No. 587–G[94] when it required pipelines, *inter alia,* to

- allow firm shippers to revise nominations during the day (thereby reducing the probability of imbalances caused by inaccurate nominations);
- enter into operational balancing agreements at all pipeline to pipeline interconnections;
- permit shippers to offset imbalances across contracts and trade imbalances amongst themselves when such imbalances have similar operational impact on the pipeline's system; and
- provide notice of OFOs and other critical notices by posting the notice on their Internet web sites, which would be accessible to shippers nationwide and by notifying the affected customers directly.

In this section the Commission proposes to require pipelines to revise their tariffs to expand the number of imbalance management services and opportunities available to shippers. Parking (temporary storage) and lending (temporary loan of gas) are currently offered by several, but not all, pipelines and allow shippers to avoid imbalances. Under the proposal, a pipeline would be required to provide such services if operationally practicable. In addition, a pipeline would be required to revise or eliminate any tariff provision that gives undue preference to its storage or balancing services over such services that are provided by a third party. In response to the tariff filing, parties could protest the proposals and propose alternatives for Commission consideration.

The Commission solicits comments on whether more specific requirements or additional initiatives would be appropriate. One prominent area of inquiry is the manner and extent to which the Commission should encourage the availability of parking and lending as well as alternative services. Some incentives are already provided for in this NOPR. For example, because parking and lending are short-term services, providers of such services would not be subject to a rate cap. The Commission could also facilitate the use of third-party storage by specifically requiring that a pipeline's transportation charges for long-term services related to injection and withdrawal of gas that comes from third party storage must be the same as the charges that apply for long-term services when the gas comes from the pipeline's own storage facilities.

The Commission could also adopt policies that promote individual shipper actions that alleviate system imbalances or operational constraints. For example, the Commission has recently established a ''no harm, no foul'' policy that would permit beneficial imbalances to escape penalties.[95] Such a policy is especially important in emergency or peak periods, when a shipper's imbalance can run in the opposite direction from the conditions adversely affecting the pipeline. A shipper with such a beneficial imbalance (one that runs in the opposite direction of the imbalance that adversely affects the pipeline system) is aiding rather than adversely affecting the system at a critical time. For example, a shipper might be taking less than it nominated on a pipeline that was suffering from significant overtakes of gas. This policy prohibits a pipeline from penalizing a shipper to the extent that such ''good'' behavior can be tracked.

A variation of a ''no harm, no foul'' policy would be to go beyond immunizing a shipper running a beneficial imbalance from penalties, and to reward such shippers especially during emergency time periods. On the other hand, in Order No. 587–G the Commission has required pipelines to permit shippers to net imbalances across contracts and trade imbalances with other shippers. In light of these requirements, would rewarding shippers running beneficial imbalances provide significant additional benefit?

The Commission solicits comments on its proposal, the alternative options, and the related questions. The Commission also solicits other alternative proposals that commenters believe merit consideration.

D. Pipelines Must Adopt Incentives and Procedures That Minimize the Use and Adverse Impact of OFOs

Finally, the Commission proposes to require each pipeline to adopt incentives and procedures that minimize the use and adverse impact of OFOs. The imposition of OFOs may severely restrict the purchase and transportation alternatives available to a customer during peak periods, precisely when such alternatives are critically needed to enhance the opportunities of a shipper to purchase such services at the lowest competitive prices. Under current practice, pipelines have incentives to favor OFOs as the first option, not the last resort. The pipeline is likely to err on the side of using an OFO, because it bears the risk that if it does not, curtailment of load may result that could in turn precipitate strong public disapproval and law suits from firm customers. In contrast, shippers—not pipelines—bear the costs that result from imposition of OFOs. A pipeline could also prefer OFOs because it would limit or eliminate a shipper's option to purchase transportation that would be in lieu of transportation services provided by that pipeline. In technical conferences, shippers have complained that OFOs have been issued too frequently, for too long, and were larger in scope than required to protect the integrity of system operations.[96]

In light of these considerations, it is appropriate to review existing pipeline tariffs to ensure that the resort to, and adverse impact of, OFOs are reduced to the maximum extent practicable. The Commission therefore proposes to require each pipeline to revise its tariff to the extent necessary to:

- state clear standards, based on objective operational conditions, for when OFOs begin and end;[97]
- require the pipeline to post, as soon as available, information about the status of operational variables that determine when an OFO will begin and end;[98]
- state the steps and order of operational remedies that will be followed before an OFO is issued to assure that the OFO has the most limited application practicable and to limit the consequences of its imposition;[99]
- set standards for different levels or degrees of severity of OFOs to correspond to different degrees of system emergencies the pipeline may confront;[100] and
- establish reporting requirements that provide information after OFOs are

[94] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), III FERC Stats. & Regs. Regulations Preambles ¶ 31,062 (Apr. 16, 1998).

[95] Panhandle Pipe Line Co., 82 FERC ¶ 61,163, at 61,600–601

[96] *See, e.g.,* NorAm Gas Transmission Company, 79 FERC ¶ 61,126, at 61,546–47 (1997); Southern Natural Gas Company, 80 FERC ¶ 61,233, at 61,890 (1997) Northern Natural Gas Company, 77 FERC ¶ 61,282 (1997); Panhandle Eastern Pipeline Company, 78 FERC ¶ 61,202 (1997); Northwest Pipeline Company, 71 FERC ¶ 61,315 (1995).

[97] For example, if a pipeline anticipates an OFO will be in effect until weather conditions change, it would aid shippers' planning to so advise them.

[98] For example, if an OFO will remain in effect until repairs are completed on a compressor, the pipeline should be required to update shippers on the status of the repairs.

[99] For example, one requirement would be that a pipeline provide as much advance warning as possible of the conditions that may create an OFO and the specific OFO itself that would allow customers to respond to such conditions and/or prepare alternative arrangements in the event the OFO is implemented.

[100] For example, a $100 OFO penalty may be appropriated in severe cases, whereas a $25 OFO penalty may be appropriate in others.

issued on the factors that caused the OFO to be issued and then lifted.

In response to the tariff filing, parties could protest the proposals and propose alternatives for Commission consideration.

The Commission requests comments on the proposal set forth above. The Commission is particularly interested in comments on the extent to which current OFOs have created significant problems and, if so, the specific problems that were created.

The Commission also solicits comments on additional or alternative options. One such option would be to use financial incentives based on the past OFO experiences of a pipeline to minimize future imposition of OFOs. For example, a pipeline that never issues OFOs could be allowed to retain a portion of cash-out penalties, which under current Commission policy would be automatically credited to its customers. Conversely, a pipeline that frequently issues OFOs could be required to rebate a portion of the customer's reservation charges if it does not fix within a reasonable time the operational problems that give rise to frequent OFOs. The Commission solicits comments on the adequacy of such incentives and also solicits alternative incentives.

Another option would be to require automatic crediting of OFO penalties, even if the Commission retains its current policy of not requiring pipelines to credit most penalty revenues. As discussed, currently pipelines have incentive to impose OFOs as a first reaction to a system operational problem. Requiring the automatic crediting of OFO penalties would at least eliminate one potential incentive.

Another option is for the Commission to institute a program that monitors on a periodic basis the frequency of impositions by each regulated pipeline of OFOs. If the Commission determines that an individual pipeline frequently issues OFOs, the Commission could audit the pipeline's operations or establish a proceeding to determine if changes should be made to the pipeline's tariff.

The Commission solicits comments on its proposal, the alternative options, and the related questions. The Commission also solicits other alternative proposals that commenters believe merit consideration.

V. Negotiated Rates and Services

Two of the objectives of the regulatory changes proposed in this NOPR are to promote greater innovation in service offerings, and to increase the value of long-term capacity as protection against price swings in the short-term market. As explained below, allowing the negotiation of rates and services can provide the flexibility necessary to foster service innovation. The negotiation of rates and services also has the ability to increase the attractiveness of long-term capacity, so that biases toward short-term capacity are weakened. In this manner, negotiated rates and services can help achieve the Commission's goal of creating a more neutral regulatory policy with respect to short-term and long-term capacity.

Permitting pipelines to negotiate the terms and conditions of service with their customers can have several beneficial effects. First, permitting negotiated terms and conditions of service may spur innovation and creativity in the services provided, and keep natural gas transportation service from becoming stagnant. Traditional regulation does not always allow for innovation and gives regulated companies little incentive to be creative or to innovate. For example, conventional tariff procedures may inhibit the development of innovative services, since the need for such services may be immediate and may arise quickly. Therefore, presently, neither pipelines, customers, nor regulators know with certainty what innovations are feasible, or would be worth their cost.

A policy that permits pipelines to negotiate rates and terms of services together may give pipelines more incentive to innovate by allowing pipelines to charge more for innovations that customers value more. Also, the ability to negotiate rates and services may stimulate pipelines to offer service innovations that are relatively costless to provide, something they may have had little incentive to do under cost-based rates. These innovations should ultimately improve the quality of the pipelines' other tariff services, if pipelines are given incentives to maintain and upgrade these services, as well.

Second, while the negotiation of service may be useful for short-term services, its most significant use may be as a valuable risk management tool for pipelines and customers with respect to long-term contracts.

When a customer enters into a long-term contract, it must undertake a number of risks. It must bear the general market risk that the value of capacity may decrease in time, so that the customer could have acquired the capacity for a lower rate later, or the risk that the pipeline will experience a decrease in system throughput, which would drive the maximum regulated rate up. The customer must bear the regulatory risk that the rates for the capacity that it has committed to under the firm contract will increase due to, for example, the rolling-in of the costs of new capacity construction, or other general rate increases. The customer must also bear the customer-specific risk that its own need for capacity might fluctuate or disappear.

When these risks are too high for a customer, at the given rates for long-term and short-term capacity, the customer may be unwilling to hold long-term capacity contracts. In the past, shippers accepted some regulatory price risk in return for little or no gas supply risk. Now, however, shippers appear less willing to shoulder the price risks associated with long-term contracts as a result of the increased attractiveness of short-term contracts, the presence of regulatory disincentives to long-term contracts, such as the right of first refusal, and the uncertainty of potential business impacts of state retail open-access programs. The movement away from long-term contracts increases the pipeline's risk that it will not earn enough revenues during the pipeline's useful life to cover its total cost and an acceptable return on the investment in the pipeline.

Allowing pipelines and shippers to negotiate terms and conditions of service, as well as rates, may permit greater flexibility in the allocation of the shipper's risk inherent in long-term capacity contracts. Such negotiation of rates and services could permit the parties to negotiate more flexible contracts for higher rates. Other options for negotiation could include lower rates for longer contract terms, differing rates for the right to reopen the contract in specified contingencies, or varying rates for different payment schedules.

Thus, a negotiated rates and services policy may give parties the ability to negotiate terms that will reduce the shipper's risk in entering into a long-term contract, thereby increasing a shipper's willingness to execute long-term contracts and encouraging greater long-term contracting, generally. This, in turn, raises a third benefit of allowing negotiated terms and conditions of service. As the value of long-term contracts increases, and more long-term contracts are executed, problems of capacity turnback may be alleviated. Negotiated rates and services may give pipelines the ability to attract new customers and keep existing customers as long-term contracts expire, helping to ensure that pipelines are able to recover their long-term investment costs. Such negotiation is especially important as

markets increasingly define the value of capacity.

Further, certain additional, indirect benefits can result from permitting negotiated services. A policy favorable to negotiated services may facilitate the unbundling of LDC services at the state level, thereby extending customer choice to more retail markets nationwide. It may also position the gas industry to be a viable competitor of the increasingly competitive electric industry for end use customers.

While the Commission recognizes the important benefits that would result from a negotiated rates and services policy, the Commission is also mindful that significant, although probably manageable, concerns exist in permitting negotiated services. Pipelines will exercise market power if they can. The concept of negotiated rates and services—under which shippers and pipelines would be able to negotiate rates or service terms and conditions that deviate from those in the pipeline's otherwise applicable tariff—relies on the theory that shippers would be able to choose a ''recourse'' rate or service from the pipeline's tariff as an alternative to negotiating with the pipeline. In this way, the recourse service would act as a check on the exercise of the pipeline's market power. Nevertheless, the negotiation of rates and services, by its nature, gives pipelines the ability to treat customers differently, and thereby could facilitate a pipeline's ability to segregate customers and exercise market power.

A pipeline with market power might be able to force captive customers to pay for unwanted terms or conditions of service by bundling them with desired services, or to pay for basic services at premium prices. The Commission is concerned that permitting the negotiation of service could give pipelines an incentive to degrade the quality of recourse services in order to sell other services on a negotiated basis.

Another way pipelines could exercise their market power with negotiated services is by unduly discriminating against certain customers. Some level of discrimination, or differentiation, among customers is inherent to the concept of negotiating differing rates and terms of service. However, the Commission is concerned that pipelines could give undue preference to affiliates or other customers in the offering of negotiated services.

Further, the Commission is keenly aware of the natural tension that exists between allowing negotiated rates and services, on the one hand, and ensuring the tradability of capacity, on the other hand. The negotiation of terms and conditions of service could make capacity less tradable and deter the Commission's goal of promoting competition in capacity markets.

Many of these concerns were raised in response to the Commission's ''Request for Comments on Alternative Pricing Methods'' in Docket No. RM95–6–000.[101]/ These concerns were part of the reason that the Commission was reluctant, in its subsequent ''Statement of Policy and Request for Comments'' in Docket Nos. RM95–6–000 and RM95–7–000, to allow the full range of negotiation, and therefore, declined to permit the negotiation of terms and conditions of service as part of its negotiated rates policy at that time.[102]/ However, since then, the Commission has had the benefit of the additional industry comments filed in Docket No. RM95–7–000, and has undertaken a thorough review of its natural gas policies. The Commission now recognizes that the concept of negotiated rates and services, taken together with the other proposals in this document, has the potential to improve the Commission's regulatory framework for natural gas pipelines.

Given the above concerns, the Commission concludes that the benefits to increased service innovation and long-term contracting that can result from the negotiation of terms and conditions of service, together with rates, are valuable, but only if they do not come at the expense of the interests of recourse ratepayers, or hinder the development of competitive markets.

Accordingly, the Commission proposes to implement a policy permitting the negotiation of rates, terms, and conditions of service for transportation services that will be governed by a set of guiding principles designed to protect recourse and captive customers from the exercise of market power, prevent undue discrimination and preference, and foster competition in the interstate capacity markets.[103] These proposed guiding principles, as described below, will provide limits and conditions on the negotiation of rates and services that should minimize the risk of potential harm to recourse shippers and capacity markets, and thereby help ensure that the benefits of the negotiated rates and services policy outweigh such risks.

The Commission is seeking comment on whether to permit the negotiation of services in the short-term market. As the short-term market develops, it can be argued that the benefits of negotiated services are especially important to the short-term market, provided that such negotiation does not impair the tradability of short-term capacity. A number of expected benefits to the market may flow from allowing the negotiation of short-term services. Short-term peak market conditions arguably require a maximum amount of flexibility and customization for shippers. On the other hand, the Commission has not resolved how the negotiation of short-term rates and services could be coordinated with the capacity auction process proposed in this NOPR. Typically, auctions involve the trading of standardized products and services, whereas negotiated services may not be sufficiently tradable.

The Commission proposes to address this issue in the final rule, and seeks analysis and comment on the alternatives of whether to permit or prohibit the negotiation of terms and conditions of service in the short-term market. Should the negotiation of services be reserved for the long-term market? Can negotiation of services be accomplished in combination with the auction process? What effect would the negotiation of short-term services have on the tradability of short-term capacity? What are the benefits to the marketplace of permitting negotiation in the short-term market?

In addition, while the Commission is proposing in this NOPR to permit negotiated rates, terms, and conditions of service under the principles below, the Commission also proposes to conduct a generic review of the negotiated services after they have been in effect for two winter heating seasons.

A. Guiding Principles

The Commission is proposing to permit the negotiation of any rate, or term or condition of service for transportation services to the extent :

- It does not result in undue discrimination or preference;
- It does not degrade the quality of existing services;
- It does not hinder the release of capacity, or otherwise significantly reduce competition;
- Pipelines do not require customers to take negotiated transportation services tied with any unwanted sales, storage, or gathering services provided

[101] / Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, 60 FR 8356 (Feb. 14, 1995), 70 FERC ¶ 61,139 (1995).

[102] / Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines, and Regulation of Negotiated Transportation Services of Natural Gas Pipelines, 61 FR 4633 (Feb. 7, 1996), 74 FERC ¶ 61,076 (1996).

[103] *See* § 284.11 of the proposed regulations.

by the pipeline, its affiliates, or upstream or downstream entities; and

- The terms of the negotiated transactions are made publicly available.

These general guiding principles will provide the boundaries within which the industry may conduct negotiations of rates and services, and will be applied on a case-by-case basis. They will also give the Commission, and the industry, a basic foundation for evaluating future negotiated deals that cannot be envisioned currently. Establishing more specific or restrictive guidelines could limit, in the future, the degree of innovation that potentially could be achieved.

Further, the Commission proposes that if a pipeline violates any of these proposed guiding principles, the Commission would revoke that pipeline's authority to negotiate rates and services. Establishment of this penalty up-front for violating the guidelines of the negotiated rates and services policy should serve as an incentive for compliance. In addition, the traditional remedies available under the NGA would also be available to the Commission to use.

Each of the proposed guiding principles is discussed more fully below.

1. No Undue Discrimination or Preference

The Commission is particularly concerned that the negotiation of rates and services does not violate the statutory prohibition against undue discrimination and preference in the NGA.[104] The very nature of negotiated rates and services is to provide some customers rates and services that differ from those provided to others. However, the negotiation of rates and services under the proposed policy cannot be unduly discriminatory or preferential. Practically speaking, under existing undue discrimination standards, this would require that ''similarly situated'' shippers have rights to the same negotiated deal. The cases in which the Commission has applied the ''similarly situated'' standard in the past provide some guidance on the meaning of ''similarly situated'' shippers.[105]

Nevertheless, the Commission recognizes that clear guidelines, or standards, on what constitutes undue discrimination or preference in negotiating rates and services may need to be established before any negotiation takes place so that the industry can abide by this principle. Such up-front standards could provide guidance to pipelines and shippers about acceptable negotiation practices, eliminating confusion about what does and does not constitute permissible conduct, and could minimize the risk of discrimination occurring before standards emerge from a case-by-case complaint and review process. The standards may also be critical to effective monitoring and enforcement.

While the Commission is considering developing such generic undue discrimination guidelines, such standards could prove difficult to craft, since undue discrimination findings usually depend on specific facts and often are subject to widely varied and subjective interpretation. Thus, the Commission seeks comment on the need for, and feasibility of, its developing clear standards on what constitutes undue discrimination or preference before negotiations are permitted to occur. The Commission further requests commenters to discuss what should be the standards for undue discrimination, including whether the ''similarly situated'' standard should continue to be used, and if so, how that term should be defined.

2. No Degradation of the Quality of Existing Services

A core concern of captive customers, shared by the Commission, is the effect a negotiated rates and services policy could have on the quality of service that recourse shippers receive. Permitting the negotiation of particular terms and conditions of service might, in a direct way, adversely affect the quality of one or many recourse shippers' service. For example, negotiations to loosen a pipeline's imbalance provision for some shippers may force the tightening of allowed tolerances for others.

Therefore, the Commission proposes to permit the negotiation of rates and services as long as the quality of service for recourse shippers is not diminished or degraded. The Commission's objective in proposing this principle is to prevent pipelines from negotiating services at the expense of service quality for recourse shippers.

3. No Impairment of the Tradability of Capacity

The negotiation of terms and conditions of service could impair or reduce competition in capacity markets. This may happen either because service may become defined so differently that capacity is no longer fungible, or because customers voluntarily give up the rights that make trading possible in exchange for a rate reduction. This, in turn, could diminish the degree of competition in capacity markets generally, or in some specific markets.

Therefore, to guard against this, the Commission proposes to permit the negotiation of rates and services as long as such negotiation does not impair tradability of capacity, result in a significantly greater concentration of sellers in capacity markets, or otherwise significantly reduce existing competition. Since the full range of innovation that might occur under the negotiated rates and services policy cannot be known at this time, it may be that shippers will be able to develop negotiated services that do not impair the tradability of capacity. To help enable shippers to release negotiated services, mechanisms may be developed which allow negotiated service to revert to standard service at the releasing shipper's option when released to another shipper.[106]

4. No Unwanted Tying Arrangements

One of the Commission's objectives in Order No. 636 was to prevent the exercise of market power over transportation from being extended to the sale of natural gas, through the tying of the two different services. The negotiation of terms and conditions of service can raise new issues in this regard. Permitting pipelines to negotiate individualized services may prompt pipelines to require customers to take packages of service, either from the pipeline, its affiliate, or another entity,

[104] *See* Section 4(b) of the NGA. 15 U.S. C. 717c (1994).

[105] *See* Tennessee Gas Pipeline Company, 77 FERC ¶ 61,877 (1996) (requiring the pipeline to file specific information to enable shippers to determine if they are similarly situated to particular negotiated rate customers, including the type of service, the receipt and delivery points applicable to the service, and the volume of gas to be transported); and Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. ¶ 30,997 at 31,067–68 (1994) (Order No. 566) (requiring pipelines to post particular information on their EBBs regarding affiliate discounts, including quantity and point data, to enable non-affiliates to determine if they are entitled to a similar discount). *See also,* Iroquois Gas Transmission System, L.P., 79 FERC ¶ 61,394 (1997), *reh'g denied,* 82 FERC ¶ 61,086 (1998) (holding that the pipeline may not charge new expansion shippers and existing shippers different rates, based on findings that differences between each shipper group stemming from the time when each group came on the system, such as differences in receipt and delivery points or available competitive alternatives, were insufficient to justify disparate treatment); and El Paso Natural Gas Company, 62 FERC ¶ 61,311 at 62,990–91 (1993), *followed in* ANR Pipeline Company, 66 FERC ¶ 61,340 at 62,130–31 (1994) and Questar Pipeline Company v. PacifiCorp, 70 FERC ¶ 61,328 at 62,009 (1995) (shippers holding discounted rate contracts between certain primary points do not have the right to use alternate points at the discounted rate, since the market conditions may not be the same at the primary and alternate points).

[106] This is discussed more fully below.

that include both transportation and sales services that are currently available separately. Similar concerns arise from attempts to bundle transportation with unwanted storage or gathering services. Allowing pipelines to force customers to take tied services could adversely affect commodity markets that are currently competitive, or competition between sellers of capacity, and could lead to increased preferences for affiliates.

Therefore, the Commission proposes that a pipeline may not require that a negotiated transportation service be tied with any unwanted sales service or other services provided by the pipeline, its affiliate, or by any upstream or downstream entity, unless that service is necessary to the provision of the negotiated transportation service. While the Commission does not envision that the tying of gathering or sales service to the transportation service would be necessary to the transportation service, there may be instances where storage service could be a prerequisite for the pipeline's ability to provide the negotiated transportation service.

5. Transparency of Negotiated Transactions

The Commission proposes to require that the essential elements of negotiated transactions, including price, be transparent to the public and the Commission. The full disclosure of the terms of the negotiated transactions is critical to the ability of shippers and the Commission to detect, and deter, the exercise of market power and undue discrimination and preference. The transparency of negotiated arrangements also enables shippers to make informed purchasing decisions.

The need for transparency has guided the Commission's development of the proposed procedures for implementing a negotiated rates and services policy. Thus, as discussed *infra,* the Commission is proposing to require pipelines to file with the Commission and serve on firm shippers, written notice of all essential information about a negotiated transaction prior to the transaction taking effect. The Commission is also proposing to increase its existing reporting requirements.

B. Implementation of the Negotiated Rates and Services Policy

1. Procedural Mechanism

The American Gas Association (AGA), on behalf of itself and the Interstate Natural Gas Association of America (INGAA), proposed to the Commission, by letter dated May 4, 1998, a method for implementing a negotiated services policy. AGA/INGAA's proposed method would entail each pipeline making an initial ''benchmark'' filing, prior to its first negotiation of service, that would (a) set forth certain terms or conditions of service that could not be negotiated absent 30 days prior notice, and (b) establish a high standard for quality and reliability of recourse service, as well as better define essential elements of the pipeline's tariff. Then, after Commission approval of the initial benchmark filing, the pipeline would be able to implement, after 10 days prior notice, negotiated deals containing items not identified in the initial filing as requiring 30 days prior notice. The Pipeline Transportation Customer Coalition (Coalition), comprised of end users, marketers, producers, and municipal distributors, filed with the Commission a letter opposing AGA/INGAA's negotiated services proposal and more broadly, the concept of negotiated services.[107]

As discussed above, the negotiation of rates and services can serve a valuable role in the Commission's proposed new regulatory approach. While the Commission acknowledges the potential risk of harm to competitive markets and recourse shippers, that risk appears to be manageable. Therefore, the Commission is proposing a method for implementing negotiated services that has some similarity to aspects of AGA/INGAA's proposed method.

The Commission is proposing to require a pipeline interested in negotiating terms and conditions of service to make an initial filing requesting authority to negotiate rates and services on its system. This initial filing would accomplish two equally important functions. First, it would define and establish a high quality recourse service.[108] Second, the initial filing would establish the parameters of permissible and impermissible negotiation for that pipeline in advance of any negotiation of service or implementation of negotiated services. This would be accomplished by the pipeline identifying categories of non-negotiable, negotiable, and potentially negotiable terms or conditions of service, as described in more detail below. The Commission would closely scrutinize the proposed categories of terms and conditions of service, particularly the terms and conditions of service included within the negotiable category, to ensure consistency with the proposed guiding principles. For example, the Commission would analyze whether the negotiation of the negotiable items could adversely affect the quality of other services or the tradability of capacity, and whether additional terms and conditions should be included in the non-negotiable category. Interested parties would have the opportunity to comment on and protest any aspect of the initial filing, and the Commission would carefully consider all such comments and protests. Only after such review, and Commission approval of the initial filing, would the pipeline be permitted to begin negotiations and implement negotiated services. In addition, after the Commission approved the initial filing, the pipeline would be required to include the categories of terms and conditions of service in its tariff.

The non-negotiable category of terms and conditions of service would include certain terms and conditions of service that could never be negotiated, and thus, would be *per se* non-negotiable. A pipeline might include in this category terms or conditions that, by their nature, would directly affect the services of other shippers (*e.g., force majeure,* higher curtailment, or generic OFOs provisions).

The negotiable category of terms and conditions of service would include particular items that the pipeline would be permitted to negotiate, at its and its customers' discretion. A pipeline could include permissible ranges of flexibility for each negotiable area of service. These negotiable deals would be permitted to be implemented after 10 days prior written notice to firm shippers and the Commission.[109] The Commission is proposing to permit these negotiable services to go into effect at the end of the 10 day notice period, without action on the notice filing by the Commission, since the Commission would have already generically approved the negotiation of these items by that pipeline with its action on the initial filing. Similarly, other shippers would have had the opportunity to comment on or oppose the pipeline's proposed negotiation of a particular term or condition of service at the initial filing stage.

The Commission, however, seeks comment on whether a shorter advance notice period, or any advance notice at all, is necessary for contracts containing the items identified by the initial filing as negotiable. Parties should comment on whether such negotiated contracts could be self-implementing, becoming

[107] *See* June 17, 1998 letter of the Pipeline Transportation Customer Coalitation filed in Docket No. PL97–1–000.

[108] Further discussion of this aspect of the proposal is included in the discussion below on the establishment of initial recourse service.

[109] *See* 18 CFR 385.2007 (1998).

effective upon the agreement of the pipeline and the shipper, subject only to the pipeline filing and posting a transactional report of the negotiated deal contemporaneous with the execution of the contract.

The potentially negotiable category of terms and conditions of service would not need to be specifically identified, but would encompass all other terms and conditions of service not identified in the non-negotiable or negotiable categories. Items would fall into this category if they had the potential to have an impact on the service of other shippers, or had the potential to violate one of the other guiding principles. Thus, any negotiation of these unspecified terms and conditions of service would require prior notice, an opportunity for other shippers to comment, and Commission review of the particular negotiated transaction before taking effect. Specifically, the pipeline would be required to make a filing under Sections 4(d) and (e) of the NGA before the negotiated deal could take effect.[110] The 30 days prior written notice to the Commission and firm shippers provided by the Section 4 filing would give all other shippers the opportunity to protest the negotiated transaction before it takes effect, and the Commission would have the ability, as usual, to accept, reject, or suspend the pipeline's filing.

The pipeline's Section 4 filing would need to contain the essential aspects of the negotiated agreement, including: the name of the shipper, any affiliation with the pipeline, the contract quantity, the applicable rate(s), the receipt and delivery points, and a brief description of the negotiated term or condition of service with reference to the modified provision of the recourse tariff or rate schedule. The filing would also contain a statement, with any supporting information, that no material adverse effects on the benchmark service will result from the negotiated term or condition. This statement and supporting information would create a rebuttable presumption that the negotiated transaction will not have any material adverse effect on the recourse service. If the presumption is overcome, the ultimate burden of persuasion would be on the pipeline to show that no degradation of the recourse service would result.

Finally, the Commission is also proposing to continue the current practice of allowing pipelines to negotiate unique services in individual rate schedules that are then made available to all customers, since this method already serves the industry well.

Although the Commission is proposing the method for implementing negotiated services described above, the Commission would also consider variations on this method, including the specific proposal advanced by AGA/INGAA. In this regard, the Commission requests comment on whether pipelines could be given an option of implementing negotiated terms and conditions of service without having to initially file general tariff provisions defining the scope of permissible or impermissible negotiation. That is, could pipelines also be permitted to negotiate unique deals with individual shippers that include terms and conditions that deviate from those in its existing tariff, by filing each negotiated contract with 30 days advance notice, and bypassing the initial tariff filing? The Commission invites comments discussing the pros and cons of the proposed implementation method, including whether that method adequately addresses concerns which have been expressed about the pipelines' potential exercise of market power. Commenters are also invited to suggest alternative procedures for implementing negotiated rates and services.

2. Recourse Service

The recourse service, which would be available to all shippers, serves as an alternative to negotiating with the pipeline, and an important check on the pipeline's potential exercise of market power. Therefore, the Commission must ensure that the recourse service is initially, and remains over time, a high quality service, so that it stays a viable alternative to negotiated rates and services. Below, the Commission presents proposals for initially establishing a good quality recourse service, and for maintaining the vitality of that recourse service in the future.

a. Establishment of Initial Recourse Service. The Commission proposes to require that each pipeline's initial voluntary filing to implement negotiated terms and conditions of service define the components of that pipeline's recourse service. Pipelines would be required to design a recourse service that is of a high quality and reliability, and maintains at least the level of service being offered by the pipeline in its currently effective tariff. Core elements of the pipeline's recourse service that are not adequately defined in the tariff, including standard operating practices, would be identified by the pipeline or its customers in conjunction with the filing.

Essentially, this method of establishing initial recourse service would require that any pipeline choosing to implement negotiated terms and conditions of service submit its tariff services for review and modification to establish adequate recourse service in exchange for the authorization to negotiate terms and conditions of service. This proposal would provide a procedure to address shippers' dissatisfaction with some pipelines' existing service offerings, and their concerns that the literal language of the existing tariffs might permit pipelines to reduce the quality of recourse service from that enjoyed under current operating practice. Thus, the review and modification of individual pipelines' existing tariff services will help ensure that recourse service is adequate before any negotiation of rates or services takes place.

However, the Commission also seeks comments on whether using pipelines' existing tariffs as the initial recourse service, without requiring new filings, might be less burdensome on the industry and the Commission, and thereby permit pipelines and shippers to begin negotiating rates and services sooner than if initial filings to establish recourse service were required. Parties should also comment on whether the existing rates, terms, and conditions in pipelines' current tariffs could be acceptable as initial recourse services, since they have already been found by the Commission to be just and reasonable. In commenting, parties should evaluate the need for establishing adequate recourse services against the ability to implement the negotiated rates and services policy without undue delay.

Another option for establishing initial recourse service would be to have GISB generically identify basic elements of service that could not be subject to negotiation. Designating particular terms or conditions as non-negotiable would have the effect of defining some of the basic terms and conditions of service that comprise recourse service. Some commenters have requested that the Commission generically specify particular terms or conditions as non-negotiable. However, GISB is the one forum where all segments of the industry are brought together, making across-the-board consensus on this issue a possibility. The Commission requests comments on the feasibility and value of having GISB define initial recourse service.

b. Maintaining Vitality of Recourse Service Over Time. For recourse service to remain a viable option to negotiated

[110] 15 U.S.C. 717c (1994).

service, the overall quality of the recourse service must continue to meet shippers' needs. The Commission is concerned that over time the quality of recourse service may deteriorate. By not updating recourse service to keep pace with changing markets, technology, and customer needs, or by maintaining a low-quality or inferior recourse service, pipelines could force captive customers into negotiating the basic services they need, at premium rates.

Thus, the Commission finds that a mechanism needs to be established to review recourse services to ensure they remain viable alternatives to negotiated services. Accordingly, the Commission proposes to implement periodic reviews of the rates, terms, and conditions of recourse service.[111] As discussed in more detail below, the Commission proposes that these periodic reviews take place on a three-to-five year cycle, although comment is invited on proposals for alternative review cycles. These periodic reviews would provide the Commission with the opportunity to examine the range of terms and conditions included in the recourse service, and to assess the quality of the recourse service as a whole.[112]

The periodic reviews would provide a forum for the Commission to determine if certain negotiated services offered by some pipelines should be offered as recourse services after some reasonable time. This would allow captive customers to obtain the benefits of service innovation, while at the same time giving pipelines a reasonable period of time to profit from their innovative service offerings before having to offer the service at a cost-based rate. The periodic reviews of recourse services would also enable proposed additions or changes to recourse service to be considered comprehensively, to help ensure that the new package of recourse services is both operationally feasible and cost effective.

There are several different ways that the Commission could implement the periodic reviews of recourse service. The periodic review could be undertaken on an individual pipeline basis, on a regional basis, or on a national, or generic, basis. The Commission proposes to establish recourse services, through the periodic reviews, for each individual pipeline. This approach is likely to provide the best match of customers' service needs with the operational capabilities of individual pipelines. Establishing recourse services individually, for each pipeline, would also allow rate issues to be treated simultaneously with service issues.

The Commission proposes that pipelines offering negotiated terms and conditions of service file information with the Commission every three to five years that will ensure the viability of the pipeline's recourse service. The information proposed to be filed is intended to give the Commission adequate information to determine whether and how to modify the pipeline's recourse rates and service to keep pace with market conditions.

The information would need to be filed for each type of negotiated service—the negotiated services that take effect on shortened notice and the transactions subject to 30 days notice. The filing would include data on the names and types of shippers negotiating the contracts, the terms negotiated, the contract demand, and volumes moved under the contracts.

In addition, to permit a comparison to the pipeline's current recourse service, the pipeline would have to provide aggregate data for each category of negotiated service, and for the recourse service. The aggregate data would include information on total contract demand, aggregate volumes, and revenues for the negotiated contracts and the recourse service.

Commenters are requested to address the adequacy of the information required in the proposal, including whether more detailed information is necessary, and are encouraged to suggest other information that might better permit the Commission to review negotiated rates and services.

The Commission is still considering, as an alternative to the pipeline-specific review of recourse service, requiring the periodic recourse service reviews to be made on a regional basis, before any individual pipeline-specific adjustments are made. On the one hand, the establishment of recourse services on a regional basis, so that the recourse services offered by all pipelines in a given region would be as nearly equivalent as possible given operational differences among pipelines, could result in greater standardization of pipeline services and practices, thereby enhancing competition and tradability of capacity. It could also lower transaction costs for customers. In addition, a regional approach may be less burdensome on shippers because they would need to participate in fewer proceedings. On the other hand, it may be difficult to develop recourse services for all pipelines in a region, since a regional approach would not facilitate the tailoring of services to the operational capabilities of specific pipelines.

The Commission seeks comment on the different ways that the Commission could implement the periodic reviews of recourse service, including comment on the merits of establishing recourse service on a regional basis through regional reviews. Parties may discuss the advantages and disadvantages of each approach, and how a regional approach might be performed.

3. The Release of Negotiated Capacity

To enhance the tradability of capacity under negotiated service contracts, the Commission is contemplating requiring pipelines to include in their tariffs a provision that allows, but does not require, a negotiated service to revert to a standard form of service when it is offered for release. This should make it easier for the customer under a negotiated service contract to release its capacity. This is because a negotiated service agreement may contain provisions tailored to a customer's needs which render the service undesirable to other shippers with different needs. This provision could apply either to all negotiated services, or only to those that represent an enhancement over the standard service. The provision could also be structured such that any negotiated term or condition of service which the replacement shipper desires would remain in the contract.

In the case where a releasing shipper negotiates enhanced, more flexible, or ''better'' services than the standard service, the releasing shipper presumably would be compensated for reselling capacity as if it was standard service, regardless of what it paid for the capacity. If negotiated services are below the standard level included in the tariff provision, the releasing shipper might be required to pay the difference between the negotiated rate and the standard rate before reselling its service as standard service. In both cases, reversion of a negotiated service to a standard form of service would be allowed only when operationally feasible, and only when requested by the releasing shipper.

The Commission requests comment on this potential method for helping ensure that negotiated capacity remains tradable, particularly on the feasibility of implementing such a requirement. Commenters should address how critical establishing this reversion requirement is to permitting the release of capacity under a negotiated contract, how difficult it would be to define what

[111] *See* proposed § 284.10(c).

[112] The Commission may need, at some point in the future, to adopt standards that define recourse service quality.

service is of a higher or lower quality than the standard level of service, and to what extent operational difficulties in permitting the reversion to a standard form of service might limit the overall value of this approach.

4. Negotiation of Rates and Services With Affiliates

As stated previously, the Commission proposes to permit the negotiation of rates and services where similarly situated shippers have rights to the same negotiated deal. The Commission is considering whether additional protections are required to protect against unduly preferential treatment in favor of pipeline marketing affiliates or whether the Commission's existing marketing affiliate rules provide adequate protections. Therefore, the Commission proposes to permit pipelines to negotiate terms and conditions of service with their marketing affiliates so long as all other similarly situated shippers are offered the same rates and services. Consistent with prior precedent, the Commission proposes to establish a rebuttable presumption that all shippers receiving the same type of service, using the same pipeline facilities, are similarly situated.[113] The pipeline could rebut the presumption by showing that a particular shipper or group of shippers is not similarly situated with its affiliate in order to justify not offering the same negotiated deal to non-affiliated shippers.

The Commission seeks comments on whether the above proposal provides adequate protection against undue discrimination. For example, should the Commission consider stronger protections, such as precluding the negotiation of rates and services with marketing affiliates as unduly preferential unless all other shippers are offered the same rates and services? Alternatively, could robust monitoring be adequate to discourage and prevent pipelines from giving undue preference to their affiliates eliminating the need for stronger protections? If so, what types of information would the Commission need to gather to meet its monitoring objectives, and how burdensome would it be to provide this information? Is some other form of protection better suited to the Commission's purpose of ensuring against undue discrimination? Commenters are invited to respond to these issues and may raise any related issues not presented here.

5. Negotiation of Capacity Release and Flexible Point Rights

The Commission is considering whether the rights to release capacity and to flexible receipt and delivery points should be included among the terms or conditions of service that could not be changed by negotiation. Capacity release is a fundamental element of the increasingly competitive natural gas capacity market. It creates competition between firm capacity holders and the pipeline in what otherwise may be a monopoly capacity market.

Under a negotiated rates and services policy, both pipelines and shippers may find it easy and advantageous to negotiate the relinquishment of such rights. Pipelines may find it in their interest to negotiate services without capacity release rights to reduce competition for their interruptible and short-term firm services. Shippers, also, may wish to relinquish capacity release rights for a price break, particularly if they do not plan to utilize their release rights. Shippers who give up capacity release rights will no longer be potential sellers of capacity. Those who give up flexible receipt and delivery points may severely limit their participation in the secondary market. Thus, surrender of these rights could have a clear and direct impact upon competition from the release market and the pipeline's ability to exercise market power.

The Commission requests comment on whether precluding the negotiation of rights to capacity release and flexible points is necessary to ensure that firm shippers can continue to release capacity and trade with others behind secondary points, and thereby remain competitors in the short-term capacity market. Commenters should address the likelihood, and extent to which, they expect these rights to be a primary subject of negotiations between pipelines and shippers, and the extent to which restricting the negotiation of such rights might limit the range of possible negotiated deals. Commenters also should consider whether the Commission should implement this restriction as an initial protection that could be relaxed in the future as more experience is gained with the negotiated rates and services policy.

6. Future Cost Allocation Issues

The Commission shares concerns, voiced by potential recourse shippers in the comments filed in Docket No. RM95–7–000, regarding the effect that the negotiation of rates and services might have on recourse shippers' rates. The main concern is that pipelines entering into negotiated deals that result in reduced revenue streams might seek to recover the revenue shortfall by raising recourse rates in future rate cases. Such cost-shifting could cross-subsidize negotiated services, and pipelines could try to keep revenues that exceed recourse rate caps, while shifting revenue shortfalls to recourse ratepayers.

The rates of recourse shippers should not be adversely affected by the pipelines' negotiations of service with other parties. Only the negotiating parties should bear the risks and rewards of their negotiated contracts. In fact, the Commission has previously addressed this issue in the negotiated rates context by prohibiting a pipeline from making any adjustment to its recourse rates to account for its failure to recover costs from a negotiated rate shipper,[114] absent some showing of benefit to recourse shippers.[115]

At the same time, the Commission is concerned that if discount-type adjustments for negotiated services are similarly prohibited in future rate cases, pipelines might be deterred from negotiating rates and services. Pipelines might favor the discounting of service fees over the negotiation of creative alternatives, since the Commission's discounting policies permit the recovery of revenue shortfalls. These lost negotiated agreements may have resulted in the pipeline obtaining a higher total revenue stream than it would have by entering into a discounted deal, and may have mitigated the losses associated with the level of discounting reflected in current rates. All customers may benefit to the extent that some shippers stay on the system or take longer term contracts as a result of the ability to negotiate rates and services.

Therefore, the Commission is considering examining all rate issues associated with negotiated rates and services in future rate cases, including the treatment of revenue shortfalls and excess revenues, and whether corresponding rate adjustments are appropriate. This would be a change from the policy stated in *NorAm* of prohibiting, *per se,* discount-type adjustments for negotiated rate agreements as a means of ensuring costs

[113] *See* Tennessee Gas Pipeline Company, 77 FERC at 61,877 (requiring the pipeline to file specific information to enable shippers to determine if they are similarly situated to particular negotiated rate customers), *see also,* Iroquois Gas Transmission System, L.P. CP96–687–000, 79 FERC ¶ 61,394 at 62.693 (1997), *reh'g denied*, 82 FERC ¶ 61,086 (1998) (rejecting proposal to discount service to expansion shippers as unduly discriminatory against existing shippers).

[114] NorAm Gas Transmission Company, 75 FERC ¶ 61,091, *order on reh'g,* 77 FERC ¶ 61,011 (1996) (*NorAm*).

[115] Northwest Pipeline Corporation, 79 FERC ¶ 61,416, 62,754 (1997).

are not shifted to recourse rate customers. This approach may also permit the Commission to consider any additional cost allocation issues that might arise from any new facilities that may have been built to provide the negotiated service. However, the burden of justifying the benefit of specific negotiated deals would be on the pipeline. In this respect, the Commission seeks comment on what type of showing pipelines would have to make in order to show that specific negotiated deals merited an adjustment to recourse rates.

Finally, the examination of all rate issues associated with negotiated terms and conditions in future rate cases may also provide the Commission with the opportunity to fully explore the benefits and/or harm to the recourse shippers from the negotiated rates and services policy. To the extent that these are unknowns at this point, the Commission needs to have a fair amount of flexibility to decide how revenues and costs associated with negotiated services should be treated in future rate cases. The Commission solicits comment on the above proposal, including comment on the extent to which this approach may lead pipelines to attempt to shift risks to captive ratepayers, and the proposal's potential impact on the ratemaking process.

An alternative would be to prohibit any adjustments to recourse rates due to revenue shortfalls resulting from negotiated rates and services. This approach would prevent pipelines from shifting the risks of negotiated deals to recourse ratepayers. On the other hand, if the pipeline were required to absorb any revenue shortfalls from negotiated deals, the pipeline should probably have a corresponding right to retain any excess revenues resulting from negotiated rates, thus eliminating the possibility that recourse shippers would benefit from negotiated deals other than through improved recourse service.

The Commission seeks comment on the advantages and disadvantages of this alternative proposal to prohibit rate adjustments to recourse rates for revenue shortfalls. Commenters should include discussion on the extent to which prohibiting rate adjustments might discourage pipelines from entering into negotiated deals, and whether, and/or to what extent, prohibiting rate adjustments is inconsistent with the Commission's existing discount policy.

7. Reporting, Monitoring, and Complaint Procedures

The implementation of stringent reporting requirements and active monitoring will be necessary to ensure the success of a negotiated rates and services policy. Such reporting and monitoring will be critical for the Commission to be able to detect and deter the exercise of market power, for customers to identify undue discrimination in the provision of services and to support their legitimate complaints, and for the Commission to ensure compliance with the guiding principles of the negotiated rates and services policy.

The Commission is proposing to add to the data that pipelines currently are required to report under the Index of Customers. Such additional information will be aimed at capturing the existence of similarly situated customers and any affiliate relationship between the capacity holder and the customer in a negotiated transaction.

Specifically, the Commission proposes to require pipelines to identify, in the Index of Customers, each contract that contains negotiated rates and services. Pipelines would only be required to flag contracts with negotiated rates and services through a ''yes/no'' indicator and contract number for each customer and contract. The Commission is not proposing to require pipelines to delineate the terms of specific contracts in the Index of Customers. Such delineation might pose a significant burden on the pipelines, without a substantial countervailing benefit.

In addition, the Commission is proposing to require other information in the Index of Customers and/or the proposed monthly transaction reports to assist in monitoring a pipeline's market power. This includes information on receipt points, delivery points, segments, affiliate relationships, and contract numbers. Such information will enable shippers and the Commission to evaluate whether specific shippers or transactions are ''similarly situated'' for purposes of assessing undue discrimination or preference under a negotiated contract.

Further, the Commission proposes to conduct compliance audits or studies of specific pipelines' compliance with the principles. Compliance audits or studies may provide the necessary detail about specific services offered, and their effects on the customers in individual cases, to allow case-by-case review of complaints, the early detection of problems, and *sua sponte* Commission action. Such audits also could provide constructive feedback to both the industry and the Commission, and may improve overall compliance. The Commission seeks comments on the utility of compliance audits.

Finally, an effective complaint procedure is necessary to resolve and discourage abuses of the negotiated rates and services policy. To this end, the Commission recently held a public conference in Docket No. PL98–4–000, to aid in the process of evaluating and improving its complaint procedures,[116] and is contemporaneously issuing a separate NOPR to revise the complaint process in Docket No. RM98–13–000.

AGA/INGAA's negotiated terms and conditions proposal recommends that an expedited and effective complaint procedure allow for the remedy of retroactive relief in the event a customer proves that the pipeline willfully and knowingly made a material misrepresentation in its initial filing of a negotiated term or condition, which resulted in material harm to the customer. Such relief would only be available in the context of the negotiated terms and conditions policy, and would not be permitted to be used as precedent for any other matter under any statute administered by the Commission. Parties may also comment on this proposal in the separate rulemaking proceeding in Docket No. RM98–13–000.

VI. Long-Term Services

The proposals made in this NOPR for the short-term capacity market will necessarily impact the long-term market. Further, without a vibrant market for long-term capacity, the benefits of the short-term market proposals cannot be realized. If the Commission adopts a new regulatory approach for short-term transportation, there must be viable, regulated long-term services available to mitigate any market power of capacity sellers. The Commission is issuing a companion Notice of Inquiry [117] to consider whether changes should be made in its policies with regard to long-term markets. However, the Commission is concerned that some of its current regulatory policies may result in a bias toward short-term contracts, which could weaken the long-term market and undermine the proposals set forth in this NOPR.

Therefore, the Commission is addressing in this NOPR, several long-term transportation rate and certificate issues that have a direct and significant impact on the short-term transportation policy proposals contained in this NOPR. Specifically, the Commission is

[116] Symposium on Process and Reform: Commission Complaint Procedures. *See* Notice of Conference issued March 10, 1998 in Docket No. PL98–4–000, 63 FR 12800 (March 16, 1998).

[117] Regulation of Interstate Natural Gas Transportation Services, Docket No. RM98–12–000.

proposing to modify the right of first refusal by eliminating the term matching cap. Further, the Commission is considering changes to its policies with regard to term-differentiated rates and negotiated terms and conditions in long-term contracts. In addition, the Commission is seeking comments on its policies for certification of new capacity.

A. The Interaction Between Long-Term and Short-Term Services

Long-term contracts provide important benefits to pipelines and customers. Long-term contracts provide stability, and can reduce financial risks to the pipeline, lowering their capital costs, to the benefit of all the pipeline's customers. In addition, encouraging long-term contracts ensures that there will be sufficient capacity available for release in the secondary market in order to maintain the vibrant competition between sales of capacity in the primary and secondary market which exists today.

The Commission has proposed that the removal of the price cap in the short-term transportation market, coupled with other changes proposed for the short-term market, would be consistent with the Commission's statutory responsibilities. These proposals, in combination with one another, should foster a more competitive environment, while at the same time, providing a check against any monopoly power abuses. The rationale for modifying the approach to short-term markets does not apply to the long-term market, however. In the long-term market, there are no effective substitutes for long-term pipeline service, unlike the short-term capacity products of interruptible, short-term firm, and capacity release. Therefore, even if the Commission decides to adopt a different regulatory approach for short-term transactions, there will continue to be a need for the Commission to regulate the terms and conditions of service for long-term transportation to protect shippers against the exercise of monopoly power by pipelines. The Commission's regulation, however, should not provide artificial disincentives for long-term contracts, but should be neutral with regard to long-term and short-term contracts.

The Commission is concerned that some of its current regulatory policies result in a bias toward short-term contracts. These policies include the term matching cap in the right of first refusal and the use of the same maximum rate for service under short-term and long-term contracts. Under these conditions, financial risks and rewards are not linked, *i.e.,* there is risk asymmetry, favoring short-term contracts, and there is little incentive for a shipper to enter into a long-term contract with the pipeline. If a shipper enters into a long-term contract, it runs the risk that its rates will increase during the term of that contract. It can avoid this risk, and still be guaranteed that it can receive service indefinitely by entering into a short-term contract with a right of first refusal. The customer knows that it need never pay more than the regulated cost-of-service maximum rate to buy service from the pipeline, regardless of whether it is pursuant to a long-term or a short-term contract. If market conditions are relatively weak at the end of the current contract, the customer may be able to bargain with the pipeline to get a discount or to obtain service more cheaply through the secondary market or on another pipeline. Where capacity holders have firm rights to capacity that is valued above the cost-of-service rate, they will likely hold onto that capacity. Current contract holders will exercise their right of first refusal when market conditions are weak. Other things being equal, the customer should want a shorter-term contract.

The pipeline faces the other side of the bargain. The bias toward short-term contracts and the current asymmetry of risk may have negative economic consequences to the pipelines, and for example, may be a factor in causing capacity turn-back and the discounting of rates for long-term contracts. Customers may take only relatively short-term contracts and only when the value meets or exceeds the rate. The proposed removal of the price cap in the short-term market could move some customers toward longer-term contracts to avoid price uncertainties and potential jumps in the short-term prices. On the other hand, however, removal of the price cap could move other customers toward the short-term market because they could always count on being able to secure capacity there at some price. Cost recovery problems resulting from a weak long-term transportation market could be a possibility for pipelines, even if the price cap were removed, given the biases toward short-term contracts. Without changes in the Commission policies that contribute to this bias, the Commission's goals for the short-term market could be undermined because pipelines would have an incentive to undermine short-term markets in order to be more confident of their ability to recover their costs over the long term.

A pipeline with cost recovery problems could try to alleviate the problem in one of several ways, each of which would have adverse consequences on the short-term market. First, to try to recover their revenues, pipelines could attempt to raise the charges to remaining long-term customers. They are unlikely to be able to recover their costs in this manner. Even if successful in raising rates to remaining customers,[118] this action could cause additional customers to leave the pipeline, leaving the pipeline and the remaining customers in an even worse financial situation.

In addition, a pipeline with a cost recovery problem would feel pressure to eliminate alternatives that enable shippers to turn back capacity.[119] If pipelines can make the secondary market less viable, by withholding capacity and/or price discrimination, they would have more captive customers from whom to recover their costs. This would undermine short-term markets and reduce efficiency because shippers' capacity could not be reallocated to those who value it more. It would also give pipelines greater opportunity to exercise market power, further decreasing efficiency, and making it easier for a pipeline to maintain a policy of discrimination between customers. Thus, by having a negative impact on the pipeline's financial stability, the bias in favor of short-term markets would provide incentives for the pipelines to undermine the short-term market.

B. Specific Impediments to Long-term Contracts

There are a number of artificial impediments to long-term contracts on existing pipelines. These result in lower risks to shippers for short-term contracts available for the same maximum rates as the long-term contracts, thereby artificially discouraging long-term contracts. One way to help restore balance is to remove these artificial impediments to long-term contracts.

1. The Right of First Refusal

In Order No. 636, the Commission authorized pre-granted abandonment of long-term firm contracts, subject to the right of first refusal for the existing

[118] The Commission would not necessarily approve a request for increased rates. *See, e.g.,* El Paso Natural Gas Company, 72 FERC ¶ 61,083 at 61,441–42 (1995); and Natural Gas Pipeline Co., 73 FERC ¶ 61,050 at 61,128–30 (1995).

[119] Pipelines might also try to increase their sale of interruptible transportation as another means of recovering their costs of service. Shippers, however, would only take this capacity when they need it, and not year round in most cases.

shipper.[120] Pursuant to the right of first refusal, the existing shipper can retain service by matching the rate and length of service of a competing bid. The rate is capped by the pipeline's maximum tariff rate, and, in Order No. 636–C, the Commission limited the requirement that the existing shipper must match the length of the contract term of a competing bid to a contract length of five years.[121] On rehearing of Order No. 636–C, the pipelines argued that this five-year matching cap interferes with market forces; and, because of the five-year cap, it is unlikely that any existing shipper will renew its contract for more than five years. While the Commission concluded that the record in the Order No. 636 proceeding supported the five-year cap, the Commission recognized there are legitimate concerns about the practical effects of the five-year matching cap on the restructured market as it continues to evolve.

The right of first refusal with the five-year matching cap provides a disincentive for an existing shipper to enter into a contract of more than five years, and results in a bias toward short-term contracts. As a practical matter, the right of first refusal with the five-year cap gives current customers the incentive to opt for as short a contract term as possible so that, at contract expiration, they can reassess the value of the capacity and decide if it is in their interest to keep it. If pipeline capacity is relatively valuable, there are likely to be other shippers interested in long-term contracts, but the existing shipper will exercise its right of first refusal and retain the capacity for a five-year term. On the other hand, if the market value of long term capacity is low, the existing shipper can terminate the contract with no obligation to the pipeline. In these circumstances, there is no reason for a shipper with a right of first refusal to enter into a long-term contract because it can use a series of short-term contracts to obtain long-term service, and wait and see how the market develops.

This results in an imbalance of risks between pipelines and existing shippers. The pipeline is obligated to provide service for the shipper indefinitely, as long as it exercises its right of first refusal, while the shipper has no corresponding long-term obligation to the pipeline. Elimination of the five-year cap from the right of first refusal would remove a significant factor in the risk asymmetry discussed above. Without a limitation on the contract length that must be matched by the existing shipper, an existing shipper who wants to be assured of access to capacity for the long term would have to match the highest rate bid up to the maximum cost-based, for the capacity for the duration of the contract bid, and thus share with the pipeline some of the risks associated with the long-term commitment.

Elimination of the cap limiting the contract length that the existing shipper must match also would foster efficient competition, as encouraged by Order No. 636. This cap tends to protect existing shippers from competition and give them control over pipeline capacity. Without the cap, the term of a contract will be determined by market forces, rather than by the limitation established by the Commission.

In *UDC* v. *FERC*,[122] the Court stated that for a finding of public convenience and necessity for pre-granted abandonment, the Commission must make appropriate findings that existing market conditions and regulatory structures protect customers from pipelines' market power. The Court found that the right of first refusal mechanism with a cap on contract length was one adequate means of protecting customers from pipeline market power. In response to the Court's concern that the Commission had failed to justify a twenty-year cap, the Commission adopted the five-year cap in Order No. 636–C. However, conditions in the market have changed substantially since the issuance of Order No. 636, and the five-year cap has not worked well in the restructured market. As discussed above, it has led to asymmetry of risk and a bias toward short-term contracts. Therefore, the Commission is proposing to eliminate the term matching cap from the right of first refusal and is seeking comments on this proposal.[123]

The Commission is also considering whether, in view of the changed market conditions, the right of first refusal should be eliminated entirely. Since restructuring, increased competition in both the commodity and capacity markets now affords customers greater protections from market power. Small LDCs no longer have to hold capacity on the pipeline in order to receive gas, and can buy gas delivered from marketers or can obtain capacity in the secondary market. In fact, many LDCs have chosen not to hold capacity on pipelines. Therefore, changed conditions suggest that the right of first refusal may no longer be needed to protect the customers it was originally intended to protect. The Commission is seeking comments on eliminating the right of first refusal, as well as other options, such as changing the length of the term matching cap or permitting the pipelines and the customers to negotiate for a right of first refusal.

2. Term-Differentiated Maximum Rates

Another method of reducing risk asymmetry and strengthening the long-term market would be to encourage contracts that contain lower maximum rates for longer-term service than for short-term service in recognition of the value of long-term contracts in limiting the pipeline's risk. As explained above, a short-term contract is riskier for the pipeline, and a higher short-term contract rate would compensate pipelines for the additional risk they take when entering short-term contracts. Conversely, a short-term contract provides greater flexibility and less risk to the shipper, and the higher short-term rate would recognize, and require payment for, these benefits.

The Commission is seeking comments on whether and how term-differentiated maximum rates should be encouraged, and, if so, how the rate differential should vary with contract term. For example, should there be only two contract length categories, or should there be more? How would the appropriate contract length categories be determined? How should the rate differentials between term categories be set? Could a market mechanism be developed for determining the appropriate differentials?

Negotiation may be a primary way of addressing the sharing of risk between the parties, to ensure that parties can contract to minimize the total cost of that risk. Negotiation of rates and services is a possible solution to some of the problems discussed above. The limitations discussed in the preceding section[124] should keep negotiations from hurting the fungibility of the capacity in the short-term market, increasing the pipelines' (or their affiliates'') ability to exercise market power, and otherwise hurting third parties.

C. New Capacity Certificate Issues

The Commission's proposed changes in the short-term market also create a need to review its policies for

[120] 18 CFR 284.221(d).

[121] Order No. 636 capped the matching term at 20 years.

[122] 88 F.3d 1105, 1139 (D.C. Cir. 1996), *cert. denied*, 117 S. Ct. 1723 (1997).

[123] The term matching cap is not set forth in the regulations, and, therefore, no revision to 18 CFR 284.221(d) is necessary.

[124] The proceding section of this NOPR discusses the role of negotiated terms and conditions in the short-term market.

certificating new capacity and services. As explained above, the removal of the price cap in the short-term market requires that viable regulated services be available in the long-term market to mitigate any market power of capacity sellers. The Commission's certificate policies are critical to assuring that pipelines construct the optimal amount of capacity to meet demand in the long-term market. Therefore, the Commission is reviewing its certificate policies to determine whether these policies should be modified to meet current market conditions and needs, particularly in light of the proposed changes in the short-term market.

The Commission's objective in this review is to assure that its policy is well-balanced so that facilities are constructed where demand warrants construction, while at the same time guarding against additional construction that is not necessary to meet any increase in demand for capacity and that could result in excess capacity and the problems of unsubscribed capacity. The Commission also seeks to assure that its policies will not result in building new capacity in markets where existing facilities are not fully subscribed because this could create false price signals and weaken the long-term transportation market.[125]

Under the policy set forth in *Kansas Pipe Line & Gas Company (Kansas Pipe Line),*[126] the Commission required an applicant seeking an NGA section 7 certificate for authority to construct and operate new facilities to show customer commitments sufficient to justify the proposed project. In order to demonstrate the need for a new project, an applicant was required to submit market studies of the customers and area to be served, and contracts showing long-term commitments for 100 percent of the proposed facility's capacity. This approach made it unlikely that too much capacity would be built.

Under the current policy, an applicant for a traditional section 7 certificate must submit precedent agreements for long-term firm service[127] for a substantial amount of the new facility's capacity.[128] Where an applicant is not able to provide evidence of long-term commitments for firm service for at least 25 percent of a proposed facility's capacity, the Commission will typically place the applicant at risk for unrecovered costs attributable to the unsubscribed capacity.[129] This at-risk condition is intended to discourage overbuilding and assure that the pipeline's other customers are not compelled to pay for costs associated with unused capacity.

In considering evidence of market demand, the Commission gives equal weight to precedent agreements between an applicant and its affiliates and an applicant and unrelated third parties. Further, the Commission has not sought to assess whether these customer commitments indicate a genuine growth in market demand necessitating additional gas supplies, or reflect a desire to access separate supply sources for unchanging quantities of gas, or represent efforts to obtain reduced transportation charges for shipping identical gas volumes. Before Order No. 636, new projects were typically intended to bring gas to unserved or clearly under-served markets. Increasingly, new projects are designed to compete for market share by offering alternatives to customers in established markets.

The Commission seeks to assure that its policies strike the proper balance between the enhancement of competitive alternatives and the possibility of over building. The Commission wants to assure that its policies serve to maximize competitive alternatives, while at the same time protect against overbuilding, unnecessary disruption of the environment, and unneeded exercise of eminent domain over private property. Specifically, the Commission seeks comments on whether proposed projects that will establish a new right-of-way in order to compete for existing market share should be subject to the same considerations as projects that will cut a new right-of-way in order to extend gas service to a frontier market area. In conjunction with this reassessment of project need, the Commission is considering how best to balance demonstrated market demand against potential adverse environmental impacts and private property rights in weighing whether a project is required by the public convenience and necessity.[130]

One option would be for the Commission to authorize all applications that at a minimum meet the regulatory requirements, then let the market pick winners and losers. Another would be for the Commission to select a single project to serve a given market and exclude all other competitors. Another possible option would be for the Commission to approve an environmentally acceptable right-of-way and let potential builders compete for a certificate.

The Commission requests comments on these three options, as well as comments on the following questions: (1) Should the Commission look behind the precedent agreement or contracts presented as evidence of market demand to assess independently the market's need for additional gas service? (2) Should the Commission apply a different standard to precedent agreements or contracts with affiliates than with non-affiliates? For example, should a proposal supported by affiliate agreements have to show a higher percentage of contracted-for capacity than a proposal supported by non-affiliate agreements, or, should all proposed projects be required to show a minimum percent of non-affiliate support? (3) Are precedent agreements primarily with affiliates sufficient to meet the statutory requirement that construction must be required by the public convenience and necessity, and, if so, (4) Should the Commission permit rolled-in rate treatment for facilities built to serve a pipeline affiliate?[131] (5) Should the Commission, in an effort to check overbuilding and capacity turnback, take a harder look at proposals that are designed to compete for existing market share rather than bring service to a new customer base, and what particular criteria should be applied in

[125] In the NOI, the Commission discusses price distortions in the California and Chicago markets, where several pipelines were facing significant turnback of long-term capacity, while other pipelines were constructing additional capacity to serve those markets.

[126] 2 FPC 29 (1939).

[127] For purposes of evaluating applications for new construction, a long term is a term of at least 10 years. *See e.g.,* Texas Eastern Transmission Corp., 82 FERC ¶61,238 (March 11, 1998).

[128] ''Generally, as it has evolved, the minimum level of firm commitment that the Commission has determined to be sufficient for a new onshore facility has been 25 percent of the proposed project's capacity.'' *Id.* at 61,916.

[129] *But see* 18 CFR 157.100–157.106 (Applicants for an optional expedited certificate under Subpart E of Part 157 may receive a certificate to construct for others for new service without any requirement to show specific market demand; however, the rates for service provided through such facilities will be designed to impose the economic risks of the project entirely on the applicant).

[130] *See, e.g.,* Granite State Gas Transmission, 83 FERC ¶61,194 (1998). The Commission authorized a new liquefied natural gas (LNG) facility after comparing services to be provided by the proposed facility with similar services that might be offered by employing alternative facilities. Although employing existing facilities could result in diminished adverse environmental impacts, the Commission authorized the proposed project, finding the service made available by the new LNG facility would provide specific advantages over the alternatives.

[131] As discussed in the NOI, in the Pricing Policy for New and Existing Facilities Constructed by Interstate Natural Gas Pipelines, 71 FERC ¶61,241 (1995), the Commission adopted a presumption in favor of rolled-in rates when the rate increase to existing customers from rolling in the new facilities in 5 percent or less, and the pipeline makes a showing of system benefits.

looking at competitive applications versus new market applications? (6) Should the Commission encourage pre-filing resolution of landowner issues by subjecting proposed projects to a diminished degree of scrutiny where the project sponsor is able to demonstrate it has obtained all necessary right-of-way authority? (7) Should a different standard be applied to project sponsors who do not plan to use either federal or state-granted rights of eminent domain to acquire right-of-way?

The parties may also address other questions concerning certification issues in general, including: (1) What should the Commission do to provide for the infrastructure to serve future increased demand for capacity? (2) How can pipelines deal with the potential for not recovering new construction costs? Should the Commission address, at the certificate issuance stage, the issue of a pipeline's responsibility for future cost under-recovery once its initial contracts expire? Assuming no adverse environmental impacts, should a pipeline be allowed to build if it does not accept the responsibility for all of the cost not covered by its initial contracts? What, if anything, should the Commission do to ensure rate certainty for customers and pipelines? Can or should this include guarantees against future rolling-in of costly expansions, future changes in O&M expenses, or any other future changes? (3) Should the Commission reassess the balance between risk and return? Is there really more risk for a pipeline with short-term contracts, or will shippers continue to make short-term deals for the life of the pipeline that cover the pipeline's cost-of-service? Is any of the risk unnecessary, and can it be eliminated without imposing additional costs? How should rates be determined after contracts expire? Should the Commission establish different pricing based on contract term? (4) What are the advantages (or disadvantages) of allowing pipelines and customers to negotiate pre-construction risk and return-sharing agreements, and what actions should the Commission take if pipelines and customers do not agree on the allocation of risk and return? (5) To what extent should the policies on new construction and existing pipelines match? (6) How does retail unbundling and open access affect all of these issues?

VII. Reorganization of Part 284 Regulations

Commission proposes to reorganize certain portions of its Part 284 regulations to better reflect the nature of services in the short-term market and to consolidate its Part 284 reporting and filing requirements in a single section. Because capacity release has become an integral part of the short-term market, the Commission is proposing to move its capacity release regulations from subpart H of Part 284 to the same location in its regulations as pipeline firm and interruptible service (newly designated sections 284.7 (firm service), 284.8 (release of firm service), and 284.9 (interruptible service)).

In addition, reporting and filing requirements for pipeline Part 284 services are presently scattered throughout Part 284. For example, the Index of Customers and storage reports are presently located in subpart B, section 284.106, which deals with interstate pipelines performing transportation service under the Natural Gas Policy Act (NGPA). But these regulations are then applied to interstate pipelines performing open access services in subpart G, section 284.223. Other reporting requirements are located throughout various substantive provisions of Part 284.[132] The Commission is proposing to collect these requirements into one new section (proposed § 284.14) applicable to interstate pipelines transporting gas under Subpart B (transportation under section 311 of the NGPA) and Subpart G (open access transportation under the NGA). Reporting requirements specific to Subpart B pipelines (by-pass reports) remain in Subpart B.

To aid commenters' review of the new regulatory format, the following would be the new outline for subpart A of Part 284.

284.1 Definitions.
284.2 Refunds and interest.
284.3 Jurisdiction under the Natural Gas Act.
284.4 Reporting.
284.5 Further terms and conditions.
284.6 Rate interpretations.
284.7 Firm transportation service.
284.8 Release of firm transportation service.
284.9 Interruptible transportation service.
284.10 Rates.
284.11 Negotiated rates and services.
284.12 Environmental compliance.
284.13 Standards for pipeline business operations and communications.
284.14 Reporting requirements for interstate pipelines.

The Commission recognizes that such changes may occasion the need for cross-reference changes in other sections of Part 284 as well as other parts of the regulations. The Commission would make such non-substantive changes in the final rule, and commenters should point out regulatory sections where such changes are needed.

VIII. Information Collection Statement

The following collections of information would be affected by this proposed rule and have been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the provided burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and any suggested methods for minimizing respondents's burden, including the use of automated information techniques. The burden estimate in this proposed rule includes the cost for pipelines to comply with the Commission's proposed regulations concerning short-term natural gas transportation services. The following burden estimates reflect only the incremental costs of complying with the proposed new and revised standards intended to implement the Commission's regulations. The burden estimates include start up and on-going costs.

Estimated Annual Burden: The estimated annual burden associated with this NOPR is shown below.

Affected data collection	Number of respondents	Number of responses per respondent	Estimated burden hours per response	Total annual burden hours
FERC–545	100	2.0	97.800	19,560
FERC–549B	100	446.5	1.526	68,136
FERC–592	74	1.0	7.000	518
Total				88,214

[132] *See,* e.g., 18 CFR 284.8 (b) (3) and 284.9 (b) (3) (requirements to provide information on available capacity); 284.7 (c) (6) (discount reports); 18 CFR 284.12 (filing of capacity).

The estimated number of reporting hours attributable to the requirements proposed herein are expected to total 88,214 hours and are included in the above annual burden estimates.

Information Collection Costs: The Commission seeks comments on the estimated cost to comply with these requirements. It has projected average annualized costs for all respondents to be the following:

[In dollars]

Estimated data collection costs	FERC–545	FERC–549B	FERC–592	Total
Annualized Capital/Startup Costs	842,061	168,412	0	1,010,473
Annualized Costs (Operations & Maintenance)	187,359	3,417,506	27,262	3,632,127
Total Annualized Costs	$1,029,420	3,585,918	27,262	4,642,600

The OMB regulations require OMB to approve certain information collection requirements imposed by agency rule.[133] Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB.

Titles: FERC–545, Gas Pipeline Rates: Rate Change (Non-Formal); FERC–549B, Gas Pipeline Rates: Capacity Information (a proposed new title); and FERC–592, Marketing Affiliates of Interstate Pipelines.

Action: Proposed Data Collections.

OMB Control Numbers: 1902–0154; 1902–0169; and 1902–0157, respectively. The respondent shall not be penalized for failure to respond to these information collections unless the collection of information displays a valid OMB control number.

Respondents: Business or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of Information: The proposed rule seeks to establish reporting requirements that will provide information needed for the market to operate more efficiently and for shippers and the Commission to effectively monitor transactions for undue discrimination and the exercise of market power.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information collection requirements. The Commission's Office of Pipeline Regulation will use the data to monitor the market place to correct problems and minimize the exercise of market power. Additionally, the industry itself will use the information to make more informed choices from among alternative capacity sources and to monitor the marketplace. The Commission's determination of burden involves among other things, an examination of adequacy of design, cost, reliability, and redundancy of the information to be required. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas pipeline industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202)208–1415, fax: (202)273–0873, e-mail: michael.miller@ferc.fed.us]

For submitting comments concerning the collections of information(s) and the associated burden estimate(s), please send your comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC, 20503. [Attention: Desk Officer for the Federal Energy Regulatory Commission, phone: (202)395–3087, fax: (202)395–7285.

IX. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[134] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[135] The actions proposed to be taken here fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[136] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

X. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA) [137] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The proposed regulations would impose requirements on interstate pipelines, which generally are not small businesses. Accordingly, pursuant to section 605(b) of the RFA, the Commission proposes to certify that the regulations proposed herein will not have a significant adverse impact on a substantial number of small entities.

XI. Comment Procedures

The Commission invites interested persons to submit written comments on the matters and issues proposed in this notice to be adopted, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments must be filed with the Commission no later than November 9, 1998. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, and should refer to Docket No. RM98–10–000. All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 888 First Street, NE, Washington, DC 20426, during regular business hours.

Additionally, comments should be submitted electronically. Commenters are encouraged to file comments using Internet E-Mail. Comments should be submitted through the Internet by E-Mail to comment.rm@ferc.fed.us in the

[133] 5 CFR 1320.11.

[134] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats, & Regs. Preambles 1986–1990 ¶30,783 (1987).

[135] 18 CFR 380.4.

[136] *See* 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

[137] 5 U.S.C. 601–612.

following format: on the subject line, specify Docket No. RM98–10–000; in the body of the E-Mail message, specify the name of the filing entity and the name, telephone number and E-Mail address of a contact person; and attach the comment in WordPerfect® 6.1 or lower format or in ASCII format as an attachment to the E-Mail message. The Commission will send a reply to the E-Mail to acknowledge receipt. Questions or comments on electronic filing using Internet E-Mail should be directed to Marvin Rosenberg at 202–208–1283, E-Mail address marvin.rosenberg@ferc.fed.us.

Commenters also can submit comments on computer diskette in WordPerfect® 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM98–10–000 on the outside of the diskette.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

David P. Boergers,

Acting Secretary.

In consideration of the foregoing, the Commission proposes to amend part 161, part 250, and part 284, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for Part 161 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 161.3, paragraphs (i) through (k) are renumbered (j) through (l) and paragraph (i) is added to read as follows:

§ 161.3 Standards of conduct

* * * * *

(i) A pipeline must post the following information concerning its affiliates on its Internet web site complying with § 284.13 of this chapter and update the information within three business days of any change, posting the date on which the information was updated.

(1) A complete list of operating personnel and facilities shared by the pipeline and its marketing affiliates.

(2) Comprehensive organizational charts and job descriptions for its employees and the employees of its marketing affiliates identifying which employees are engaged in transportation and which are engaged in sales or marketing, and clearly showing the chain of command. The job descriptions need not include employees whose jobs are purely clerical or those without responsibility or access to information concerning the processing or administration of requests for transportation service. Each job description must include: the employee's title, duties and status as an operating or non-operating employee; and in the case of a senior employee (*i.e.*, any employee who supervises non-clerical employees), the employee's name.

* * * * *

3. In § 161.3(h)(2), revise all references to ''284.10(a)'' to read ''284.13'' and remove the words ''Electronic Bulletin Board, operated pursuant to'' and add, in their place, the words ''Internet Web site complying with''.

PART 250—FORMS

4. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

5. In § 250.16, paragraph (b)(1) is removed, paragraph (b)(2) is redesignated as (b)(1), and paragraph (b)(2) is reserved.

§ 250.16 [Amended]

6. In § 250.16(c)(2), revise all references to ''284.10(a)'' to read ''284.13'' and remove the words ''Electronic Bulletin Board, operated pursuant to'' and add, in their place, the words'' Internet Web site complying with''.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

7. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C 7101–7532; 43 U.S.C 1331–1356.

§ 284.12 [Removed]

8(a) Part 284 is amended by removing § 284.12.

8(b) Part 284 is amended by redesignating the sections as set forth in the following redesignation table:

Old section	New section
284.7	284.10
284.8	284.7
284.10	284.13
284.11	284.12

9. In newly redesignated § 284.7, paragraph (b)(3) is removed and paragraph (b)(4) is redesignated as paragraph (b)(3).

10. Part 284 is amended by adding § 284.8 to read as follows:

§ 284.8 Release of firm transportation service.

(a) An interstate pipeline that offers transportation service on a firm basis under subparts B or G of this part must include in its tariff a mechanism for firm shippers to release firm capacity to the pipeline for resale by the pipeline on a firm basis.

(b) To the extent necessary, a firm shipper on an interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part is granted a limited-jurisdiction blanket certificate of public convenience and necessity pursuant to section 7 of the Natural Gas Act solely for the purpose of releasing firm capacity pursuant to this section.

(c) The pipeline must enter into a contract with the replacement shipper purchasing the capacity. Unless otherwise agreed by the pipeline, the contract of the shipper releasing capacity will remain in full force and effect, with the net proceeds from any resale to a replacement shipper credited to the releasing shipper's reservation charge.

(d) Releases of capacity for a period of less than one year must conform to the requirements of the auction established under § 284.10(c)(5) of this part.

(e) Releases of capacity of one year or more must comply with the following requirements.

(1) A shipper may arrange for a replacement shipper to obtain its released capacity from the pipeline. The releasing and replacement shippers or an authorized agent must notify the pipeline of the terms and conditions of the release.

(2) A shipper may post any capacity it has available on the pipeline's Internet site and may authorize the pipeline to accept bids for such capacity. A releasing shipper posting capacity for bid must notify the pipeline of the terms and conditions under which it will release its capacity.

(3) For releases of capacity of one year or more, the rate may not exceed the maximum rate in the pipeline's tariff.

§ 284.9 [Amended]

11. In § 284.9, paragraph (b)(3) is removed and paragraph (b)(4) is redesignated paragraph as (b)(3).

12. In newly redesignated § 284.10, paragraphs (c)(5) and (c)(6) are revised, and paragraph (c)(7) is added to read as follows.

§ 284.10 Rates.

* * * * *

(c) * * *

(5) *Rates for short-term transportation services.* For transportation contracts of less than one year for pipeline firm and interruptible service and for capacity released pursuant to § 284.8 of this part, the rates will be determined in the following manner.

(i) *Minimum rate.* The minimum rate charged for such service may not be lower than the minimum rate in the pipeline's tariff.

(ii) *Capacity auction.* The rate charged for any transaction at or above the minimum rate will be determined by an auction that conforms to the following requirements:

(A) All available short-term capacity must be sold through an auction;

(B) Daily capacity from the pipeline must be sold through an auction without the establishment of a reserve or minimum bid price;

(C) All eligible shippers must be permitted to bid with no favoritism shown to pipeline affiliates or other shippers;

(D) The procedures and rules for each auction, including the auction schedule, must be disclosed in the pipeline's tariff in advance of the auction and must be applied to each auction;

(E) Capacity must be allocated based on established criteria and parameters known in advance to all bidders and the same criteria and parameters must apply to pipeline and released capacity;

(F) Shippers must be able to validate that the auction was run properly either through the posting of information sufficient to permit them to validate that the winners were selected appropriately or through the use of other mechanisms, such as an independent third-party, which will validate the results.

(6) *Rates for long-term transportation services.* (i) Except as provided in section (ii) of this paragraph and § 284.11 of this part, for transportation contracts of one year or longer for pipeline firm and interruptible service, the pipeline may charge an individual customer a rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.

(ii) The pipeline may not file a revised or new rate designed to recover costs not recovered under rates previously in effect.

(7) *Rates involving marketing affiliates.* If a pipeline does not hold a blanket certificate under subpart G of this part, it may not charge, in a transaction involving its marketing affiliate, a rate that is lower than the highest rate it charges in any transaction not involving its marketing affiliate.

13. Part 284 is amended by adding § 284.11 to read as follows.

§ 284.11 Negotiated rates and services.

(a) *Authority.* An interstate pipeline that provides transportation service under subparts B or G of this part may negotiate with shippers the rates, or terms and conditions of service, in any contract, provided the pipeline offers all shippers recourse to transportation service under its generally applicable transportation tariff as an alternative to negotiated service.

(b) *Limitations on negotiations.* Pipelines cannot negotiate rates and services that:

(1) result in undue discrimination or preference;

(2) degrade the quality of existing services;

(3) hinder the release of capacity or otherwise significantly reduce competition; or

(4) require customers, as a condition of obtaining negotiated rates or services, to purchase sales, storage, or gathering services provided by the pipeline, its affiliates, or upstream or downstream entities that are unnecessary to the provision of the negotiated service.

(c) *Review of recourse service.* Pipelines must file (every 3 or 5 years) the following information regarding negotiated rates and terms of service and recourse service.

(1) For each negotiated transaction, the pipeline must file, for each calendar year, by category of negotiated transaction (transactions taking effect on shortened notice and transactions subject to 30 days notice) the following: the name of the shipper, the shipper's designation (e.g., marketer, producer, LDC, end-user), the contract number, the docket number under which the contract was filed with the Commission, the type of service (e.g., firm or interruptible transportation or storage), the contract demand, the rate, and the volume. For transactions taking effect under shortened notice, the pipeline must include an indication of the tariff categories under which the contract was negotiated. For transactions subject to thirty days notice, the pipeline must include a short description of the terms and conditions negotiated.

(2) For each year, for each category of negotiated service and for recourse services, by rate schedule, the pipeline must file data showing aggregate contract demand, aggregate volumes, and aggregate revenue.

14. In newly redesignated § 284.13, paragraphs (c)(1)(ii) and (c)(2)(iii) through (v) are added and paragraph (b)(1)(v) is revised to read as follows.

§ 284.13 Standards for pipeline business operations and communications.

* * * * *

(b) * * *

(1) * * *

(v) Capacity Release Related Standards (Version 1.2,

July 31, 1997), with the exception of Standard 5.3.2.

(c) * * *

(1) * * *

(ii) *Capacity release nominations.* Pipelines must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour of submission of the transaction, but the requirement for contracting must not inhibit the ability to submit a nomination at the time the transaction is complete.

(2) * * *

(iii) *Imbalance management.* A pipeline must provide, to the extent operationally practicable, parking and lending or other services that facilitate the ability of its shippers to manage transportation imbalances. A pipeline must provide such services without undue discrimination or preference of any kind against third parties that seek to provide similar services to the shippers of the pipeline.

(iv) *Penalties.* A pipeline may include in its tariff transportation penalties only to the extent necessary for system operations. A pipeline must provide, on a timely basis, as much information as possible about the imbalance and overrun status of each shipper and the imbalance of the pipeline's system.

(v) *Operational flow orders.* A pipeline must take all reasonable actions to minimize the issuance and adverse impacts of operational flow orders (OFOs) or other measures taken to respond to adverse operational events on its system. A pipeline must set forth in its tariff clear standards for when such measures will begin and end and must provide timely information that

will enable shippers to minimize the adverse impacts of these measures.

* * * * *

15. Part 284 is amended by adding § 284.14 to read as follows:

§ 284.14 Reporting requirements for interstate pipelines.

An interstate pipeline that provides transportation service under subparts B or G of this part must comply with the following reporting requirements.

(a) *Cross references.* The pipeline must comply with the requirements in part 161, part 250, and part 260, where applicable.

(b) *Index of customers.* (1) On the first business day of each calendar quarter, subsequent to the initial implementation of this provision, an interstate pipeline must provide for electronic dissemination of an index of all its firm transportation and storage customers under contract as of the first day of the calendar quarter. Electronic dissemination will be by placing a file, adhering to the requirements set forth by the Commission, on the pipeline's Internet web site, pursuant to section 284.13 of this part, in a format which can be downloaded. The pipeline must also submit the electronic file to the Commission.

(2) Until an interstate pipeline is in compliance with the reporting requirements of this paragraph, the pipeline must comply with the index of customer requirements applicable to transportation and sales under part 157, set forth under § 154.111(b) and (c) of this chapter.

(3) For each customer receiving firm transportation or storage service, the index must include the information listed below:

(i) The full legal name of the customer;

(ii) The rate schedule number of the service being provided;

(iii) The contract number;

(iv) The contract effective date;

(v) The contract expiration date;

(vi) For transportation service, maximum daily contract quantity (specify unit of measurement);

(vii) For storage service, maximum storage quantity (specify unit of measurement);

(viii) The receipt and delivery points and the zones or segments in which the capacity is held;

(ix) An indication as to whether the contract includes negotiated rates or terms and conditions;

(x) Any affiliate relationship between the pipeline and the customer or any affiliate relationships between contract holders;

(xi) The name of any agent or asset manager managing 20% or more of the transportation service in a pipeline rate zone and the agent's and asset manager's rights with respect to managing the transportation service.

(4) The information included in the quarterly index must be available on the pipeline's web site until the next quarterly index is established.

(5) The requirements of this section do not apply to contracts which relate solely to the release of capacity under § 284.8, unless the release is permanent.

(6) The requirements for the electronic index can be obtained at the Federal Energy Regulatory Commission, Division of Information Services, Public Reference and Files Maintenance Branch, Washington, DC 20426.

(c) *Reports on firm and interruptible services.* An interstate pipeline must post the following information on its Internet web site, and provide the information in downloadable file formats, in conformity with section 284.13 of this part.

(1) For pipeline firm service, whether provided by the pipeline or from release transactions under section 284.8 of this part, the pipeline must post, contemporaneously with the execution of a contract for service:

(i) The full legal name of the shipper receiving service under the contract and the full legal name of the releasing shipper if a capacity release is involved or an indication that the pipeline is the seller of transportation capacity;

(ii) The contract number for the shipper receiving service under the contract, and, in addition, for released transactions, the contract number of the releasing shipper's contract;

(iii) The rate charged under each contract;

(iv) The duration of the contract;

(v) The receipt and delivery points and mainline segments covered by the contract;

(vi) The contract quantity or the volumetric quantity under a volumetric release;

(vii) Any special terms and conditions applicable to the contract; and

(viii) Whether there is an affiliate relationship between the pipeline and the shipper or between the releasing and replacement shipper.

(2) For pipeline interruptible service, the pipeline must post on a daily basis:

(i) The full legal name of the shipper;

(ii) The rate charged;

(iii) The receipt and delivery points and mainline segments over which the shipper is entitled to nominate gas;

(iv) The quantity of gas the shipper is entitled to nominate;

(v) Whether the shipper is affiliated with the pipeline.

(d) *Available capacity.* (1) An interstate pipeline must provide on its Internet web site and in downloadable file formats, in conformity with section 284.13 of this part, equal and timely access to information relevant to the availability of all transportation services, including, but not limited to, the availability of capacity at receipt points, on the mainline, at delivery points, and in storage fields, whether the capacity is available directly from the pipeline or through capacity release, the total design capacity of each point or segment on the system, the amount scheduled at each point or segment on a daily basis, and all planned and actual service outages or reductions in service capacity.

(2) An interstate pipeline must make an annual filing by March 1 of each year showing the estimated peak day capacity of the pipeline's system, and the estimated storage capacity and maximum daily delivery capability of storage facilities under reasonably representative operating assumptions and the respective assignments of that capacity to the various firm services provided by the pipeline.

(e) *Semi-annual storage report.* Within 30 days of the end of each complete storage injection and withdrawal season, the interstate pipeline must file with the Commission a report of storage activity. The report must be signed under oath by a senior official, consist of an original and five conformed copies, and contain a summary of storage injection and withdrawal activities to include the following:

(1) The identity of each customer injecting gas into storage and/or withdrawing gas from storage, identifying any affiliation with the interstate pipeline;

(2) The rate schedule under which the storage injection or withdrawal service was performed;

(3) The maximum storage quantity and maximum daily withdrawal quantity applicable to each storage customer;

(4) For each storage customer, the volume of gas (in dekatherms) injected into and/or withdrawn from storage during the period;

(5) The unit charge and total revenues received during the injection/withdrawal period from each storage customer, noting the extent of any discounts permitted during the period; and

(6) The related docket numbers in which the interstate pipeline reported storage related injection/withdrawal transportation services.

16. In § 284.106, paragraph (c) is removed and paragraph (b) is revised to read as follows:

§ 284.106 Reporting requirements

* * * * *

(b) An interstate pipeline providing transportation service under this subpart must comply with the reporting requirements of § 284.14 of this part.

§ 284.223 [Amended]

17. In § 284.223, paragraph (b) is removed and reserved.

18. Subpart H is revised to read as follows:

Subpart H—Assignment of Capacity on Upstream Interstate Pipelines

§ 284.241. Upstream interstate pipelines.

An interstate pipeline that offers transportation service on a firm basis under subpart B or G of this part must offer without undue discrimination to assign to its firm shippers its firm transportation capacity, including contract storage, on all upstream pipelines, whether the firm capacity is authorized under part 284 or part 157. An upstream pipeline is authorized and required to permit a downstream pipeline to assign its firm capacity to the downstream pipeline's firm shippers.

§§ 284.10, 284.123, 284.221, 284.261, 284.263, 284.266, and 284.286 [Amended]

19. §§ 284.10, 284.123, 284.221, 284.261, 284.263, 284.266, and 284.286 [Amended]

In addition to the amendments set forth above, in 18 CFR part 284, the following nomenclature changes are made:

A. Revise all references to ''§ 284.7'' to read ''§ 284.10'' in the following places:

1. Section 284.221(d)(2)(ii);

2. Section 284.261;

3. Section 284.263; and

4. Sections 284.266(a)(1) and (a)(2).

B. Revise all references to ''§§ 284.8–284.13'' to read ''§§ 284.7–284.9 and §§ 284.11–284.14'' in the following places:

1. Section 284.261; and

2. Section 284.263.

C. Revise all references to ''§ 284.8(d)'' to read ''§ 284.7(d)'' in newly redesignated §§ 284.10(c)(1) and (c)(2).

D. Revise all references to ''§§ 284.8'' to read ''§§ 284.7'' in § 284.123 (b)(1).

E. Revise all references to ''§§ 284.8(b)(2)'' to read ''§§ 284.7(b)(2)'' in § 284.286(b).

F. Remove the words ''§§ 161.3(c), (e), (f), (g), and (h)'' and add, in its place, the words ''§§ 161.3(c), (e), (f), (g), (h), and (i)'' in section 284.286(c).

[FR Doc. 98–20998 Filed 8–10–98; 8:45 am]

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Federal Register

Tuesday
August 11, 1998

Part V

Federal Communications Commission

47 CFR Parts 20 and 64

Commercial Mobile Radio Services and Miscellaneous Rules Relating to Common Carriers; Proposed Rule and Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 64

[WT Docket No. 98–100; GN Docket No. 94–33; FCC 98–134]

Commercial Mobile Radio Services and Miscellaneous Rules Relating to Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This *Notice of Proposed Rulemaking* (NPRM) was adopted contemporaneously with a *Memorandum Opinion and Order* that granted in part and denied in part a petition for forbearance filed by the Personal Communications Industry Association (PCIA). The Memorandum Opinion and Order is summarized elsewhere in this edition of the **Federal Register**.

In this *Notice of Proposed Rulemaking*, the Commission asks questions designed to elicit specific information relevant to determining whether, and in what respects, the Commission should forbear from applying additional provisions of TOCSIA to CMRS providers and aggregators, continue applying these provisions to those parties, or modify or eliminate its rules implementing TOCSIA to address the different circumstances faced by CMRS providers. The Commission also seeks new comments regarding forbearance from regulation in wireless telecommunications markets that is responsive to current statutory standards and market conditions.

DATES: Comments are due on or before August 18, 1998, and reply comments are due on or before September 2, 1998.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg at (202) 418–0620 or Kimberly Parker at (202) 418–7240 (Wireless Telecommunications Bureau/ Commercial Wireless Division).

SUPPLEMENTARY INFORMATION: This is a summary of the *Notice of Proposed Rulemaking* in WT Docket No. 98–100, adopted as part of the *Memorandum Opinion and Order and Notice of Proposed Rulemaking*, FCC 98–134, on June 23, 1998 and released July 2, 1998. The *Memorandum Opinion and Order* portion of this document is summarized elsewhere in this edition of the **Federal Register**. The complete text of the *Memorandum Opinion and Order and Notice of Proposed Rulemaking* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20037.

Synopsis of the Notice of Proposed Rulemaking

I. Notice of Proposed Rulemaking

A. Application of TOCSIA to CMRS Aggregators and OSPs

1. In the *Memorandum Opinion and Order*, with regard to TOCSIA, the Commission determined that, except for the provisions relating to unblocked access and the filing of informational tariffs, the record was inadequate to support forbearance from applying the provisions of TOCSIA and the Commission's implementing regulations to CMRS OSPs and aggregators. PCIA, however, made several arguments that could, if adequately supported, establish grounds for forbearing from enforcing some or all of those provisions. Consistent with the deregulatory intent of the 1996 Act, and with the more specific forbearance directive of section 10 and biennial review requirement of section 11, PCIA's arguments merit further inquiry. Accordingly, in this *Notice of Proposed Rulemaking* the Commission asks questions designed to elicit specific information relevant to determining whether, and in what respects, the Commission should forbear from applying additional provisions of TOCSIA to CMRS providers and aggregators, continue applying these provisions to those parties, or modify or eliminate its rules implementing TOCSIA to address the different circumstances faced by CMRS providers.

2. In this *Notice of Proposed Rulemaking* the Commission proposes to consider applying modified TOCSIA regulations to CMRS providers and aggregators as well as eliminating the application of certain regulations and statutory provisions. The adoption of any appropriate modifications to the regulations implementing the statute should promote the public interest both by relieving CMRS providers and aggregators of regulatory burdens that are ill-suited to the CMRS context and by providing consumers with targeted measures for their protection.

3. The Commission tentatively concludes that any decision to forbear arising out of this *Notice of Proposed Rulemaking* will apply to providers and aggregators of all services classified as CMRS. The Commission seeks comment on this tentative conclusion.

4. Before addressing the provisions of TOCSIA and the Commission's implementing rules individually, the Commission also seeks comment on a few matters that underlie its consideration of many of these provisions. PCIA argues that many of the provisions of TOCSIA are unduly burdensome as applied to broadband PCS providers because these providers may not be able to distinguish users that obtain service through an aggregator from other users of their services. The Commission seeks comment as to whether all broadband PCS providers, and other CMRS providers, are in fact currently unable to identify calls that are placed or received through aggregators. If some aggregator calls can in fact be identified, the Commission requests specific information as to what factors, including the type of CMRS involved, technical attributes of the underlying provider's network, or the type of aggregator arrangement, permit such identification. The Commission also seeks clarification as to whether calls made through aggregators cannot be distinguished from all other CMRS calls, or only from certain types of calls (*e.g.*, roaming calls). To the extent that some aggregator calls cannot be identified, the Commission further seeks comment regarding whether it would be feasible for providers to introduce the capability to identify these calls and, if so, at what cost.

5. The Commission also seeks comment on the different contexts in which CMRS is now or could in the future be offered through aggregators. The record includes evidence of a variety of different transient uses of mobile telephone service, including air-to-ground telephone service on commercial airlines, the leasing of phones along with rental cars, mobile phone booths at special events, and the rental of phones by hotels and shopping malls. The Commission seeks further information on the distinguishing characteristics of each of these arrangements, and on any other contexts in which CMRS is aggregated. In particular, when addressing particular provisions of TOCSIA, commenters should consider whether the statutory provisions and regulations have different impacts depending on the type of aggregator arrangement in question. In particular, the Commission seeks comment regarding how proposed schemes under which the calling party pays for airtime might affect the arrangements between CMRS providers and aggregators and the impact of TOCSIA and the Commission's implementing rules.

6. *Aggregator Disclosure and OSP Oversight of Aggregators.* TOCSIA and the Commission's rules require aggregators to post ''on or near the telephone instrument, in plain view of consumers'' information designed to aid consumers. This information includes, for example, (1) the name, address, and toll-free telephone number of the provider of operator services; (2) a written disclosure that the rates for all operator-assisted calls are available on request, and that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carrier for information on accessing that carrier's service using that telephone. The Commission requires all aggregators to comply with this posting requirement, including aggregators in non-equal access areas. Responsibility for enforcement of the aggregator posting requirement is, in part, placed upon the OSP used by the aggregator. The OSP is obligated to ensure, by contract or tariff, that each aggregator for which such provider is the presubscribed provider of operator services is in compliance with the posting requirements.

7. The Commission tentatively concludes that it should continue in the future to require some form of disclosure by CMRS aggregators similar to that prescribed by the Act. In particular, the Commission believes customers of CMRS aggregators will benefit from access to the same information that is available to direct customers of CMRS providers, including the identity of and how to contact the underlying service provider, how to obtain information about rates, and how to lodge complaints about service. For example, if certain aggregators are prone to frequently changing their underlying service provider, might it be costly for them to continuously update the disclosure information? The Commission also welcomes comment on the benefits of disclosure to consumers.

8. The Commission therefore tentatively concludes that it should forbear from requiring CMRS aggregators to post disclosure information ''on or near the telephone instrument,'' and instead should permit some or all CMRS aggregators to use some other reasonable means of disclosure. For example, the Commission might permit CMRS aggregators to provide the required information to the consumer at the point of establishing a contractual relationship, *e.g.*, at the car rental counter or concierge desk. The Commission seeks comment regarding this tentative conclusion and how it should be implemented.

9. The Commission also seeks comment on whether certain disclosures should be required of CMRS aggregators in addition to those mandated under section 226(c) of the Act and section 64.703(b) of the Commission's rules. Specifically, CMRS providers typically impose a number of charges on end users that are not commonly encountered in the wireline context, including roaming charges, charges for airtime, and charges for incoming calls. The Commission believes that CMRS subscribers are typically aware of these charges, but that transient users of CMRS may not be. The Commission therefore seeks comment on whether CMRS aggregators should be required to disclose the existence of these or other charges. If so, the Commission further seeks comment regarding the precise nature of the required disclosure. For example, should the aggregator provide information regarding the boundaries of the home calling area?

10. Section 64.703(b)(3) of the Commission's rules requires that in the case of a pay telephone, an aggregator must disclose the local coin rate for the location. The Commission seeks comment on whether this requirement is appropriately applied to CMRS aggregators. Commenters should specifically address any relevant differences between CMRS and wireline coin-operated phones.

11. The Commission also tentatively concludes that it should retain the requirement that CMRS OSPs ensure by contract or tariff that aggregators will comply with the disclosure requirements. PCIA argues, however, that compliance with the oversight requirement is problematic for CMRS OSPs because, unlike wireline OSPs, they typically do not have contracts with aggregators, and indeed may not know who aggregators of their services are. The Commission seeks comment regarding the prevalence of contractual arrangements between CMRS aggregators and OSPs, and how this compares with the wireline context. To the extent such contracts do not exist, the Commission seeks comment on the costs and benefits of requiring CMRS aggregators and OSPs to enter into contracts. The Commission also seeks comment on practical alternatives to contractual provisions as a means of effecting OSP oversight, and on whether OSPs that do not have contracts with their aggregators, or do not know who their aggregators are, should be exempt from the oversight requirement. In addition, the Commission welcomes comments on the benefits of oversight by CMRS OSPs.

12. *OSP Identification, Disclosure, and Termination at No Charge.* TOCSIA requires that every OSP audibly and distinctly identify itself to every person who uses its operator services before any charge is incurred by the consumer, permit the consumer to terminate the telephone call at no charge before the call is connected, and disclose to the consumer upon request, at no charge, a quotation of its rates or charges for the call, the methods by which such rates or charges will be collected, and the methods by which complaints concerning such rates, charges, or collection practices will be resolved. Our regulations reiterate these requirements, and in addition the Commission requires that the OSP disclose audibly to the customer how to obtain the price of a call before the call is connected.

13. The Commission seeks additional comments on PCIA's arguments in favor of forbearance. First, PCIA and commenters supporting its position argue that the OSP disclosure and call termination requirements are unnecessary to protect consumers because CMRS providers' rates and practices are reasonable, competitive market forces motivate CMRS providers to offer services at reasonable rates, and CMRS providers generally disclose rate information as a matter of sound business practice.

14. The Commission also seeks comment on the disclosure practices of CMRS OSPs, and in particular whether they make relevant information available to consumers on each call and inform consumers before each call how to obtain such information. In addition, assuming providers typically do act reasonably and disclose their rates and practices, the Commission seeks comment on whether these circumstances are sufficient grounds for forbearing from regulation. The Commission also seeks comment on whether continuing to apply disclosure requirements to CMRS OSPs on each call is consistent with its decision in the *Memorandum Opinion and Order* to forbear from requiring these providers to file informational tariffs.

15. Second, PCIA argues that enforcement of these requirements is not in the public interest because compliance with these requirements is unduly costly and burdensome for CMRS OSPs. The Commission seeks specific information regarding the costs of compliance for CMRS OSPs. To the extent that CMRS providers cannot distinguish calls made through aggregators from other calls, the

Commission further seeks information regarding the costs of making the required identification and disclosures on a larger universe of calls.

16. Finally, PCIA argues that the OSP disclosure requirements are ill suited to CMRS operator services because, unlike in the wireline context, CMRS OSPs typically have no direct relationship with the end user and do not set the end user's rates. Rather, according to PCIA, the aggregator sets the customer's rates and bills the customer directly. The Commission seeks comment on the billing practices that prevail in CMRS aggregator contexts, and on the variations that may exist in these practices.

17. *Billing for Unanswered Calls.* TOCSIA and the Commission's regulations forbid OSPs from billing for unanswered telephone calls in areas where equal access is available, and from knowingly billing for unanswered telephone calls in areas where equal access is not available. The Commission seeks comment about CMRS industry practices with respect to billing for unanswered calls and any variations in those practices. In particular, the Commission seeks information regarding what constitutes billable airtime and whether CMRS providers calculate airtime differently for customers who obtain service through aggregators than for other users of their networks. Commenters should further address the cost of implementing and complying with this provision for CMRS calls made through aggregators. To the extent that CMRS providers cannot distinguish between public and other users of the network, commenters should address the costs of forgoing billing for unanswered calls for a larger set of users.

18. *Call Splashing.* Both TOCSIA and the implementing regulations forbid OSPs from engaging in ''call splashing'' or billing for a call that does not reflect the originating location of the call without the consumer's informed consent.

19. The Commission seeks comment on the costs and benefits of applying the call splashing prohibition to CMRS. In particular, the Commission seeks comment on whether CMRS OSPs have any history of call splashing to the detriment of consumers, and on whether situations exist or could arise where CMRS OSPs could have an incentive to engage in call splashing that would harm consumers. In this regard, the Commission requests comment on the prevalence of distance-insensitive billing in CMRS markets, how this billing practice affects CMRS OSPs' incentives to engage in call splashing and the potential for call splashing to harm consumers, and how these conditions compare with the situation in wireline services. In addition, the Commission seeks information on the costs to CMRS OSPs of complying with the call splashing prohibition for calls made through aggregators and, to the extent that CMRS providers cannot distinguish between customers of aggregators and other users, the costs of complying with this prohibition on other calls as well.

20. *OSP Publication of Changes in Services.* Under TOCSIA, the Commission is required to establish a policy for requiring providers of operator services to make public information about recent changes in operator services available to consumers. Pursuant to that directive, the Commission has required OSPs to regularly publish and make available at no cost to inquiring consumers written materials that describe any recent changes in operator services and in the choices available to consumers in that market. The Commission seeks comment on the costs and benefits of requiring CMRS OSPs to publish regular reports of their changes in service in light of the nature of the services provided, the level of abuses, and carriers' customary disclosure practices. The Commission is also interested in how this cost benefit analysis compares with the analysis for wireline OSPs. Commenters should particularly consider whether the benefit of these reports to consumers may vary for different CMRS aggregator arrangements, and therefore whether it may make sense to modify or forbear from enforcing the rule only for certain types of arrangements.

21. *Routing of Emergency Calls.* TOCSIA requires the Commission to establish minimum standards for OSPs and aggregators to use in the routing of emergency telephone calls. Under § 64.706 of the Commission's rules, which implements this provision, OSPs and aggregators are required to ensure immediate connection of emergency telephone calls to the appropriate emergency service of the reported location of the emergency, if known, and if not known, of the originating location of the call.

22. The record, however, is almost totally devoid of comments addressing the emergency call routing obligation. The Commission seeks comment as to whether § 64.706 is appropriately applied to CMRS aggregators and OSPs, in light of the Commission's E911 rules. Commenters should specifically address the costs and benefits of applying § 64.706 in the CMRS context. In addition to addressing the impact of § 20.18, commenters should consider whether § 64.706 remains necessary and appropriate as applied to any CMRS aggregators and OSPs that are not covered by the E911 rule, or whether those providers that are not covered by the E911 rule should be excluded from any emergency call routing obligation because they are incapable of handling emergency calls.

B. Forbearance From Other Statutory and Regulatory Provisions

23. The Commission received numerous comments and reply comments on the *Further Forbearance NPRM,* 59 FR 25432 (May 16, 1994), but the passage of the Telecommunications Act of 1996 made sweeping changes which not only affected all consumers and telecommunications service providers, but also greatly expanded the Commission's forbearance authority. Section 332(c) authorizes the Commission to forbear from applying most provisions of Title II to any CMRS ''service or person.'' Under section 10, by contrast, the Commission may forbear from applying almost any regulation or provision of the Act to any ''telecommunications carrier or telecommunications service, or class of telecommunications carriers or telecommunications services, in any or some of their geographic markets.'' The 1996 Act also added section 11, which directs the Commission biennially to review all of its telecommunications regulations and repeal or modify any regulations that the Commission determines are no longer necessary in the public interest as the result of meaningful economic competition between providers of service. Because these legal changes and changes in the telecommunications marketplace have made portions of the record in the *Further Forbearance NPRM* stale, the Commission terminates that proceeding and seeks new comments regarding forbearance from applying any regulation or provision of the Act to wireless telecommunications carriers licensed by the Commission. Such carriers include telecommunications carriers licensed under part 21 (domestic public fixed radio services), part 22 (public mobile radio services), part 24 (personal communications services), part 90 (private land mobile radio services), and part 101 (fixed microwave services) of the Commission's rules.

24. The Commission believes the goals identified in the *CMRS Second Report and Order* mirror those set for it by Congress in the 1996 Act: reduce the regulatory burden upon, and foster

vigorous and fair competition among, telecommunications providers. The Commission is continually striving to meet those goals. For example, the Commission's decision to forbear from applying tariffing requirements in sections 203, 204, and 205 to CMRS providers significantly reduced the filing burdens placed upon such providers. Continuing this trend, the Commission recently eliminated in most circumstances the requirement that telecommunications carriers licensed by the Wireless Telecommunications Bureau obtain prior Commission approval before consummating *pro forma* transactions.

25. Section 332(c) and section 10 differ in scope, yet set forth similar three-pronged tests that must be met in order for the Commission to exercise forbearance authority. Since the *Further Forbearance NPRM* was issued prior to the passage of section 10, the Commission seeks comment as to whether the differences in language between section 332(c) and section 10 necessitate a departure from the criteria the Commission enunciated in the *Further Forbearance NPRM* as a test for whether it would use its authority to forbear. The Commission further asks, since its authority under section 332(c) was limited to deregulation of commercial mobile services, whether it should extend any forbearance pursuant to section 10 to wireless carriers other than those classified as CMRS, *e.g.*, wireless competitive local exchange carriers (CLECs), in order to promote their role in providing competition in the local exchange market.

26. If commenters seek forbearance from particular statutory provisions or regulations, the Commission asks them to primarily focus their analysis on whether forbearance is warranted under the three-pronged test of either section 332 or section 10. In connection with the third prong of the test, the public interest standard, commenters should show whether the costs incurred by carriers to comply with particular provisions outweigh the benefits to the public to be gained in applying them, as well as whether forbearance from particular statutory provisions would enhance future competition from a diversity of entities and thus tend to justify a finding that forbearance served the public interest.

27. The Commission also seeks comment on whether there exist, within CMRS and other wireless telecommunications markets, types of providers for which application of a particular statutory or regulatory provision will either pose undue costs or yield no benefits to the public. For example, if the costs of regulation are fixed, smaller providers could be more likely than other types of providers to be burdened by the costs of regulation. The Commission believes two factors of the public interest test that it has proposed to apply under section 332(c) can serve to guide its determinations in this area. The first is whether differential costs of compliance with particular laws or regulations make forbearance appropriate for particular types of providers. The second is whether the public interest benefits from application of particular provisions vary among the different types of providers.

28. In addition, the Commission asks interested parties to comment on how forbearance for particular types of providers would comport with the goal of regulatory symmetry, bearing in mind that the Commission's forbearance authority permits different regulation of different providers.

29. Finally, the Commission asks interested parties to suggest any other factors or alternatives that it should consider when evaluating forbearance petitions affecting telecommunications services or providers licensed or regulated by the Wireless Telecommunications Bureau.

Paperwork Reduction Act

30. The proposals contained herein do not contain any information collections requiring approval by the Office of Management and Budget. The Commission seeks comments regarding whether, and in what respects, it should forbear from applying already established rules.

Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible impact on small entities of the rules proposed in the NPRM (Notice) in WT Docket No. 98–100. Written public comments are requested on the IRFA. Comments on the IRFA must have a separate and distinct heading designating them as responses to the IRFA and must be filed by the deadlines for comments on the Notice. The Commission will send a copy of the Notice, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

A. Need for, and Objectives of, the Proposed Rules

32. In this NPRM, the Commission proposes to consider forbearing from applying provisions of section 226 of the Communications Act (Telephone Operator Consumer Services Improvement Act or TOCSIA) to Commercial Mobile Radio Service (CMRS) providers and aggregators of CMRS, as well as modifying its rules applying TOCSIA to those entities. Specifically, the Commission proposes to: (1) continue to require some form of disclosure to consumers by CMRS aggregators similar to that mandated by section 226(b)(1)(D) of the Act, although the precise nature of the disclosure may be modified; (2) forbear from requiring CMRS aggregators to post disclosure information ''on or near the telephone instrument,'' and instead permit all or some CMRS aggregators to use some other reasonable means of disclosure; and (3) continue to require CMRS providers of operator service (OSPs) to ensure by contract or tariff that aggregators will comply with the disclosure requirements.

33. In addition, the Commission requests comment on whether it should forbear from applying other provisions of TOCSIA in the CMRS context or whether these requirements should be modified as applied to CMRS aggregators and OSPs. The Commission's objective is to formulate rules that are responsive to the differences between CMRS and fixed services provided through aggregators, that avoid imposing unnecessary burdens on CMRS OSPs and aggregators, and that provide consumers who obtain CMRS through aggregators with protections comparable to those enjoyed by other consumers of CMRS.

34. The Notice also seeks comment on forbearance from applying other provisions of the Act to all wireless telecommunications carriers licensed by the Commission, including telecommunications carriers licensed under part 21 (domestic public fixed radio services), part 22 (public mobile radio services), part 24 (personal communications services), part 90 (private land mobile radio services), and part 101 (fixed microwave services) of our rules. The Commission's objective is to reduce regulatory burdens upon providers of wireless telecommunications services where consistent with the public interest, and thus to foster vigorous and fair competition among these providers.

B. Legal Basis

35. The proposed action is authorized under sections 1, 4(i), 10, 11 and 332(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 160, 161 and 332(c).

C. Description and Estimate of the Number of Small Entities to Which Rules Will Apply

36. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by our rules. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' A small organization is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' Nationwide, there are 275,801 small organizations. ''Small governmental jurisdiction'' generally means ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000.'' As of 1992, there were 85,006 such jurisdictions in the United States.

37. In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under Section 3 of the Small Business Act. Under the Small Business Act, a ''small business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).

38. The Notice could result in rule changes that, if adopted, would affect all small businesses that are aggregators or providers of CMRS operator services as well as all small business that are wireless telecommunications carriers. To assist the Commission in analyzing the total number of affected small entities, commenters are requested to provide estimates of the number of small entities that may be affected by any rule changes resulting from the Notice. The Commission estimates the following number of small entities may be affected by the proposed rule changes:

39. Cellular Radiotelephone Service. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1,000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of this IRFA, that all of the current cellular licensees are small entities, as that term is defined by the SBA. In addition, the Commission notes that there are 1,758 cellular licenses; however, a cellular licensee may own several licenses. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its *Telecommunications Industry Revenue* report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

40. Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F. The Commission has defined ''small entity'' in the auctions for Blocks C and F as a firm that had average gross revenues of less than $40 million in the three previous calendar years. This definition of ''small entity'' in the context of broadband PCS auctions has been approved by the SBA. The Commission has auctioned broadband PCS licenses in blocks A through F. Of the qualified bidders in the C and F block auctions, all were entrepreneurs. Entrepreneurs was defined for these auctions as entities, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application was filed. Ninety bidders, including C block auction winners, won 493 C block licenses and 88 bidders won 491 F block licenses. For purposes of this IRFA, the Commission assumes that all of the 90 C block broadband PCS licensees and 88 F block broadband PCS licensees, a total of 178 licensees, are small entities.

41. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

42. 220 MHz Radio Services. Commercial licenses in the 220–222 MHz band are divided into two categories. Phase I licensees are licensees granted initial authorizations from among applications filed on or before May 24, 1991. The Commission has not adopted a definition of small business specific to Phase I 220 MHz licensees. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. Approximately 1,515 non-nationwide Phase I licenses and four nationwide Phase I licenses have been awarded. The Commission estimates that almost all of the holders of these licenses are small entities under the SBA definition.

43. Phase II licensees are licensees granted initial authorizations from among applications filed after May 24, 1991. The Commission has adopted a two-tiered definition of small businesses in the context of auctioning Phase II licenses in the 220–222 MHz band. A small business is defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenue for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenue for the three preceding years of not more than $15 million. This definition of small business has been

approved by the SBA. There have not been any auctions to date of 220 MHz licenses, and it is therefore impossible accurately to predict how many eventual licensees out of the auctions process will be small entities. Based on its experience with auctions of SMR licenses in the 900 MHz band, however, the Commission estimates that for the 908 auctionable licenses in the 220 MHz band, there will be approximately 120 applicants, of which approximately 92 will be small entities within either prong of the definition approved by the SBA.

44. Paging. The Commission has proposed a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. Under the proposal, a small business will be defined as either (1) an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million; or (2) an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. Since the SBA has not yet approved this definition for paging services, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses.

45. Air-Ground Radiotelephone Service. The Commission has not adopted a definition of small business specific to the Air-Ground Radiotelephone Service. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

46. Specialized Mobile Radio (SMR). The Commission awards bidding credits in auctions for geographic area 800 MHz and 900 MHz SMR licenses to firms that had revenues of no more than $15 million in each of the three previous calendar years. This regulation defining ''small entity'' in the context of 800 MHz and 900 MHz SMR has been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band, and recently completed an auction for geographic area 800 MHz SMR licenses. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. There were 10 winning bidders who qualified as small entities in the 800 MHz auction.

47. Offshore Radiotelephone Service. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

48. General Wireless Communications Service. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications.

49. Common Carrier Fixed Microwave Services. Microwave services include common carrier fixed, private operational-fixed, and broadcast auxiliary radio services. Of these, only operators in the common carrier fixed microwave service are telecommunications carriers that could be affected by the adoption of rules pursuant to this Notice. At present, there are 22,015 common carrier fixed microwave licensees. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the common carrier fixed microwave licensees would qualify as small entities under the SBA definition for radiotelephone communications.

50. Rural Radiotelephone Service. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

51. Marine Coast Service. The Commission has not adopted a definition of small business specific to the marine coast service. The Commission will use the SBA definition applicable to radiotelephone companies; *i.e.*, an entity employing no more than 1,500 persons. There are approximately 10,500 licensees in the marine coast service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

52. Wireless Communications Services (WCS). WCS is a wireless service which can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission will use the SBA definition applicable to radiotelephone companies, *i.e.*, an entity employing no more than 1,500 persons, while it seeks SBA approval of a more refined definition. The Commission auctioned geographic area licenses in the WCS service. Based upon the information obtained in the auctions process, the Commission concludes that eight WCS licensees are small entities.

53. In addition to the above estimates, new licensees in the wireless radio services will be affected by these rules, if adopted. CMRS aggregators will also be affected by these rules, if adopted. The Commission does not have any basis for estimating the number of CMRS aggregators that may be small entities. To assist the Commission in analyzing the numbers of potentially affected small entities, commenters are requested to provide information regarding how many small business entities may be affected by the proposed rules.

D. Description of Reporting, Record Keeping and Other Compliance Requirements

54. The Notice proposes no additional reporting, recordkeeping or other compliance measures and seeks to minimize such burdens for CMRS aggregators and OSPs. As noted, the Commission proposes to forbear from

requiring CMRS aggregators to post disclosure information ''on or near the telephone instrument,'' and instead permit all or some CMRS aggregators to use some other reasonable means of disclosure.

E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

55. The NPRM proposes to reduce the administrative burdens and cost of compliance with TOCSIA and the Commission's implementing regulations for CMRS aggregators and OSPs generally. This reduction of burden will economically benefit small entities within these categories. In addition, the Commission seeks comment on ways of reducing regulatory burdens by forbearing from applying any provisions of the Communications Act to wireless telecommunications carriers, including those carriers that are small business entities. The Commission specifically requests comment on whether forbearance from applying any statutory provision is appropriate with respect to smaller CMRS providers.

F. Federal Rules Which Overlap, Duplicate, or Conflict With These Proposed Rules

56. None.

V. Ordering Clauses

57. *It Is Ordered* that, pursuant to sections 1, 4(i), 10, 11, 303(g), 303(r) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 161, 303(g), 303(r) and 332, a Notice of Proposed Rulemaking is hereby adopted.

58. *It Is Further Ordered* that, pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on the Notice of Proposed Rulemaking on or before August 3, 1998, and reply comments on or before August 18, 1998. Comments and reply comments should be filed in WT Docket No. 98–100. To file formally in this proceeding, you must file an original plus four copies of all comments, reply comments, and supporting comments. For each Commissioner to receive a personal copy of your comments, you must file an original plus nine copies. Send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. For further information contact Jeffrey Steinberg at 202–418–0620 or Kimberly Parker at 202–418–7240.

59. This is a permit-but-disclose notice and comment rulemaking proceeding. *Ex parte* presentations are permitted except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules. *See generally* 47 CFR 1.1202, 1.203, and 1.206(a).

60. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. § 603, the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the expected impact on small entities of the proposals suggested in this document. The IRFA is set forth herein. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the rest of the NPRM, but they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this NPRM, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 20

Communications common carriers, Communications equipment.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission,

Magalie Roman Salas,

Secretary.

[FR Doc. 98–21258 Filed 8–10–98; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20 and 64

[WT Docket No. 98–100, GN Docket No. 94–33; FCC 98–134]

Commercial Mobile Radio Services and Miscellaneous Rules Relating to Common Carriers

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this *Memorandum Opinion and Order,* the Commission grants in part and denies in part the Personal Communications Industry Association's (PCIA) Petition for Forbearance For Broadband Personal Communications Services. Simultaneously with this Order, the Commission is issuing a *Notice of Proposed Rulemaking* seeking new comments regarding forbearance from regulation in wireless telecommunications markets that is responsive to current statutory standards and market conditions. The *Notice of Proposed Rulemaking* is summarized elsewhere in this edition of the **Federal Register**.

EFFECTIVE DATE: September 10, 1998.

FOR FURTHER INFORMATION CONTACT: Jeffrey Steinberg at (202) 418–0620 or Kimberly Parker at (202) 418–7240 (Wireless Telecommunications Bureau/ Commercial Wireless Division).

SUPPLEMENTARY INFORMATION: This is a summary of the *Memorandum Opinion and Order,* FCC 98–134, adopted June 23, 1998 and released July 2, 1998. The complete text of the *Memorandum Opinion and Order* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C. and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20037.

Synopsis of the Memorandum Opinion and Order

I. Introduction

1. On May 22, 1997, the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association (PCIA) filed a petition requesting forbearance from the continued application of sections 201, 202, 214, 226, and 310(d) of the Communications Act of 1934, as amended (the Act), to broadband Personal Communications Services (broadband PCS) carriers. PCIA also requests forbearance from continued application of the resale obligations of 47 CFR 20.12(b) to broadband PCS carriers. For the reasons discussed below, the Commission grants partial forbearance from the requirement that Commercial Mobile Radio Service (CMRS) providers file tariffs for their international services. The Commission also grants partial forbearance from section 226 of the Act (the Telephone Operator Consumer Services Improvement Act or TOCSIA) for CMRS providers of operator services and aggregators. The Commission decline to forbear from applying sections 201 and 202 of the Act, the international authorization requirement of section 214 of the Act, and the resale rule of 47 CFR 20.12(b) to broadband PCS providers because the record does not satisfy the three-prong forbearance test set forth in section 10 of the Act. In addition, the Commission denies the Petition of GTE Service Corporation (GTE) for Reconsideration or Waiver of a Declaratory Ruling and affirms the Common Carrier Bureau's decision that TOCSIA applies to certain activities of GTE's mobile affiliates, but grants limited forbearance from certain provisions of TOCSIA as explained herein.

II. Background

1. The Commission derives its authority to forbear from applying regulations or provisions of the Communications Act of 1934 (Act) from sections 332(c)(1)(A) and 10 of the Act. Section 332(c)(1)(A) provides the Commission with the authority to forbear from enforcing most Title II obligations, but only as to commercial mobile radio service (CMRS) providers. Section 10 provides the Commission with authority to forbear from the application of virtually any regulation or any provision of the Act to a telecommunications carrier or telecommunications service, or a class of carriers or services.

2. Under section 10, the Commission must forbear from applying any regulation or provision of the Act to a telecommunications carrier or service, or class of telecommunications carriers or services, in any or some of its geographic markets if a three-pronged test is met. Specifically, section 10 requires forbearance, notwithstanding section 332(c)(1)(A), if the Commission determines that:

(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory;

(2) enforcement of such regulation or provision is not necessary for the protection of consumers; and

(3) forbearance from applying such provision or regulation is consistent with the public interest.

3. On June 2, 1997, the Wireless Telecommunications Bureau issued a public notice seeking comment on the Petition. Twenty-two parties filed comments on the Petition and thirteen parties filed reply comments. On May 21, 1998, the Commission extended until June 8, 1998, the date on which the Petition would be deemed granted in the absence of a decision that it failed to meet the standards for forbearance under section 10(a). On June 5, 1998, the Commission further extended this deadline until June 23, 1998.

III. Discussion

A. Sections 201 and 202

4. *Background.* Section 201 of the Act mandates that carriers engaged in the provision of interstate or foreign communication service provide service upon reasonable request, and that all charges, practices, classifications, and regulations for such service be just and reasonable. Section 201 also empowers the Commission to require physical connections with other carriers, to establish through routes, and to determine appropriate charges for such actions. Section 202 states that it is unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services, or to make or give any undue or unreasonable preference or advantage to any person or class of persons. Section 332 of the Act requires that the Commission treat all CMRS providers as common carriers for purposes of the Communications Act, except to the extent the Commission determines to forbear from applying certain provisions of Title II. Although section 10 forbearance contains no such restriction, it is notable that, for purposes of forbearance under section 332, the Commission ''may not specify any provision of section 201, 202, or 208.'' PCIA requests section 10 forbearance from the application of sections 201 and 202 of the Act to broadband PCS providers on the ground that market forces, including the competitive presence of other CMRS providers, are sufficient to ensure that rates are just, reasonable and not unjustly discriminatory. PCIA states that forbearance will promote the public interest by enhancing competition,

providing consumers with increased choices, driving prices downward, and eliminating compliance costs.

5. *Discussion*. Sections 201 and 202, codifying the bedrock consumer protection obligations of a common carrier, have represented the core concepts of federal common carrier regulation dating back over a hundred years. Although these provisions were enacted in a context in which virtually all telecommunications services were provided by monopolists, they have remained in the law over two decades during which numerous common carriers have provided service on a competitive basis. These sections set out broad standards of conduct, requiring the provision of interstate service upon reasonable request, pursuant to charges and practices which are just and reasonable and not unjustly discriminatory. At bottom, these provisions prohibit unreasonable discrimination by common carriers by guaranteeing consumers the basic ability to obtain telecommunications service on no less favorable terms than other similarly situated customers. The Commission gives the standards meaning by defining practices that run afoul of carriers' obligations, either by rulemaking or by case-by-case adjudication. The existence of the broad obligations, however, is what gives the Commission the power to protect consumers by defining forbidden practices and enforcing compliance. Thus, sections 201 and 202 lie at the heart of consumer protection under the Act. Congress recognized the core nature of sections 201 and 202 when it excluded them from the scope of the Commission's forbearance authority under section 332(c)(1)(A). Although section 10 now gives the Commission the authority to forbear from enforcing sections 201 and 202 if certain conditions are satisfied, the history of the forbearance provisions confirms that this would be a particularly momentous step. Consistent with the centrality of sections 201 and 202 to consumer protection, the Commission has never previously refrained from enforcing sections 201 and 202 against common carriers, even when competition exists in a market.

6. Based on the record, the Commission declines to forbear from enforcing the core common carrier obligations of sections 201 and 202 at this time. The record does not show, as required for forbearance under section 10, that the current market conditions ensure that the charges, practices, classifications and regulations of broadband PCS carriers are just and reasonable and are not unjustly or unreasonably discriminatory, that market forces are sufficient to protect consumers from discriminatory charges and practices of broadband PCS providers, and that forbearance is in the public interest.

7. The first prong of the section 10 forbearance standard is not satisfied unless enforcement of a statutory provision is shown not to be necessary to ensure that charges, practices, classifications, and regulations are just and reasonable, and are not unjustly or unreasonably discriminatory. This standard essentially tracks the central requirements of sections 201 and 202. Thus, in arguing for forbearance from applying sections 201 and 202, PCIA necessarily contends that in order to ensure that broadband PCS providers' charges, practices, classifications, and regulations are just, reasonable, and not unjustly or unreasonably discriminatory, the Commission need not require that those charges, practices, classifications, and regulations be just, reasonable, and not unjustly or unreasonably discriminatory.

8. PCIA argues that the broadband PCS market is competitive within the context of the total CMRS market, that broadband PCS providers lack individual market power, and that, therefore, enforcement of sections 201 and 202 is no longer necessary to ensure that rates and practices associated with broadband PCS, or imposed by broadband PCS providers, are just, reasonable, and not unjustly discriminatory.

9. Given the ongoing competitive development of the markets in which broadband PCS providers operate, constraints on market entry imposed by the need for spectrum licenses, and uncertainties regarding the extent to which a competitive market structure can ensure reasonable and nondiscriminatory practices toward all consumers, the Commission is unwilling to assume that current market conditions alone will adequately constrain unjust and unreasonable or unjustly and unreasonably discriminatory rates and practices without specific evidence to that effect. Neither PCIA nor any other source has brought such evidence to the Commission's attention. The Commission therefore concludes that the first prong of the section 10 forbearance standard has not been satisfied.

10. Under the second prong of the section 10 forbearance standard, a party seeking forbearance must show that enforcement of a provision is not necessary for the protection of consumers. PCIA asserts that the variety of competitive alternatives available to consumers, along with the broad range of pricing plans from which they may choose, renders the continued application of sections 201 and 202 to broadband PCS providers unnecessary for consumers' protection. The Commission recognizes that consumers in today's market may have a broad choice of calling plans, and that many consumers are able to choose to take service from among several providers. Nonetheless, the Commission found in connection with the first prong of the section 10 forbearance standard, the record does not show that today's market conditions eliminate all remaining concerns about whether broadband PCS providers' rates and practices are just, reasonable, and non-discriminatory. For the same reasons, the Commission cannot conclude that sections 201 and 202 are not necessary to protect consumers.

11. The third prong of the section 10 forbearance standard requires the Commission to forbear only if it finds that forbearance is consistent with the public interest. In evaluating whether forbearance is consistent with the public interest, the Commission must consider whether forbearance from enforcing the provision or regulation will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers. In making this assessment, the Commission may consider the benefits a regulation bestows upon the public, along with any potential detrimental effects or costs of enforcing a provision. PCIA argues that forbearance from applying sections 201 and 202 to broadband PCS providers would further the public interest because these sections limit carriers' ability to develop specialized offerings for particular customers, and impose administrative costs on carriers. Thus, PCIA contends, sections 201 and 202 retard competition and ultimately harm consumers. The Commission rejects PCIA's argument for several reasons.

12. The Commission believes that the benefits sections 201 and 202 confer upon the public by protecting consumers and preventing unjust, unreasonable, and discriminatory practices are important parts of its public interest analysis. Indeed, as customers begin to rely on CMRS as a partial or complete substitute for wireline service, it becomes increasingly important for the Commission to preserve the basic relationship between carriers and customers enshrined in sections 201 and 202.

13. Sections 201 and 202 continue to provide important safeguards to

consumers of broadband PCS against carrier abuse in an area that has already been largely deregulated by the Commission. The Commission therefore finds that at this time it is necessary to maintain sections 201 and 202, which enable the Commission to ensure that broadband PCS carriers provide service in a just, reasonable, and non-discriminatory manner, and to provide all consumers, including other carriers, with a mechanism through which they can seek redress for unreasonable carrier practices.

B. Resale Rule, 47 CFR 20.12(b)

14. *Background.* PCIA has also requested that the Commission forbear from applying the CMRS resale rule to broadband PCS carriers. On June 12, 1996, the Commission adopted a rule prohibiting certain providers of CMRS from unreasonably restricting the resale of their services during a transitional period. Prior to 1996, the Commission applied a similar rule only to providers of cellular service. In Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, published at 61 FR 38399 (July 24, 1996) CC Docket No. 94–54, 11 FCC Rcd. 18455 (1996) (*First Report and Order*), the Commission extended the resale rule to providers of broadband PCS and certain ''covered'' specialized mobile radio (SMR) services in order to promote competition in those services.

15. Section 20.12(b) of the Commission's rules, which was adopted in the *First Report and Order,* states that ''[e]ach carrier subject to this section must permit unrestricted resale of its service'' until the transition period expires. The Commission explained in the *First Report and Order* that the rule has two straightforward requirements: (1) no provider may offer like communications services to resellers at less favorable prices, terms, or conditions than are available to other similarly situated customers, absent reasonable justification; and (2) no provider may explicitly ban resale or engage in practices that effectively restrict resale, unless those practices are justified as reasonable. It essentially prohibits covered carriers from unreasonably discriminating against resellers. The resale rule does not require providers to structure their operations or offerings in any particular way, such as to promote resale, adopt wholesale/retail business structures, establish a margin for resellers, or guarantee resellers a profit.

16. *Discussion.* PCIA argues that the Commission should not wait until the end of the transition period established in the *First Report and Order* to sunset the CMRS resale rule, but rather should forbear from applying that rule to broadband PCS providers immediately. Several commenters support PCIA's position, arguing that the Commission should either forbear from enforcing the resale rule or significantly relax the current requirements due to robust competition in CMRS markets. The Commission finds that the record does not show that the three-pronged forbearance test set out in section 10 of the Act has been met. It therefore declines to forbear from enforcing the resale rule with respect to broadband PCS providers at this time.

17. To some extent, PCIA's arguments for forbearance from enforcing the resale rule simply repeat its arguments with respect to sections 201 and 202; namely, that the criteria in section 10 are met because of the level of competition faced by broadband PCS providers and the growth of broadband PCS service. The Commission rejects these general arguments for the reasons discussed above. Specifically, the Commission has already found that, notwithstanding many promising developments, the competitive development of the market in which broadband PCS providers operate is not yet complete. Moreover, although increased competition brings many benefits to consumers and eliminates the rationale for many regulations, the Commission cannot assume that increased competition alone will protect consumers from unjust or discriminatory practices. Under these circumstances, the evidence does not establish that current market conditions will ensure that providers' practices are just, reasonable, and not unjustly or unreasonably discriminatory, and that consumers will not be harmed.

18. With respect to the first prong of the test, PCIA argues that the resale rule is unnecessary because, given the competitive state of the market, broadband PCS providers have no incentive to engage in unjust or unreasonable resale practices, or to unjustly or unreasonably discriminate against resellers. Indeed, PCIA states, in a competitive environment facilities-based operators have a natural incentive to promote distribution of their services through the use of resellers. PCIA asserts that facilities-based operators are even more likely to rely on resellers where, as is the case with broadband PCS providers, they have extremely high spectrum acquisition and operating costs.

To the contrary, the record contains significant evidence suggesting that despite the current resale rule, abuses in the form of refusals to offer services for resale still exist. While the Commission cannot conclude from this record that all of these alleged practices are unreasonable, these allegations, which have not been effectively refuted, support its conclusion that the resale rule has not been shown unnecessary to ensure that rates and practices are just, reasonable, and non-discriminatory. Although the Commission has received few formal complaints about CMRS providers' failure to permit unrestricted resale of their services, it will vigorously investigate any complaints that it receives and take appropriate enforcement action.

19, The Commission also finds that PCIA's petition does not satisfy the second prong of the forbearance test. PCIA argues that the resale rule is not necessary to protect consumers because the competitive marketplace will ensure the efficient availability of resale, with its attendant consumer benefits. The Commission rejects this contention because the record does not show that current market conditions can effectively prevent unreasonable resale practices. In this regard, the Commission emphasizes that unrestricted resale promises many benefits to consumers, especially in markets where direct competition among underlying providers remains somewhat limited. With more retail competitors, consumers benefit from alternative choices and higher quality services as carriers vie for customers. As many commenters note, the unrestricted availability of resale helps ensure that consumers will have access to favorable rates and innovative service offerings.

20. Finally, the record does not show forbearance from enforcement of the resale rule to be in the public interest. In particular, the Commission finds that continued enforcement of the resale rule is important to promote the rapid development of vigorous competition in the market in which broadband PCS providers compete. One of the Commission's major reasons for adopting the CMRS resale rule in 1996 was to speed the development of competition by permitting new entrants to begin offering service to the public before building out their facilities. This capability would help new entrants to overcome the advantages enjoyed by two types of earlier entrants. First, all new entrants, including broadband PCS providers, would be competing directly with cellular firms that in many instances had been in the market for a decade or more, and therefore enjoyed substantial advantages of incumbency. Second, even among broadband PCS providers, the earliest licensed entrant in a geographic market might receive its

license and begin operating substantially before its last competitors. The Commission continues to believe that resale opportunities will help later entrants to overcome their competitors' advantages by entering the market through resale before their facilities are built out, and finds nothing in the record to contradict this conclusion.

21. The resale rule also promotes competition in ways other than facilitating the early entry of new licensees. In a market that has not achieved sufficient competition, an active resale market can help to replicate many of the features of competition, including spurring innovation and discouraging unreasonably discriminatory practices, by increasing the number of entities offering service at the retail level. In addition, the availability of resale permits more entities to offer packages containing a variety of services including CMRS, thereby increasing competition in the market for multiple-service packages. Resale may also be used as an entry strategy by small entities that may aspire to offer facilities-based services in the future.

22. Furthermore, even assuming that forbearance from enforcing the resale rule would confer certain public interest benefits, forbearance would also impose costs. If the Commission were to forbear from enforcing the rule only as applied to broadband PCS providers, it would create a regulatory asymmetry between those providers and their cellular and covered SMR competitors. This result could distort the working of market forces, and contradict clear Congressional intent. If, however, the Commission were to forbear with respect to all CMRS providers, it would further exacerbate the competitive advantage enjoyed by the cellular incumbents.

23. The Commission therefore concludes at this time that it should continue enforcing the resale rule against all covered providers until the scheduled sunset date five years after it awards the last group of initial broadband PCS licenses. The Commission recognizes, however, that market conditions or other developments may justify termination of the resale rule, as applied to some or all covered providers, before that time. In particular, conditions in some geographic markets may support forbearance at the same time as the rule is still needed in other locations. In evaluating future petitions, the Commission will consider the state of facilities-based competition, the extent of resale activity within the relevant market, the immediate prospects for future development of additional facilities-based competition, the value of service to previously unserved or underserved markets, and other factors relevant to determining whether the requirements of section 10 would be satisfied by the granting of such a petition. In order to resolve such petitions in an expeditious fashion, the Commission will place those petitions promptly on public notice and it will establish expedited pleading cycles. The Commission will make every effort to resolve such petitions substantially in advance of the statutory deadline for forbearance petitions.

C. International Section 214 Authorizations

24. PCIA asks the Commission to forbear from the international section 214 facilities authorization requirement as it applies to broadband PCS providers. Pursuant to section 214, the Commission requires carriers to obtain separate Commission authorizations to provide international telecommunications service, whether by acquiring facilities or by reselling the international services of another carrier. International section 214 authorizations are filed according to section 63.18 of the Commission's rules and processed pursuant to section 63.12. All CMRS providers are currently required to obtain section 214 authorization before providing international service.

25. For the reasons discussed below, the Commission finds that it is necessary to continue to require that international services be provided only pursuant to an authorization that can be conditioned or revoked. The Commission therefore concludes, based on the record generated in this proceeding, that the section 10 forbearance standard for the international section 214 authorization requirement has not been satisfied. As part of its 1998 biennial review, however, the Commission is considering what steps can be taken to minimize regulatory burdens on international carriers, including PCS providers. The Commission believes that at the conclusion of this review, many of PCIA's concerns with the section 214 authorization process will have been addressed.

26. The Commission is unable to conclude on the present record that forbearance from the section 214 authorization requirement would be consistent with the public interest as required under the section 10 standard. PCIA's petition does not address the leveraging of foreign market power by foreign-affiliated carriers except to assert that ''as new entrants into the international telecommunication market, broadband PCS providers are without international market power and, therefore, lack the ability to engage in unjust or unreasonable practices.'' The Commission is concerned that a broadband PCS provider, like any other carrier of international traffic that competes against other international carriers, could acquire an affiliation with a foreign carrier that has market power and that the foreign affiliate would then have the ability and incentive to discriminate against unaffiliated U.S. international carriers on the affiliated route. The Commission therefore must continue to require that international service be provided only pursuant to an authorization that can be conditioned or revoked if necessary to ensure that rates and conditions of service are just, reasonable, and nondiscriminatory and to protect consumers.

27. PCIA's argument that forbearance would serve the public interest is unpersuasive in light of the above considerations. The great majority of international section 214 applications are granted through a streamlined process under which the applicant may commence service on the 36th day after public notice of its application. Applications that are opposed or that the Commission deems unsuitable for streamlined processing are generally disposed of within 90 days. This delay is not so great a burden as to outweigh the needs described above.

28. The Commission concludes that the record does not show that it would be consistent with the public interest to forbear from the international section 214 authorization requirement. Therefore, the third prong of the forbearance standard is not met. Because the third prong of the standard is not satisfied, the Commission cannot grant the forbearance PCIA seeks, and it need not address the first two prongs.

D. International Tariffing Requirements

29. PCIA next asks the Commission to forbear from imposing on broadband PCS carriers the requirement of filing tariffs for their international services. In the *CMRS Second Report and Order*, 59 FR 18493 (April 19, 1994), the Commission exercised its forbearance authority under section 332(c) to forbear from requiring or permitting tariffs for interstate service offered directly by CMRS providers to their customers. The Commission did not address the tariffing obligations as they apply to international services.

30. The Commission concludes, based on the present record, that the section 10 standard is met for forbearance from

the international tariffing requirement for CMRS providers that offer international service directly to their customers for international routes where they are not affiliated with any carrier that terminates U.S. international traffic and collects settlement payments from U.S. carriers. Thus, the Commission will forbear from the mandatory tariffing requirement and adopt permissive detariffing of international services to unaffiliated points for CMRS providers.

31. Under the first criterion for forbearance under section 10, the Commission must determine that mandatory tariff filing requirements are unnecessary to ensure that charges, practices, classifications, or regulations are just and reasonable and are not unjustly or unreasonably discriminatory. In the domestic context, the Commission has determined that tariffing is not necessary to ensure reasonable rates for carriers that lack market power. In the *CMRS Second Report and Order*, the Commission found that competition in the CMRS market for domestic services will lead to reasonable rates and that enforcement of the tariffing requirement is therefore not necessary. In the absence of an affiliation with a foreign carrier, the same considerations apply in the CMRS market for international services. The CMRS market is sufficiently competitive that there is no reason to regulate any CMRS carrier as dominant on an international route for any reason other than an affiliation with a foreign carrier.

32. Under the second statutory criterion for forbearance, the Commission must determine that mandatory tariff filing requirements for CMRS providers serving unaffiliated international routes are unnecessary to protect consumers. As explained above, tariffs are not necessary to ensure that rates are just and reasonable. Therefore, tariffs are also not necessary to protect consumers. Accordingly, the second criterion is met.

33. Under the third criterion, the Commission must determine that permissive detariffing of CMRS providers serving unaffiliated international routes is consistent with the public interest. Permissive detariffing reduces transaction costs for service providers and reduces administrative burdens on service providers and the Commission. Thus, carriers that choose not to file tariffs would not need to undertake the time and expense of preparing and filing tariffs, and the Commission would not incur the administrative burden of reviewing them. Section 10(b) requires the Commission, in determining whether forbearance would be consistent with the public interest, to consider whether forbearance would promote competitive market conditions. The Commission believes that permissive detariffing would enable carriers to avoid impediments that mandatory tariffing might impose on a carrier's ability to introduce services because of the time and expense of preparing and filing tariffs. Thus, detariffing should lower the cost of entry into the international services market by CMRS providers. Further, permissive detariffing would facilitate the provision of international service by CMRS providers by not requiring that they disclose their prices to competitors and would enable carriers that offer international services directly to their customers to enjoy the benefits of the Commission's earlier decision to prohibit tariffs for domestic CMRS services. These considerations outweigh any public interest benefit of requiring CMRS providers to file tariffs for the provision of international service on unaffiliated routes.

34. The Commission is unable to find, however, that it would be consistent with the public interest to adopt permissive detariffing for CMRS providers serving international routes where the carrier is affiliated with a foreign carrier that terminates U.S. international traffic. Currently, the Commission's ability to detect and deter certain kinds of anticompetitive pricing practices on affiliated routes depends on the availability of tariffed rates on those routes. When an international carrier serves an affiliated route, the carrier and its affiliate may have the ability and incentive to engage in anticompetitive pricing behavior that can harm competition and consumers in the U.S. market. If tariffs were not available, the Commission would need to rely on another mechanism for detecting, as well as deterring, price squeezes by facilities-based carriers on affiliated routes. The record in this proceeding does not address the extent to which other sources of pricing information are sufficiently available to permit the Commission and interested parties to detect price squeeze behavior by foreign-affiliated carriers in a timely manner.

35. Price squeeze behavior on affiliated routes can have anticompetitive effects that are inconsistent with competitive market conditions, and enforcement of the Commission's rules and policies against such behavior currently depends on the availability of tariffed rates on affiliated routes. The Commission therefore concludes that the third prong of the forbearance standard, that forbearance would be consistent with the public interest, is not met for any CMRS provider providing international service to a destination market in which it is affiliated with a foreign carrier that terminates U.S. international traffic and collects settlement payments from U.S. carriers. Because the third prong of the forbearance standard is not satisfied for affiliated routes, the Commission cannot forbear in those circumstances, and it need not address the first two prongs.

36. The Commission will forbear from applying the international tariffing requirement on unaffiliated routes to all CMRS providers despite the fact that PCIA's petition seeks forbearance only for broadband PCS providers. If the Commission could not extend forbearance to all CMRS providers, it would not be able to grant the forbearance that PCIA seeks, because it would not find that the public interest would be served by granting forbearance that would create a disparity in regulatory treatment among like CMRS providers. Therefore, forbearance should be applied equally to all CMRS providers.

37. The Commission will not adopt complete detariffing, i.e., prohibiting the filing of tariffs, in this proceeding. Although there are usually added benefits to complete detariffing, PCIA's petition did not request complete detariffing and there is no discussion of that option in this record. Because the Commission continues to require tariffs on affiliated routes, there could be complications to adopting complete detariffing on unaffiliated routes that are not present in the domestic context. Therefore, it would be imprudent to prohibit the filing of tariffs on unaffiliated routes while continuing to require tariffs on affiliated routes without any discussion in the record of the consequences of such a policy.

38. The Commission grants PCIA's request for forbearance from the international tariffing requirement to the extent described above. As a result, a CMRS carrier offering international service directly to its customers need not file tariffs for its service to international points where it is not affiliated with a carrier that terminates U.S. international traffic. If the CMRS carrier acquires an affiliation with a foreign carrier that collects settlement payments from U.S. carriers, it must file a tariff in order to continue to provide service to any market where the foreign carrier terminates U.S. international traffic. In addition, when any authorized international carrier, including a CMRS provider with international section 214 authority, acquires an affiliation with a foreign carrier, it must notify the

Commission as required by § 63.11 of the Commission's rules.

E. Section 226: Telephone Operator Consumer Services Improvement Act

39. *Background.* In 1990, Congress passed and the President signed TOCSIA to ''protect consumers who make interstate operator service calls from pay telephones, hotels, and other public locations against unreasonably high rates and anticompetitive practices.'' TOCSIA regulates two classes of telecommunications service providers: (1) ''aggregators,'' which are defined as persons or entities that make telephones available to the public or to transient users of their facilities for interstate telephone calls using a provider of operator services, and (2) ''providers of operator services'' (OSPs), which are defined as common carriers that provide operator services, or any other persons determined by the Commission to be providing operator services. ''Operator services'' have been defined as any interstate telecommunications service initiated from an aggregator location that includes, as a component, any automatic or live assistance to a consumer to arrange for billing or completion, or both, of an interstate telephone call through a method other than: (1) automatic completion with billing to the telephone from which the call originated; or (2) completion through an access code used by the consumer, with billing to an account previously established with the carrier by the consumer.

40. TOCSIA and the Commission's regulations impose several requirements upon aggregators. Aggregators must post the following information on or near the telephone instrument, in plain view of consumers: (a) the name, address, and toll-free telephone number of the OSP presubscribed to the telephone; (b) a written disclosure that rates for service are available on request, and that consumers have a right to obtain access to the OSP of their choice and may contact their preferred OSP for information on accessing its service using that telephone; (c) in the case of a pay telephone, the local coin rate for the pay telephone location; and (d) the name and address of the Enforcement Division of the Common Carrier Bureau of the Commission. Aggregators must also ensure that each of their telephones presubscribed to an OSP allows consumers to use ''800,'' ''900'' or ''10XXX'' access codes to reach the OSP of their choice, and ensure that consumers are not charged higher rates for calls placed using these access codes.

41. TOCSIA and the Commission's regulations also impose a number of requirements upon OSPs. OSPs must identify themselves, audibly and distinctly, to the consumer at the beginning of each telephone call and before the consumer incurs any charge for the call. They must also disclose immediately to the consumer, upon request and at no charge to the consumer, a quotation of their rates or charges for the call, the methods by which such rates or charges will be collected, and the method by which complaints concerning such rates, charges, or collection practices will be resolved. OSPs must also permit the consumer to terminate a telephone call at no charge before the call is connected; not bill for unanswered telephone calls; not engage in ''call splashing'' unless the consumer requests to be transferred to another OSP after being informed, prior to such a transfer, and prior to incurring any charges, that the rates for the call may not reflect the rates from the actual originating location of the call; and not bill for a call that does not reflect the location of the origination of the call. The Commission recently added an additional requirement: OSPs must now audibly disclose to consumers how to obtain the price of a call before it is connected.

42. The regulatory scheme of TOCSIA also affirmatively charges OSPs with overseeing aggregator compliance with both the statute's posting requirement and its prohibitions on restricting consumers' access to the OSP of their choice. Finally, TOCSIA requires OSPs to file informational tariffs with the Commission, the Commission requires OSPs to regularly publish and make available at no cost to inquiring customers written materials that describe any recent changes in operator services and in the choices available to consumers in that market, and the Commission requires OSPs and aggregators to ensure immediate connection of emergency telephone calls to the appropriate emergency service of the reported location of the emergency, if known, and, if not known, of the originating location of the call.

43. The Commission has previously considered the issue of TOCSIA's application to wireless service. In 1993, the Common Carrier Bureau denied a Petition for Declaratory Ruling filed by GTE that sought a ruling that TOCSIA did not apply to certain activities of GTE's mobile affiliates. The Common Carrier Bureau held that TOCSIA required the Commission to regulate as an aggregator any entity that makes telephones available to the public or transient users of its premises, and to regulate as an OSP any entity that provides interstate telecommunications service initiated from an aggregator location that includes automatic or live assistance to arrange for billing or call completion. The Common Carrier Bureau found that certain GTE affiliates provided services which made them aggregators and that commercial air-to-ground carriers provided services which made them OSPs. GTE subsequently requested reconsideration or waiver of this decision, arguing that it could not be reconciled with the language, legislative history, and purposes of TOCSIA or sound public policy.

44. In the *CMRS Second Report and Order,* adopted in 1994, the Commission concluded, based on the record before it at that time, that forbearance from TOCSIA was not warranted for CMRS providers in general. However, in the *Further Forbearance NPRM,* 59 FR 25432 (May 16, 1994), issued later that year, the Commission sought comment on whether there were particular classes of CMRS providers that warranted forbearance from certain regulations. Although the Commission is now terminating the *Further Forbearance NPRM,* it incorporates the comments received in that proceeding that relate to TOCSIA into the record of this proceeding. Since the Commission is resolving GTE's *Reconsideration Petition* with this Order, it also incorporates the record of both the *GTE Declaratory Ruling* and the *GTE Reconsideration Petition* into this proceeding.

45. *Discussion.* The requirements of TOCSIA and the Commission's implementing regulations apply only to entities functioning as aggregators or OSPs. Thus, only a small subset of CMRS activities is affected by TOCSIA. The Commission will forbear from applying to CMRS providers those provisions of TOCSIA that impose requirements that are identical or similar to requirements that Congress or the Commission have previously found unnecessary. Thus, the Commission will forbear from enforcing the provisions of TOCSIA related to unblocked access against CMRS aggregators and OSPs, and will forbear from requiring CMRS OSPs to file informational tariffs. As discussed below, the three-pronged test under section 10 is satisfied as to these provisions. Although the current factual record is insufficient to support forbearance from other provisions of TOCSIA, the Commission explores in the *Notice of Proposed Rulemaking* (summarized elsewhere in this edition of the **Federal Register**) the possibility of further forbearance from TOCSIA and proposes to modify its rules in a manner

tailored to the mobile phone environment.

46. *Unblocked Access.* TOCSIA and its implementing rules contain several provisions based on the premise that consumers should be allowed access to the OSP of their choice. Aggregators are required to ensure that their telephones presubscribed to a particular OSP allow consumers to use 800 and 950 access codes to reach their preferred OSP. Aggregators also must not charge consumers more for using an access code than the amount the aggregator charges for calls placed using the presubscribed OSP, and they must post a written disclosure that consumers have a right to obtain access to the interstate common carrier of their choice and may contact their preferred interstate common carrier for information on accessing that carrier's service using that telephone. OSPs must ensure, by contract or tariff, that aggregators allow consumers to use 800 and 950 access codes to reach the OSP of their choice and must withhold payment of any compensation due to aggregators if the OSP reasonably believes that the aggregator is blocking such access.

47. In order to forbear, the first prong of the section 10 forbearance test requires that the Commission find that enforcement of these provisions is not necessary to ensure that the charges, practices, classifications, or regulations of CMRS providers acting as OSPs are just and reasonable and are not unjustly or unreasonably discriminatory. Discussing the requirements of TOCSIA in general, PCIA asserts that the most persuasive support for such a finding is the ''complete lack of complaints'' about mobile public phone services, which have been offered since before TOCSIA was enacted. According to PCIA, there is also no evidence that blocking or discriminatory charges have been a problem in the mobile context. The Commission believes that the absence of complaints filed with the Commission about access blocking or discriminatory charges for access by CMRS aggregators, standing alone, may not be enough to support forbearance, particularly since the public mobile phone industry is relatively young. Nonetheless, nothing in the record contradicts PCIA's assertion that blocking of access is not a problem in this context. The principal purpose of TOCSIA, as suggested by its name, is to protect consumers. This function is addressed under the second prong of the forbearance test. In this context, in the absence of some evidence suggesting that without the unblocked access rules CMRS aggregators would engage in unjust, unreasonable, or discriminatory practices, the first prong of the forbearance test is satisfied.

48. The second prong of the section 10 forbearance test requires that the Commission find that enforcement of the provisions at issue is not necessary for the protection of consumers. PCIA contends that requiring CMRS providers to comply with the statutory and regulatory requirements of TOCSIA is not necessary to protect consumers because none of the abuses that led to the enactment of TOCSIA, including call blocking, have occurred in the mobile context. With respect to the obligation of OSPs to ensure that aggregators comply with the unblocking requirement of TOCSIA and its prohibition against charging higher rates for using access codes to reach a preferred OSP, PCIA states that, because of the resale obligation, CMRS providers may not know that their services are being resold for mobile public phone purposes and therefore have no contract with the aggregator. Finally, PCIA asserts that the TOCSIA unblocking requirements have been superseded by the limitation that section 332(c)(8) places on the Commission's ability to order unblocking.

49. The Commission does not have a factual record that would support a finding that CMRS providers are unable to comply with the requirement that they ensure aggregators' compliance with unblocking because they do not have contracts with aggregators. However, the Commission believes that it would be inconsistent with section 332(c)(8) to fail to forbear from enforcing the unblocking requirements in question here. The Commission believes that section 332(c)(8) reflects a determination on the part of Congress that equal access and unblocking regulations are generally unnecessary to protect consumers of CMRS. In light of these circumstances, the Commission sees no need to provide transient users of CMRS with consumer protections that neither Congress nor the Commission has provided for ordinary subscribers. In sum, the Commission concludes that enforcement of the equal access and unblocking provisions of TOCSIA is unnecessary for the protection of consumers.

50. The third prong of the section 10 forbearance test requires that the Commission find that forbearance from applying the provisions in question is consistent with the public interest. In determining whether forbearing from certain regulations meets the public interest prong of the section 10 test, the Commission balances the costs carriers must incur to comply with regulations and the effects of these costs upon competition with the benefits that these regulations bestow on the public. In light of Congressional concerns that equal and unblocked access requirements would increase the cost of service, and the absence of evidence that such requirements would produce any identifiable benefits, the Commission concludes that forbearance from the unblocking provisions of TOCSIA with respect to CMRS is consistent with the public interest.

51. *Informational Tariffs.* Under TOCSIA, OSPs are required to file tariffs specifying rates, terms, and conditions, and including commissions, surcharges, any fees which are collected from consumers, and reasonable estimates of the amount of traffic priced at each rate, with respect to calls for which operator services are provided.

52. Having further considered this issue, the Commission now believes that it should forbear from applying the informational tariff requirement to CMRS OSPs. The first prong of section 10 requires a finding that enforcement of the tariff filing requirement is not necessary to ensure that the charges and practices of OSPs are just and reasonable and are not unjustly or unreasonably discriminatory. The rates and related surcharges or fees in OSPs' informational tariffs may be changed without prior notice to consumers or to the Commission. Moreover, the CMRS marketplace is becoming increasingly competitive and will continue to promote rates and practices that are just and reasonable. In the event isolated abuses do occur, they can be dealt with under sections 201 and 202 through the Commission's complaint procedures. Therefore, the tariff filings required under section 226 are not necessary to ensure just and reasonable rates and practices.

53. The second prong of section 10 requires the Commission to find that enforcement of the section 226 tariff filing requirement is not necessary for the protection of consumers. For the same reasons stated under the first prong, the Commission believes that the tariff requirement is not necessary to protect consumers. There is no record evidence that indicates a need for these informational tariffs to protect consumers.

54. Under the third prong of section 10, the Commission must find that forbearance from applying the section 226 tariffing requirement is consistent with the public interest. With respect to this prong of the section 10 test, PCIA claims that forbearance from TOCSIA is in the public interest because the statute

undermines the benefits derived from detariffing CMRS providers.

Consistent with its previous mandatory detariffing decision for CMRS, the Commission therefore forbids CMRS OSPs from filing informational tariffs under section 226, and it requires CMRS OSPs with tariffs currently on file to cancel those tariffs within 90 days of publication of this *Memorandum Opinion and Order* in the **Federal Register**.

55. *Other Requirements.* PCIA claims in its Petition that other OSP requirements of TOCSIA are irrelevant to CMRS, unduly burdensome, or impossible for broadband PCS providers to meet. Thus, for example, PCIA states that the requirement that OSPs disclose their rates immediately to the consumer is irrelevant in the CMRS context because charges are determined by the aggregator. PCIA also asserts that other requirements would be very costly, and produce little benefit, because CMRS providers cannot generally distinguish calls from public mobile phones from calls placed by subscribers using their own phones. However, neither PCIA nor any of the commenters has supplied sufficient specific factual material in support of these claims. Thus, the Commission believes that it does not have an adequate record at this time to forbear from any of the OSP provisions of TOCSIA other than those already discussed. It similarly lacks a record to forbear from enforcing any additional aggregator disclosure provisions, which may provide important information to consumers.

56. *GTE Petition for Reconsideration.* With respect to its petition for reconsideration, GTE contends that Congress did not intend TOCSIA to apply to mobile telecommunications service providers. The Commission disagrees. As the Common Carrier Bureau stated in the *GTE Declaratory Ruling,* the statutory language and legislative history indicate that Congress intended TOCSIA to apply to all phones made available to the public in situations where the consumer, not the telephone provider, pays for the cost of the call, regardless of whether the phone is a mobile phone or not. Furthermore, although numerous commenters on the *Further Forbearance NPRM* contend that the ''captive customer'' problem Congress passed TOCSIA to remedy is uniquely a landline telephone service problem, customers who need to place a call from a public telephone located on an airplane or a train are as ''captive,'' if not more ''captive,'' than customers making a landline OSP call from a hotel or hospital. The Commission believes that Congress imposed TOCSIA's aggregator regulations to protect ''captive'' customers, and therefore these provisions should apply to commercial air-ground telephone service and Railfone service.

57. Upon review of the record, the Commission finds that GTE offers no new facts or legal arguments in support of its position that TOCSIA does not apply to the actions of certain of its mobile affiliates, other than to allege that the decision failed to consider the policy and practical implications of classifying cellular carriers as OSPs in the Railfone and rental cellular phone contexts. Upon consideration of the entire record, the Commission finds no reason to overturn the Common Carrier Bureau's decision. It therefore affirms the decision in the *GTE Declaratory Ruling* that TOCSIA applies to the actions of certain GTE affiliates, and deny the *GTE Reconsideration Petition.* However, this Order provides relief from certain of the provisions of TOCSIA for CMRS providers and will grant GTE some of the relief it sought in its petition. The Commission is exploring other issues concerning TOCSIA's application to mobile service in the *Notice of Proposed Rulemaking,* summarized elsewhere in this edition of the **Federal Register**.

IV. Procedural Matters

58. *Paperwork Reduction Act Analysis.* This *Memorandum Opinion and Order* does not contain any information collections requiring approval by the Office of Management and Budget because, in it, the Commission forbears from applying already established rules.

V. Ordering Clauses

59. Accordingly, it is ordered that, pursuant to sections 1, 4(i), 10, 11 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 160, 161 and 332, the outstanding portions of the Petition for Forbearance filed by the Broadband Personal Communications Services Alliance of the Personal Communications Industry Association on May 22, 1997, are granted in part and denied in part to the extent discussed above.

60. It is further ordered that, pursuant to sections 1, 4(i), 226 and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 226 and 332, the Petition for Reconsideration or Waiver filed by GTE on September 27, 1993, is denied.

61. It is further ordered that, pursuant to sections 1, 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i) and 332, the rulemaking proceeding captioned Further Forbearance from Title II Regulation for Certain Types of Commercial Mobile Radio Service Providers, GN Docket No. 94–33, is terminated.

62. It is further ordered that, Parts 20 and 64 of the Commission's Rules are amended effective September 10, 1998.

List of Subjects

47 CFR Part 20

Communications common carriers, Radio.

47 CFR Part 64

Communications common carriers, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, parts 20 and 64, is amended as follows:

PART 20—COMMERCIAL MOBILE RADIO SERVICES

1. The authority citation for part 20 is amended to read as follows:

Authority : 47 U.S.C. 154, 160, 251–254, 303, and 332 unless otherwise noted.

2. Section 20.15 is amended by revising paragraphs (c) and (d) to read as follows:

§ 20.15 Requirements under Title II of the Communications Act.

* * * * *

(c) Commercial mobile radio service providers shall not file tariffs for interstate service to their customers, interstate access service, or interstate operator service. Sections 1.771–1.773 and part 61 of this chapter are not applicable to interstate services provided by commercial mobile radio service providers. Commercial mobile radio service providers shall cancel tariffs for interstate service to their customers, interstate access service, and interstate operator service.

(d) Nothing in this section shall be construed to modify the Commission's rules and policies on the provision of international service under Part 63 of this chapter, except that a commercial mobile radio service provider is not required to file tariffs for its provision of international service to markets where it does not have an affiliation with a foreign carrier that collects settlement payments from U.S. carriers. For purposes of this paragraph,

affiliation is defined in § 63.18(h)(1)(i) of this chapter.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 is amended to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

2. Section 64.703 is amended by removing the word ''A'' at the beginning of paragraph (b)(2) and inserting in its place the phrase ''Except for CMRS aggregators, a''.

3. Section 64.704 is amended by adding a new paragraph (e) to read as follows:

§ 64.704 Call blocking prohibited.

* * * * *

(e) The requirements of this section shall not apply to CMRS aggregators and providers of CMRS operator services.

4. Section 64.705 is amended by adding a new paragraph (c) to read as follows:

§ 64.705 Restrictions on charges related to the provision of operator services.

* * * * *

(c) The requirements of paragraphs (a)(5) and (b) of this section shall not apply to CMRS aggregators and providers of CMRS operator services.

5. Section 64.708 is amended by redesignating paragraphs (d) through (h) as (f) through (j), redesignating paragraph (i) as paragraph (l) and adding paragraphs (d), (e) and (k) to read as follows:

§ 64.708 Definitions.

* * * * *

(d) *CMRS aggregator* means an aggregator that, in the ordinary course of its operations, makes telephones available to the public or to transient users of its premises for interstate telephone calls using a provider of CMRS operator services;

(e) *CMRS operator services* means operator services provided by means of a commercial mobile radio service as defined in section 20.3 of this chapter;

* * * * *

(k) *Provider of CMRS operator services* means a provider of operator services that provides CMRS operator services;

* * * * *

[FR Doc. 98–21257 Filed 8–10–98; 8:45 am]

BILLING CODE 6712–01–P

Federal Register

Tuesday
August 11, 1998

Part VI

Environmental Protection Agency

40 CFR Part 80

Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program From the Phoenix, Arizona Serious Ozone Nonattainment Area; Notice and Final Rule

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6136–9]

RIN 2060–ZA04

Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program From the Phoenix, Arizona Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In today's final action, EPA is announcing its approval of the petition by the Governor of Arizona to opt-out of the federal RFG program and remove the requirement to sell federal RFG in the Phoenix serious ozone nonattainment area as of June 10, 1998. EPA's regulations establish the procedures and criteria for opting out of the RFG program, and provide that if a state relies on the federal RFG program as a control measure in its State Implementation Plan (SIP), the state must revise the SIP to reflect the opt-out from RFG. EPA regulations also provide that the effective date of the opt-out shall be no less than 90 days from EPA's approval of such a SIP revision. Arizona replaced federal RFG with a state cleaner burning gasoline program which EPA approved into Arizona's SIP effective March 12, 1998. Under 40 CFR 80.72, the effective date of the opt out is 90 days after EPA approves such a SIP revision, which in this case is June 10, 1998. As of June 10, 1998, Arizona's clean fuel state regulations will go into effect in the Phoenix area. Arizona developed a clean fuel program to reduce emissions of volatile organic compounds (VOC) and particulates (PM10). Thus, although opting out of the federal RFG program, the Phoenix area will continue to enjoy the air quality benefits of a clean burning gasoline. In accordance with the approval of the opt-out petition and the determination of the opt-out effective date, EPA is, in a separate action published elsewhere in this issue of the **Federal Register**, amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998.

DATES: The effective date for removal of the Phoenix, Arizona area from the federal RFG program is June 10, 1998.

ADDRESSES: Materials relevant to this notice to remove the federal RFG program from the Phoenix area may be found in Docket A–98–23, the docket for the rulemaking to amend section 80.72 of the RFG regulations. In addition, materials relevant to the rulemaking to opt-in Phoenix to the federal RFG program may be found in Docket A–97–02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to the EPA Final Rule to approve the Arizona SIP revision establishing state clean burning gasoline regulations are available in the docket located at Region IX. The docket is located at 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00—4:00 p.m. A reasonable fee may be charged for copying docket material. This approval action is not being addressed in this notice.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney-Advisor, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 564–9856.

SUPPLEMENTARY INFORMATION:

Availability on the TTNBBS

Copies of this document are available electronically from the EPA Internet Web site and via dial-up modem on the Technology Transfer Network (TTN), which is an electronic bulletin board system (BBS) operated by EPA's Office of Air Quality Planning and Standards. Both services are free of charge, except for your existing cost of Internet connectivity or the cost of the phone call to TTN. Users are able to access and download files on their first call using a personal computer per the following information. An electronic version is made available on the day of publication on the primary Internet sites listed below. The EPA Office of Mobile Sources also publishes these notices on the secondary Web site listed below and on the TTN BBS.

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http://www.epa.gov/docs/fedrgstr/EPA–AIR/
(either select desired date or use Search feature)
http://www.epa.gov/OMSWWW/
(look in What's New or under the specific rulemaking topic)

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At this point, choose the topic (e.g., Fuels) and subtopic (e.g., Reformulated Gasoline) of the rulemaking, and the system will list all available files in the chosen category in date order with brief descriptions. To download a file, type the letter ''D'' and hit your Enter key. Then select a transfer protocol that is supported by the terminal software on your own computer, and pick the appropriate command in your own software to receive the file using that same protocol. After getting the files you want onto your computer, you can quit the TTN BBS with the <G>oodbye command.

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

I. Background

A. Opt-Out Procedures

Section 80.72 of the RFG regulations (Opt-out Rule) provides the process and criteria for a reasonable transition out of the RFG program if a state decides to opt-out.[1] The procedures for opting out are geared towards achieving a reasonable transition out of the RFG program for industry and states. The Opt-out Rule provides that the Governor of the state must submit a petition to the Administrator requesting to opt out of the RFG program. The petition must include specific information on how, if at all, the state has relied on RFG in a pending or approved SIP and, if RFG is in an approved SIP, how the SIP will be revised to reflect the state's opt-out from RFG. The Opt-out Rule also provides that EPA will notify the state in writing of the Agency's action on the petition and the date the opt-out becomes effective when the petition is approved.

[1] Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

The regulations also provide that EPA will publish an FR notice announcing the approval of any opt-out petition and the effective date of such opt-out.

The effective date of the opt-out is dependent on how the RFG program is used by a state in its SIP. Opt-out petitions received prior to December 31, 1997 become effective 90 days (or later if requested) from the date EPA provides written notification to the state that the petition has been approved. If, however, the state included RFG as a control measure in an approved SIP, the state must revise the SIP to remove federal RFG as a control measure before the opt-out can be effective. For the latter case, the opt-out becomes effective no less than 90 days (or later if requested) after the Agency approves a revision to the state plan replacing RFG with another control. Opt-out petitions received after December 31, 1997 are treated differently. See 62 FR 54552 (October 20, 1997).

EPA determined in the Opt-out Rule that it would not be necessary to conduct a separate rulemaking for each future opt-out request. 61 FR 35673 at 35675 (July 8, 1996). EPA established a petition process to address, on a case-by-case basis, future individual state requests to opt-out of the federal RFG program. These regulations establish clear and objective criteria for EPA to apply. These regulatory criteria address when a state's petition is complete and the appropriate transition time for opting out. As EPA stated in the preamble to the Opt-out Rule, this application of regulatory criteria on a case-by-case basis to individual opt-out requests does not require notice and comment rulemaking, either under section 307(d) of the Act or the Administrative Procedure Act. Thus, in this action, EPA is applying the criteria provided in the Opt-out Rule to approve the Arizona petition.

B. Arizona Opt-in and Opt-out of RFG for the Phoenix Area

By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal RFG program.[2] The Governor requested an implementation date of June 1, 1997. Pursuant to the Governor's letter and the provisions of section 211(k)(6) of the Clean Air Act, and after holding a public hearing in Phoenix on March 18, 1997, EPA adopted regulations on May 28, 1997, that applied the requirement to sell RFG to the Phoenix area. 62 FR 30260 (June 3, 1997)[3]

Arizona subsequently enacted legislation which authorized the establishment of a State cleaner burning gasoline program which would become effective June 1, 1998. By letter dated September 12, 1997, the Governor of the State of Arizona applied to EPA to opt-out of the federal RFG program for the Phoenix area. The Governor requested the specific opt-out effective date of June 1, 1998, to ensure that the federal RFG program would be maintained in the Phoenix area until the State RFG regulations became effective. Thus, the Governor requested that EPA approve the State's opt-out petition and set the opt-out effective date only upon EPA approval of the SIP revision containing the Arizona RFG regulations and the waiver request.

EPA's Office of Air and Radiation (OAR) responded to the Governor's petition by letter dated October 3, 1997. EPA stated in the letter that the Governor's petition provided the information required by the Opt-out Rule and that OAR would work with EPA Region IX to process the SIP revision as quickly as possible in order to provide the opt-out effective date requested.

II. Action

In this document, EPA is notifying the public that it has applied the criteria provided in the Opt-out Rule (40 CFR 80.72) and is approving the petition submitted by the Governor of Arizona to determine that June 10, 1998 is the effective date for opt-out of the federal RFG program for the Phoenix area. EPA is, in a separate action published elsewhere in this issue of the **Federal Register**, amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998.

First, EPA is approving the Governor's petition because it provided the information required by the Opt-out Rule. Second, EPA is determining the opt-out effective date by applying the criteria in 40 CFR 80.72. As discussed in section I.A.above, the Opt-Out Rule requires that if a state included RFG as a control measure in an approved SIP, the state must revise the SIP, reflecting the removal of federal RFG as a control measure before an opt-out can be effective. The Governor's petition stated that Arizona adopted an interim rule for a State clean fuel program which would replace the federal RFG program as a control measure in its SIP. In September 1997, the State submitted to EPA's Region IX office a SIP revision that included its clean fuel program and a request for a waiver of federal preemption of state fuel standards under section 211(c)(4)(C) of the Act. Arizona's SIP revision provided data to show that its clean fuel program would provide the same or more VOC and PM reductions that it realized from federal RFG.

EPA's Region IX office published a proposed approval of the SIP revision on November 20, 1997 (62 FR 61942) and a final approval of the SIP revision on February 10, 1998. (63 FR 6653) The effective date for the final approval of the SIP revision was March 12, 1998. The Opt-out Rule provides that the opt-out effective date shall be no less than 90 days from the EPA SIP approval effective date. Thus, the opt-out effective date for the Phoenix area will be June 10, 1998, 90 days from March 12, 1998.

Thus, EPA is today notifying the public that it has applied its regulatory criteria to make the following determinations. EPA is approving the petition by the Governor of Arizona to opt-out of the federal reformulated gasoline (RFG) program for the Phoenix area and removing the requirement to sell federal RFG in the Phoenix serious ozone nonattainment area as of June 10, 1998. This opt-out effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. Pursuant to these determinations, EPA is also, in a separate action published elsewhere in this issue of the **Federal Register**, amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998.

Dated: July 31, 1998.

Carol M. Browner,

Administrator.

[FR Doc. 98–21213 Filed 8–10–98; 8:45 am]

BILLING CODE 6560–50–P

[2] EPA reclassified the Phoenix area from moderate to serious nonattainment for ozone on November 6, 1997 (62 FR 60001).

[3] *See* Notice of Proposed Rulemaking at 62 FR 7197 (February 18, 1997); and Notice of public hearing at 62 FR 11405 (March 12, 1997).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[FRL–6137–8]

RIN 2060–ZA04

Regulations of Fuels and Fuel Additives: Removal of the Reformulated Gasoline Program from the Phoenix, AZ Serious Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In today's final action, EPA is amending its reformulated gasoline regulations to reflect that the Phoenix, Arizona ozone nonattainment area will not be a covered area in the federal reformulated gasoline (RFG) program as of June 10, 1998. As described in a separate notice published elsewhere in this issue of the **Federal Register**, pursuant to 40 CFR 80.72, EPA has approved the petition by the Governor of Arizona dated September 12, 1997, to opt-out of the federal RFG program and removed the requirement to sell federal RFG in the Phoenix ozone nonattainment area as of June 10, 1998. This effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. This rulemaking will conform the list of covered areas in the regulations to reflect the effective date of the opt-out for the Phoenix area. As of June 10, 1998, Arizona's cleaner burning gasoline state regulations will go into effect in the Phoenix area. Arizona developed a clean fuel program to reduce emissions of volatile organic compounds (VOC) and particulates (PM10). Thus, although opting out of the federal RFG program, the Phoenix area will continue to enjoy the air quality benefits of a clean burning gasoline.

DATES: This final rule is effective August 11, 1998.

ADDRESSES: Materials relevant to this rule to amend § 80.70 of the RFG regulations to reflect the removal of the Phoenix area from the federal RFG program have been placed in Docket A–98–23. Materials relevant to the rule to include the Phoenix area in the federal RFG program may be found in Docket A–97–02. The docket is located at the Air Docket Section, Mail Code 6102, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, in room M–1500 Waterside Mall. Documents may be inspected on business days from 8:00 a.m. to 5:30 p.m. A reasonable fee may be charged for copying docket material.

Materials relevant to the EPA Final Rule to approve the Arizona SIP revision establishing state clean burning gasoline regulations are available in the docket located at Region IX. The docket is located at 75 Hawthorne Street, AIR–2, 17th Floor, San Francisco, California 94105. Documents may be inspected from 9:00 a.m. to noon and from 1:00—4:00 p.m. A reasonable fee may be charged for copying docket material. This approval action is not being addressed in this rule.

FOR FURTHER INFORMATION CONTACT: Janice Raburn, Attorney-Advisor, U.S. Environmental Protection Agency, Office of Air and Radiation, 401 M Street, SW (6406J), Washington, DC 20460, (202) 564–9856.

SUPPLEMENTARY INFORMATION:

Availability on the TTNBBS

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Regulated Entities

Entities potentially regulated by this action are those which produce, import, supply or distribute gasoline. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Refiners, importers, oxygenate blenders, terminal operators, distributors, retail gasoline stations.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your business would have been regulated by this action, you should carefully examine the list of areas covered by the reformulated gasoline program in § 80.70 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

I. Background

A. Opt-Out Procedures

Section 80.72 of the RFG regulations (Opt-out Rule) provides the process and criteria for a reasonable transition out of the RFG program if a state decides to

opt-out.[1] The procedures for opting out are geared towards achieving a reasonable transition out of the RFG program for industry and states. The Opt-out Rule provides that the Governor of the state must submit a petition to the Administrator requesting to opt out of the RFG program. The petition must include specific information on how, if at all, the state has relied on RFG in a pending or approved SIP and, if RFG is in an approved SIP, how the SIP will be revised to reflect the state's opt-out from RFG. The Opt-out Rule also provides that EPA will notify the state in writing of the Agency's action on the petition and the date the opt-out becomes effective when the petition is approved. The regulations also provide that EPA will publish an FR notice announcing the approval of any opt-out petition and the effective date of such opt-out.

The effective date of the opt-out is dependent on how the RFG program is used by a state in its SIP. Opt-out petitions received prior to December 31, 1997 become effective 90 days (or later if requested) from the date EPA provides written notification to the state that the petition has been approved. If, however, the state included RFG as a control measure in an approved SIP, the state must revise the SIP to remove federal RFG as a control measure before the opt-out can be effective. For the latter case, the opt-out becomes effective no less than 90 days (or later if requested) after the Agency approves a revision to the state plan replacing RFG with another control. Opt-out petitions received after December 31, 1997 are treated differently. *See* 62 FR 54552 (October 20, 1997).

B. Arizona Opt-In and Opt-Out of RFG for the Phoenix Area

By letter dated January 17, 1997, the Governor of the State of Arizona applied to EPA to include the Phoenix moderate ozone nonattainment area in the federal RFG program.[2] The Governor requested an implementation date of June 1, 1997. Pursuant to the Governor's letter and the provisions of section 211(k)(6) of the Clean Air Act, and after holding a public hearing in Phoenix on March 18, 1997, EPA adopted regulations on May 28, 1997, that applied the requirement to sell RFG to the Phoenix area. 62 FR 30260 (June 3, 1997).[3]

Arizona subsequently enacted legislation which authorized the establishment of a State cleaner burning gasoline program which would become effective June 1, 1998. By letter dated September 12, 1997, the Governor of the State of Arizona applied to EPA to opt-out of the federal RFG program for the Phoenix area. The Governor requested the specific opt-out effective date of June 1, 1998, to ensure that the federal RFG program would be maintained in the Phoenix area until the State RFG regulations became effective. Thus, the Governor requested that EPA approve the State's opt-out petition and set the opt-out effective date only upon EPA approval of the SIP revision containing the Arizona RFG regulations and the waiver request.

EPA's Office of Air and Radiation (OAR) responded to the Governor's petition by letter dated October 3, 1997. EPA stated in the letter that the Governor's petition provided the information required by the Opt-out Rule and that OAR would work with Region IX to process the SIP revision as quickly as possible in order to provide the opt-out effective date requested.

II. Action

In this rule, EPA is amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998. In a separate notice published elsewhere in this issue of the **Federal Register**, EPA is announcing its approval of the Governor's petition and the opt-out effective date. The opt-out effective date for the Phoenix area is June 10, 1998. This June 10, 1998, opt-out effective date applies to retailers, wholesale purchaser-consumers, refiners, importers, and distributors. For a further discussion see 63 FR 6653, February 10, 1998.

In today's final action, EPA is amending § 80.70(m) to reflect that Phoenix will not be a covered area in the federal RFG program as of June 10, 1998. This amendment will conform the regulations with EPA's approval of the Governor of Arizona's petition to opt-out of the federal reformulated gasoline (RFG) program for the Phoenix area, and removal of the requirement to sell federal RFG in the Phoenix serious ozone nonattainment area as of June 10, 1998.

III. Public Participation

EPA is issuing this final rule without prior notice and comment. The rulemaking procedures provided in section 307(d) of the Act do not apply when the Agency for good cause finds that the notice and comment procedures under section 307(d) of the Act are impracticable, unnecessary, or contrary to the public interest. CAA section 307(d)(1). This expedited rulemaking procedure is based on the fact that EPA is amending the CFR today to reflect the approval of Arizona's opt-out petition, based on criteria in EPA regulations for opting out of the federal RFG program.

EPA is simply making a ministerial change to the list of RFG covered areas in the CFR so the list of covered areas in 40 CFR 80.70 will conform to EPA's approval of the Phoenix opt-out request. That approval is a separate action and is not the subject of this rule. For these reasons, EPA finds that notice and comment procedures under section 307(d)(1) of the Act are unnecessary. EPA also finds these circumstances provide good cause under 5 U.S.C. 553(d) for this expedited effective date.

IV. Environmental Impact

Although Arizona has decided to opt-out of the federal RFG program for the Phoenix area, Arizona is replacing the RFG program with a State clean fuel program in its SIP. Under the Arizona fuel program, refiners may provide either a federal RFG-like fuel or a California RFG-like fuel. The state fuel program is expected to achieve air quality benefits similar to those achieved by federal RFG. Thus, the Phoenix area will continue to benefit from the use of a clean burning gasoline. The type of gasoline used in an area does affect its air quality. Gasoline vapors and vehicle exhaust contain VOCs and NO_X that react in the atmosphere in the presence of sunlight and heat to produce ozone, a major component of smog. Vehicles also release toxic emissions, one of which (benzene) is a known human carcinogen. Cleaner burning gasolines, such as federal and California RFG contain less of the ingredients that contribute to these harmful forms of air pollution. Consequently, these gasolines reduce the exposure of the U.S. public overall to ozone and certain air toxics.

Cleaner burning gasolines such as federal and California RFG generally provide reductions in ozone-forming VOC emissions, toxic emissions, and NO_X emissions. Reductions in VOCs are environmentally significant because of the associated reductions in ozone formation and in secondary formation of

[1] Pursuant to authority under sections 211(c) and (k) and 301(a) of the Clean Air Act, EPA promulgated regulations to provide criteria and general procedures for states to opt-out of the RFG program where the state had previously voluntarily opted into the program. The regulations were initially adopted on July 8, 1996 (61 FR 35673); and were revised on October 20, 1997 (62 FR 54552).

[2] EPA reclassified the Phoenix area from moderate to serious nonattainment for ozone on November 6, 1997 (62 FR 60001).

[3] *See* Notice of Proposed Rulemaking at 62 FR 7197 (February 18, 1997); and Notice of public hearing at 62 FR 11405 (March 12, 1997).

particulate matter, with the associated improvements in human health and welfare. Exposure to ground-level ozone (or smog) can damage sensitive lung tissue, reduce lung function, cause lung inflammation, increase susceptibility to respiratory infection, and increase sensitivity of asthmatics to allergens (*e.g.*, pollen) and other bronchoconstrictors. Symptoms from short-term exposure to ozone include coughing, eye and throat irritation, and chest pain. Animal studies suggest that long-term exposure (months to years) to ozone can damage lung tissue and may lead to chronic respiratory illness.

Toxic emissions from motor vehicles have been estimated to account for roughly half of the total exposure of the urban U.S. population to toxic air emissions. Reductions in emissions of toxic air pollutants are environmentally important because they carry significant benefits for human health and welfare primarily by reducing the number of cancer cases each year. The reduction of benzene provides the majority of air toxics emission reductions from RFG. New monitoring data from the 1995 EPA Air Quality Trends Report shows that in RFG areas, benzene was reduced by 43 percent. A number of adverse non-cancer health effects, such as eye, nose, and throat irritation, have also been associated with exposure to elevated levels of these air toxics.

V. Statutory Authority

The Statutory authority for the action today is granted to EPA by sections 211(c) and (k), 301, and 307 of the Clean Air Act, as amended; 42 U.S.C. 7545(c) and (k), 7601, 7607; and 5 U.S.C. 553(b).

VI. Regulatory Flexibility

The Agency has determined that the rule being issued today is not subject to the Regulatory Flexibility Act (RFA), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA applies only to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act (APA) or any other statute. Today's rule is not subject to notice and comment requirements under the APA or any other statute. As described above, EPA has determined that there is good cause for exempting this action from notice and comment requirements under section 307(d) of the Act. The Agency nonetheless has assessed the potential of this rule to adversely impact small entities. EPA has determined that this action will not have a significant economic impact on a substantial number of small entities. Today's final rule is a ministerial action to conform the list of covered areas in EPA regulations to reflect the effective date of EPA's approval of Phoenix's opt-out petition. This ministerial revision of the list of covered areas in the CFR does not have a significant impact on a substantial number of small entities, since it simply reflects the effective date of EPA's approval of the RFG opt-out petition for Phoenix. Because EPA's action to set the effective date for the opt out was not a rulemaking, it was not subject to the RFA. Nonetheless, EPA has determined that setting the effective date of EPA's approval of Phoenix's opt-out petition does not have a significant impact on a substantial number of small entities. EPA's approval of the opt-out petition, as well as today's rule conforming the list of covered areas to reflect the effective date of that approval, will affect only those refiners, importers or blenders of gasoline and gasoline distributors and retail stations that chose to produce, import, or sell RFG in the Phoenix ozone nonattainment area during the period that Phoenix was a covered area in the federal RFG program (July 3, 1997–June 10, 1998). These entities will no longer be required to comply with federal RFG requirements in the Phoenix area. Instead, for federal purposes, these entities will be subject to the federal anti-dumping and volatility requirements. Compliance with these requirements will be less burdensome than compliance with the federal RFG requirements.

VII. Executive Order 12866

Under Executive Order 12866,[4] the Agency must determine whether a regulation is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments of communities;

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.[5]

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

VIII. Paperwork Reduction Act

This action does not add any new requirements under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* OMB has approved the information collection requirements contained in the final RFG/antidumping rule and has assigned OMB control number 2060–0277 (EPA ICR No. 1951.03).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control number for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

IX. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA''), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, or tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to

[4] *See* 58 FR 51735 (October 4, 1993).

[5] *Id.* At section 3(f) (1)–(4).

identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local or tribal governments or the private sector.

X. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to amend the CFR to reflect the removal of the federal RFG program from the Phoenix ozone nonattainment area must be filed in the United States Court of Appeals for the appropriate circuit by October 13, 1998. 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).)

XI. Submission to Congress and the General Accounting Office

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

XII. Children's Health Protection

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

List of Subjects in 40 CFR Part 80

Environmental protection, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: July 31, 1998.

Carol M. Browner,

Administrator.

40 CFR part 80 is amended as follows:

PART 80—[AMENDED]

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.70 is amended by adding two sentences to the end of paragraph (m) to read as follows:

§ 80.70 Covered areas.

* * * * *

(m) * * * The Phoenix, Arizona ozone nonattainment area is a covered area until June 10, 1998. As of June 10, 1998, the Phoenix area will no longer be a covered area.

[FR Doc. 98–21212 Filed 8–10–98; 8:45 am]

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Federal Register

Tuesday
August 11, 1998

Part VII

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Part 26

Federal Reserve Board

12 CFR Part 212

Federal Deposit Insurance Corporation

12 CFR Part 348

Department of the Treasury

Office of Thrift Supervision

12 CFR Part 563f

Management Official Interlocks; Proposed Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 26

[Docket No. 98–09]

RIN 1557–AB60

FEDERAL RESERVE BOARD

12 CFR Part 212

[Docket No. R–1013]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 348

RIN 3064–ACO8

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 563f

[Docket No. 98–58]

RIN 1550–AB07

Management Official Interlocks

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury.

ACTION: Joint notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), and Office of Thrift Supervision (OTS) (the Agencies) propose to revise their rules regarding management interlocks. The proposal conforms the interlocks rules to recent statutory changes, modernizes and clarifies the rules, and reduces unnecessary regulatory burdens where feasible, consistent with statutory requirements.

DATES: Comments must be received by October 13, 1998.

ADDRESSES: Comments should be directed to:

OCC: Office of the Comptroller of the Currency, Communications Division, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 98–09. Comments will be available for public inspection and photocopying at the same location. In addition, comments may be sent by facsimile transmission to FAX number (202) 874–5274 or by Internet mail to REGS.COMMENTS@OCC.TREAS.GOV.

Board: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, Docket No. R–1013, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9:00 a.m. and 5:00 p.m., except as provided in 12 CFR 261.12 of the Board's Rules Regarding Availability of Information, 12 CFR 261.12.

FDIC: Written comments should be addressed to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429. Comments may be hand delivered to the guard station at the rear of the 550 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. (Fax number: (202) 898–3838; Internet address: comments@fdic.gov). Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, NW, Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

OTS: Manager, Dissemination Branch, Records Management and Information Policy, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 98–58. These submissions may be hand-delivered to 1700 G Street, NW., from 9:00 to 5:00 on business days; sent by facsimile transmission to FAX number (202) 906–7755, or may be sent by e-mail to: public.info@ots.treas.gov. Those commenting by e-mail should include their name and telephone number. Comments will be available for inspection at 1700 G Street, NW., from 9:00 until 4:00 on business days.

FOR FURTHER INFORMATION CONTACT:

OCC: Sue E. Auerbach, Senior Attorney, Bank Activities and Structure, (202) 874–5300; Emily R. McNaughton, National Bank Examiner, Senior Policy Analyst, Core Policy Development, (202) 874–5190; Jackie Durham, Bank Organization and Structure, Senior Licensing Policy Analyst, (202) 874–5060; or Ursula Pfeil, Attorney, Legislative and Regulatory Activities, (202) 874–5090.

Board: Thomas M. Corsi, Senior Counsel, (202) 452–3275, or Michelle Q. Profit, Attorney, (202) 736–5599, Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for Deaf (TTD), Diane Jenkins, (202) 452–3544.

FDIC: Curtis Vaughn, Examination Specialist, Division of Supervision, (202) 898–6759; John Jilovec, Examination Specialist, Division of Supervision, (202) 898–8958; or Mark Mellon, Counsel, Regulation and Legislation Section, Legal Division, (202) 898–3854.

OTS: David Bristol, Senior Attorney, Business Transactions Division, Chief Counsel's Office, (202) 906–6461; or Joseph M. Casey, Supervision Policy, (202) 906–5741.

SUPPLEMENTARY INFORMATION:

I. Background

The Depository Institution Management Interlocks Act (12 U.S.C. 3201–3208) (the Interlocks Act or Act) generally prohibits bank management officials from serving simultaneously with two unaffiliated depository institutions or their holding companies (depository organizations). The scope of the prohibition depends on the size and location of the organizations involved. For instance, the Act prohibits interlocks between unaffiliated depository organizations, regardless of size, if both organizations have an office [1] in the same community (the community prohibition). Interlocks are also prohibited between unaffiliated depository organizations if both organizations have total assets of $20 million or more and have offices in the same Relevant Metropolitan Statistical Area (RMSA) (the RMSA prohibition). The Interlocks Act also prohibits interlocks between unaffiliated depository organizations, regardless of location, if the organizations have total assets exceeding specified thresholds (the major assets prohibition).

Section 2210 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPR Act) amended sections 204, 206 and 209 of the Interlocks Act (12 U.S.C. 3203, 3205 and 3207). Section 2210(a) of the EGRPR Act amended the Interlocks Act by changing the thresholds for the major assets prohibition under 12 U.S.C. 3203. Prior to the EGRPR Act, management officials of depository organizations with total assets exceeding $1 billion were prohibited from serving as management officials of unaffiliated depository organizations with assets exceeding $500 million, regardless of the location

[1] Each of the Agencies' regulations generally define ''office'' as a home or branch office. *See* 12 CFR 26.2, 212.2, 348.2, and 563f.2.

of the organizations.[2] The EGRPR Act raised the thresholds to $2.5 billion and $1.5 billion, respectively. The revision also authorized the Agencies to adjust the thresholds by regulation, as necessary to allow for inflation or market conditions.

Section 2210(b) of the EGRPR Act permanently extended the grandfather exemptions found in 12 U.S.C. 3205(a) and (b). These exemptions were due to expire in 1998. The EGRPR Act repealed section 3205(c), which mandated Agency review of grandfathered interlocks before March 1995.

The EGRPR Act also amended 12 U.S.C. 3207 to provide that the Agencies may adopt ''regulations that permit service by a management official that would otherwise be prohibited by [the Interlocks Act], if such service would not result in a monopoly or substantial lessening of competition.'' This change repealed the specific ''regulatory standards'' and ''management consignment'' exemptions added by the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRI Act),[3] and restored the Agencies' broad authority to create regulatory exemptions to the statutory prohibitions on interlocks.

II. Discussion of Proposed Regulations

The proposal reflects these statutory changes. This proposal also renews an earlier proposal for a small market share exemption that the Board, OCC, and FDIC had advanced before enactment of the CDRI Act. The Agencies invite comments on all aspects of this proposal.

A. Definitions

The Agencies' current regulations define key terms implementing the Interlocks Act. A number of these definitions were added or revised in 1996 to implement the CDRI Act.[4] With the repeal of the specific exemptive standards in the CDRI Act, two of these definitions have become unnecessary and would be removed.

Anticompetitive Effect

The current rule defines ''anticompetitive effect'' as a ''monopoly or substantial lessening of competition.'' Under the new statutory scheme, the substance of this definition is the sole criterion for gauging whether to grant an exemption under the Agencies' general exemptive authority. Because the proposed regulations would employ this phrase in only one provision, a separate definition is unnecessary.

Critical

The current regulations use the term ''critical'' in connection with the Regulatory Standards exemption created by the CDRI Act. Since the EGRPR Act eliminates the Regulatory Standards exemption, a regulatory definition of ''critical'' is unnecessary.

B. Major Assets Prohibition

Prior to the EGRPR Act, if a depository institution or depository holding company had total assets exceeding $1 billion, a management official of such institution or any affiliate thereof could not serve as a management official of any other nonaffiliated depository institution or depository holding company having total assets exceeding $500 million or as a management official of any affiliates of such other institution, regardless of location. The EGRPR Act revised the asset thresholds for the major assets prohibition from $1 billion and $500 million to $2.5 billion and $1.5 billion, respectively. The legislation also authorized the Agencies to adjust the threshold from time to time to reflect inflation or market changes.

The proposal would amend the regulations to reflect the new threshold amounts, and to add a mechanism providing for periodic adjustments of the thresholds. The adjustment would be based on changes in the Consumer Price Index for Urban Wage Earners and Clerical Workers (the Consumer Price Index). In those years when changes in the Consumer Price Index would change the thresholds by more than $100 million, the Agencies will provide appropriate notice of the change to depository institutions and depository institution holding companies. The Agencies invite comment on other types of market changes that may warrant subsequent adjustments to the major assets prohibition.

C. Regulatory Standards and Management Consignment Exemptions

The current regulations contain Regulatory Standards and Management Consignment exemptions, which were predicated on section 3207 of the CDRI Act. The EGRPR Act removed the specific exemptions from the Interlocks Act and substituted a general authority for the Agencies to create exemptions by regulation. Accordingly, the proposed rule would remove these regulatory exemptions.

However, the rule proposed under the amended exemptive authority, discussed in the following section, includes rebuttable presumptions that interlocks in certain circumstances would not result in a monopoly or substantial lessening of competition. These presumptions are based on criteria that the Agencies used before the passage of the CDRI Act, and which Congress employed in creating the Management Consignment exemption.

D. General Exemptive Authority

Section 2210(c) of the EGRPR Act authorizes the Agencies to adopt regulations permitting service by a management official that would otherwise be prohibited by the Interlocks Act, if such service would not result in ''a monopoly or substantial lessening of competition.'' To implement this authority, the Agencies are proposing to exempt otherwise prohibited management interlocks where the dual service would not result in a monopoly or substantial lessening of competition, and would not otherwise threaten safety and soundness. The process for obtaining such exemptions will be set out in each Agency's procedural regulations or, in the case of the OCC, in its Corporate Manual.

Since 1979, when regulations implementing the Interlocks Act were first promulgated, the Agencies have recognized that interlocks involving certain classes of depository organizations present a reduced risk to competition, and that, by enlarging the pool of management available to such organizations, competition could be enhanced. Thus, in the initial interlocks rules published in 1979, the Agencies reserved the authority to permit interlocks to strengthen newly chartered organizations, troubled organizations, organizations in low- or moderate-income areas, and organizations controlled or managed by minorities or women. The authority to permit interlocks in such circumstances was deemed ''necessary for the promotion of competition over the long term.''[5] Prior to the CDRI Act, these exemptions were granted to meet the need for qualified management. The Management Consignment exemption under the CDRI Act was generally available to the same four classes of organizations, but on a more limited basis.

With the EGRPR Act's restoration of the broad exemptive authority under the Interlocks Act, the Agencies again have

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[2] The Agencies define ''total assets'' of diversified savings and loan holding companies and bank holding companies exempt from § 4 of the Bank Holding Company Act to include only the assets of their depository institution affiliates. *See* 12 CFR 26.2(r), 212.2(q), 348.2(q), and 563f.2(r).

[3] The Agencies adopted final regulations implementing the management interlocks provisions of the CDRI Act, effective October 1, 1996. *See* 61 FR 40293 (August 2, 1996).

[4] *See* 61 FR 40293 (August 2, 1996).

[5] *See* 44 FR 42161, 42165 (July 19, 1979).

broad authority to grant exemptions that will not adversely affect competition. The Agencies believe that interlocks involving the four classes of organizations previously identified may provide management expertise needed to enhance such organizations' ability to compete. Accordingly, the Agencies propose to create a rebuttable presumption that an interlock would not result in a monopoly or substantial lessening of competition, if: (1) The depository organization primarily serves, low- or moderate-income areas; (2) the depository organization is controlled or managed by members of a minority group or women; (3) the depository institution has been chartered for less than 2 years; or (4) the depository organization is deemed to be in ''troubled condition'' under regulations implementing section 914 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 1831i). These presumptions would be applied in a manner consistent with the Agencies' past analysis of the factors to meet the legitimate needs of the institutions and organizations involved for qualified and skilled management.

The presumptions are designed to provide greater flexibility to classes of organizations that may have greater need for seasoned management. A claim that factors exist giving rise to a presumption does not preclude an Agency from denying a request for an exemption if the Agency finds that the interlock nevertheless would result in a monopoly or substantial lessening of competition.

The definitions of ''area median income'' and ''low- and moderate-income areas'' added to the regulations in 1996 to implement the CDRI Act amendments would be retained to provide guidance as to when an organization would qualify for one of the presumptions.

Interlocks that are based on a rebuttable presumption would be allowed to continue for three years, unless otherwise provided in the approval order. Nothing in the proposed rule would prevent an organization from applying for an extension of an interlock exemption granted under a presumption if the factors continued to apply. The organization would also be free to utilize any other exemption that may be available. The Agencies propose that any interlock approved under this section may continue so long as it would not result in a monopoly or substantial lessening of competition, becomes unsafe or unsound, or is subject to a condition requiring termination at a specific time.

E. Small Market Share Exemption

In 1994, the OCC, Board, and FDIC published notices of proposed rulemaking seeking comment on a proposed market share exemption.[6] The proposed exemption would have been available for interlocks involving institutions that, on a combined basis, would control less than 20 percent of the deposits in a community or relevant MSA. These agencies published small market share exemption proposals pursuant to the broad exemptive authority vested in the agencies prior to the CDRI Act. After the CDRI Act restricted the agencies' broad authority, the OCC, Board and FDIC withdrew their proposals.[7] The broad exemptive authority under the EGRPR Act provides authority for a small market share exemption. Accordingly, the OCC, Board and FDIC, joined by the OTS, are issuing this proposal for the small market share exemption.

The exemption is intended to enlarge the pool of management talent upon which depository institutions may draw, resulting in more competitive, better-managed institutions without causing significant anticompetitive effects. The Interlocks Act, by discouraging common management among financial institutions, seeks to prevent adverse effects on competition in the provision of products and services that financial institutions offer. Where depository institutions dominate a large portion of the market, these risks are significant. When a particular market is served by many institutions, however, the risks diminish that depository institutions with interlocking relationships can adversely affect the available products and services in their markets.

The Agencies believe that the combined share of the deposits of two institutions provides a meaningful assessment of the capacity of the two institutions to control credit and related services in their market. Accordingly, the Agencies propose to exempt interlocking service involving two unaffiliated depository organizations that together control no more than 20 percent of the deposits in any RMSA or community in which the organizations have offices. Organizations claiming the exemption would be required to determine the market share in each RMSA and community in which both depository organizations (or their depository institution affiliates) have offices.

The relevant market used for the small market share exception (*i.e.* the RMSAs or communities in which both depository organizations or their depository institution affiliates have offices) are the same markets described in the community and RMSA prohibitions. The small market share exemption would not be available for interlocks subject to the major assets prohibition.

The exemptions would continue to apply as long as the organizations meet the applicable conditions. Any event, such as expansion or a merger, that causes the level of deposits controlled to exceed 20 percent of deposits in any RMSA or community would be considered to be a change in circumstances. Accordingly, the depository organizations would have 15 months (or such shorter period as directed by the appropriate Agency) to address the prohibited interlock by termination or otherwise. Conforming changes relating to termination have been made to the Agencies' change of circumstances provisions.

No prior Agency approval would be required in order to claim the proposed small market share exemption. Management is responsible for compliance with the terms of the exemption and for maintaining sufficient supporting documentation. To determine their eligibility for the exemptions, depository organizations would need to obtain appropriate deposit share data from the FDIC. This information is collected in the Summary of Deposits published by the FDIC and is available for institutions regulated by the Agencies on the Internet at http://www.fdic.gov.

The most recently available deposit share data will be used to determine whether organizations are entitled to the exemptions. Thus, the depository organization seeking the exemption is entitled to rely upon the deposit share data that has been compiled for the previous year, until the next year's data has been distributed.

The Agencies request comments on all aspects of the proposed small market share exemption. In particular, the Agencies request comments regarding the following issues:

1. Whether 20 percent of the deposits in a community or RMSA is an appropriate limit for the application of the exemptions.

2. Whether deposit data collected by the FDIC in connection with the Report of Condition and Income should be used to determine eligibility for the exemptions, and whether alternative

[6] *See* OCC, 59 FR 29740 (June 9, 1994); Board, 59 FR 7909 (February 17, 1994); and FDIC, 59 FR 18764 (April 20, 1994).

[7] *See* 60 FR 67424 (December 29, 1995) for withdrawal by the OCC and the Board; and 60 FR 7139 (February 7, 1995) for withdrawal by the FDIC.

sources of information concerning deposit share should be acceptable for determining availability of the exemptions.

3. Whether calculation of a depository organization's eligibility for exemption from the community prohibition will create undue burdens, and, if so, how the burdens could be reduced (for example, by basing the exemption on the total asset size of the institutions involved).

4. Whether there is a significant risk that the purposes of the Interlocks Act would be evaded through ''hub and spoke'' arrangements. Under these arrangements, directors of one depository organization would serve as directors of different unaffiliated organizations that have, in the aggregate, a deposit share in excess of the 20% limit.

III. Paperwork Reduction Act

The Agencies invite comment on:

(1) Whether the proposed collection of information contained in this notice of proposed rulemaking is necessary for the proper performance of each Agency's functions, including whether the information has practical utility;

(2) The accuracy of each Agency's estimate of the burden of the proposed information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, minutes, and purchase of services to provide information.

Recordkeepers are not required to respond to this collection of information unless it displays a currently valid OMB control number.

OCC: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1557–0196), Washington, DC 20503, with copies to the Legislative and Regulatory Activities Division (1557–0196), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.

The collection of information requirements in this proposed rule are found in 12 CFR 26.4(h)(1)(i), 26.6(b), and 26.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act by national banks and District banks. The likely respondents are national banks and District banks.

Estimated average annual burden hours per respondent: 4 hours.

Estimated number of respondents: 7.

Estimated total annual reporting burden: 29 hours.

Start-up costs to respondents: None.

Board: In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100–0046, 7100–0134, 7100–0171, 7100–0266), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

The collection of information requirements in this proposed rulemaking are found in 12 CFR 212.4(h)(1)(i), 212.6(b), and 212.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act as amended by section 338 of the CDRI Act. The respondents are state member banks and subsidiary depository institutions of bank holding companies.

Estimated number of respondents: 6 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of reporting: Not applicable (one-time application).

Estimated total annual reporting burden: 24 hours.

Start-up costs to respondents: None.

No issues of confidentiality under the provisions of the Freedom of Information Act normally arise for the applications.

FDIC: The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C.3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (3604–0118), Washington, DC 20503, with copies of such comments to be sent to Steven F. Hanft, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

The collection of information requirements in this proposed regulation are found in 12 CFR 348.4(i)(1)(i), 348.6(b), and 348.6(c). This information is required to evidence compliance with the requirements of the Interlocks Act. The likely respondents are insured nonmember banks.

Estimated number of respondents: 5 applicants per year.

Estimated average annual burden per respondent: 4 hours.

Estimated annual frequency of reporting: Not applicable (one-time application).

Estimated total annual reporting burden: 20 hours.

OTS: The collection of information requirements contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (1550–0051), Washington, DC 20503, with copies to the Office of Thrift Supervision, 1700 G Street, NW., Washington, DC.

The information collection requirements in this proposed rule are found in 12 CFR 563f.4(h)(1)(i), 563f.6(b) and 563f.6(c). The OTS requires this information as evidence of compliance with the requirements of the Interlocks Act by savings associations. The likely respondents are savings associations.

Estimated annual frequency of reporting: Not applicable (one-time application).

Estimated total annual reporting burden: 32 hours.

Estimated average annual hours per respondent: 4 hours.

Estimated number of respondents: 8.

Start-up costs to respondents: None.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 605(b)) the Agencies hereby certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. The Agencies expect that this proposal will not: (1) Have significant secondary or incidental effects on a substantial number of small entities; or (2) create any additional burden on small entities. The proposed regulations relax the criteria for obtaining an exemption from the interlocks prohibitions, and specifically address the needs of small

entities by creating the small market share exemption. Accordingly, a regulatory flexibility analysis is not required.

V. Executive Order 12866

The OCC and OTS have determined that this proposal is not a significant regulatory action under Executive Order 12866.

VI. Unfunded Mandates Act of 1995

The OCC and OTS have determined that the proposed rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of more than $100 million in any one year. Accordingly, neither the OCC nor the OTS has prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 26

Antitrust, Holding companies, Management official interlocks, National banks, Reporting and recordkeeping requirements.

12 CFR Part 212

Antitrust, Banks, banking, Federal Reserve System, Holding companies, Management official interlocks, Reporting and recordkeeping requirements.

12 CFR Part 348

Antitrust, Banks, banking, Holding companies, Reporting and recordkeeping requirements.

12 CFR Part 563f

Antitrust, Holding companies, Reporting and recordkeeping requirements, Savings associations.

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons set out in the joint preamble, the OCC proposes to amend chapter I of title 12 of the Code of Federal Regulations as follows:

PART 26—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 26 continues to read as follows:

Authority: 12 U.S.C. 93a and 3201–3208.

§ 26.2 [Amended]

2. Section 26.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 26.3 is amended by revising paragraph (c) to read as follows:

§ 26.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OCC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million.

4. Section 26.5 is revised to read as follows:

§ 26.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 26.3 is permissible, if:

(1) The interlock is not prohibited by § 26.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 26.6 is revised to read as follows:

§ 26.6 General exemption.

(a) *Exemption.* The OCC may, by order issued following receipt of an application, exempt an interlock from the prohibitions in § 26.3, if the OCC finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing applications for an exemption under this section, the OCC will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in 12 CFR 5.51(c)(6).

(c) *Duration.* Unless a specific expiration period is provided in the OCC approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the OCC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OCC in writing.

6. Section 26.7 is amended by revising paragraph (a) to read as follows:

§ 26.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or any reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

Dated: July 14, 1998.

Julie L. Williams,

Acting Comptroller of the Currency.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set out in the joint preamble, the Board proposes to amend chapter II of title 12 of the Code of Federal Regulations as follows:

PART 212—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 212 continues to read as follows:

Authority: 12 U.S.C. 3201–3208; 15 U.S.C. 19.

§ 212.2 [Amended]

2. Section 212.2 is amended by removing paragraphs (b) and (f) and

redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 212.3 is amended by revising paragraph (c) to read as follows:

§ 212.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The Board will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million.

4. Section 212.5 is revised to read as follows:

§ 212.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 212.3 is permissible, if:

(1) The interlock is not prohibited by § 212.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 212.6 is revised to read as follows:

§ 212.6 General exemption.

(a) *Exemption.* The Board may, by agency order, exempt an interlock from the prohibitions in § 212.3, if the Board finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing applications for an exemption under this section, the Board will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in 12 CFR 225.71.

(c) *Duration.* Unless a shorter expiration period is provided in the Board approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the Board grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the Board in writing.

6. Section 212.7 is amended by revising paragraph (a) to read as follows:

§ 212.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 20, 1998.

Jennifer J. Johnson,

Secretary of the Board.

Federal Deposit Insurance Corporation

12 CFR Chapter III

Authority and Issuance

For the reasons set forth in the joint preamble, the Board of Directors of the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 348—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 348 is revised to read as follows:

Authority: 12 U.S.C. 1823(k), 3207.

§ 348.2 [Amended]

2. Section 348.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (r) as paragraphs (b) through (p), respectively.

3. Section 348.3 is amended by revising paragraph (c) to read as follows:

§ 348.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The FDIC will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million.

4. Section 348.5 is revised to read as follows:

§ 348.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 348.3 is permissible, if:

(1) The interlock is not prohibited by § 348.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 348.6 is revised to read as follows:

§ 348.6 General exemption.

(a) *Exemption.* The FDIC may, by agency order, exempt an interlock from the prohibitions in § 348.3, if the FDIC finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns.

(b) *Presumptions.* In reviewing applications for an exemption under this section, the FDIC will apply a

rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low- and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in § 303.101(c) of this chapter.

(c) *Duration.* Unless a shorter expiration period is provided in the FDIC approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the FDIC grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the FDIC in writing.

6. Section 348.7 is amended by revising paragraph (a) to read as follows:

§ 348.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

By order of the Board of Directors.

Dated at Washington, DC, this 18th day of May, 1998.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Office of Thrift Supervision

12 CFR Chapter V

Authority and Issuance

For the reasons set out in the joint preamble, the OTS proposes to amend chapter V of title 12 of the Code of Federal Regulations as follows:

PART 563f—MANAGEMENT OFFICIAL INTERLOCKS

1. The authority citation for part 563f continues to read as follows:

Authority: 12 U.S.C. 3201–3208.

§ 563f.2 [Amended]

2. Section 563f.2 is amended by removing paragraphs (b) and (f) and redesignating paragraphs (c) through (s) as paragraphs (b) through (q), respectively.

3. Section 563f.3 is amended by revising paragraph (c) to read as follows:

§ 563f.3 Prohibitions.

* * * * *

(c) *Major assets.* A management official of a depository organization with total assets exceeding $2.5 billion (or any affiliate of such an organization) may not serve at the same time as a management official of an unaffiliated depository organization with total assets exceeding $1.5 billion (or any affiliate of such an organization), regardless of the location of the two depository organizations. The OTS will adjust these thresholds, as necessary, based on the year-to-year change in the average of the Consumer Price Index for the Urban Wage Earners and Clerical Workers, not seasonally adjusted, with rounding to the nearest $100 million.

4. Section 563f.5 is revised to read as follows:

§ 563f.5 Small market share exemption.

(a) *Exemption.* A management interlock that is prohibited by § 563f.3 is permissible, if:

(1) The interlock is not prohibited by § 563f.3(c); and

(2) The depository organizations (and their depository institution affiliates) hold, in the aggregate, no more than 20 percent of the deposits in each RMSA or community in which both depository organizations (or their depository institution affiliates) have offices. The amount of deposits shall be determined by reference to the most recent annual Summary of Deposits published by the FDIC for the RMSA or community.

(b) *Confirmation and records.* Each depository organization must maintain records sufficient to support its determination of eligibility for the exemption under paragraph (a) of this section, and must reconfirm that determination on an annual basis.

5. Section 563f.6 is revised to read as follows:

§ 563f.6 General exemption.

(a) *Exemption.* The OTS may, by agency order, exempt an interlock from the prohibitions in § 563f.3, if the OTS finds that the interlock would not result in a monopoly or substantial lessening of competition, and would not present safety and soundness concerns. A depository organization may apply to the OTS for an exemption as provided by § 516.2 of this chapter.

(b) *Presumptions.* In reviewing applications for an exemption under this section, the OTS will apply a rebuttable presumption that an interlock will not result in a monopoly or substantial lessening of competition if the depository organization seeking to add a management official:

(1) Primarily serves low-and moderate-income areas;

(2) Is controlled or managed by persons who are members of a minority group, or women;

(3) Is a depository institution that or has been chartered for less than two years; or

(4) Is deemed to be in ''troubled condition'' as defined in § 574.9(a)(5) of this chapter.

(c) *Duration.* Unless a shorter expiration period is provided in the OTS approval, an exemption permitted by paragraph (a) of this section may continue so long as it would not result in a monopoly or substantial lessening of competition, or be unsafe or unsound. If the OTS grants an interlock exemption in reliance upon a presumption under paragraph (b) of this section, the interlock may continue for three years, unless otherwise provided by the OTS in writing.

6. Section 563f.7 is amended by revising paragraph (a) to read as follows:

§ 563f.7 Change in circumstances.

(a) *Termination.* A management official shall terminate his or her service or apply for an exemption if a change in circumstances causes the service to become prohibited. A change in circumstances may include an increase in asset size of an organization, a change in the delineation of the RMSA or community, the establishment of an office, an increase in the aggregate deposits of the depository organization, or an acquisition, merger, consolidation, or reorganization of the ownership structure of a depository organization that causes a previously permissible interlock to become prohibited.

* * * * *

By the Office of Thrift Supervision.

Dated: May 27, 1998.

Ellen Seidman,

Director.

[FR Doc. 98–20848 Filed 8–10–98; 8:45 am]

BILLING CODE OTS: 6720–01–P (25%); OCC: 4810–33–P (25%); Board: 6210–01–P (25%) FDIC: 6714–01–P (25%);

Federal Register

Tuesday
August 11, 1998

Part VIII

The President

Proclamation 7115—Victims of the Bombing Incidents in Africa

Federal Register
Vol. 63, No. 154
Tuesday, August 11, 1998

Presidential Documents

Title 3—

The President

Proclamation 7115 of August 7, 1998

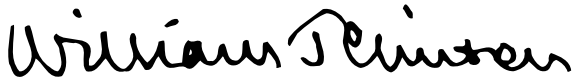
Victims of the Bombing Incidents in Africa

By the President of the United States of America

A Proclamation

As a mark of respect for those killed in the bombing incidents outside the United States embassies in Nairobi, Kenya, and Dar es Salaam, Tanzania, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff at the White House and upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until sunset, Sunday, August 9, 1998. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of August, in the year of our Lord nineteen hundred and ninety-eight, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 98–21700
Filed 8–10–98; 8:48 am]
Billing code 3195–01–P

Federal Register

Tuesday
August 11, 1998

Part IX

The President

Executive Order 13097—Interparliamentary Union

Federal Register
Vol. 63, No. 154
Tuesday, August 11, 1998

Presidential Documents

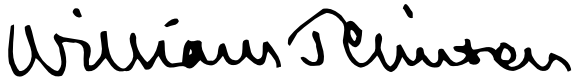
Title 3—

The President

Executive Order 13097 of August 7, 1998

Interparliamentary Union

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 1 of the International Organizations Immunities Act (22 U.S.C. 288), and having found that the Interparliamentary Union is a public international organization in which the United States participates within the meaning of the International Organizations Immunities Act, I hereby designate the Interparliamentary Union as a public international organization entitled to enjoy the privileges, exemptions, and immunities conferred by the International Organizations Immunities Act. This designation is not intended to abridge in any respect privileges, exemptions, or immunities that such organization may have acquired or may acquire by international agreements or by congressional action.



THE WHITE HOUSE,
August 7, 1998.

[FR Doc. 98–21710
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H.R. 643/P.L. 105–218

To designate the United States courthouse to be constructed at the corner of Superior and Huron Roads, in Cleveland, Ohio, as the ''Carl B. Stokes United States Courthouse''. (Aug. 7, 1998; 112 Stat. 912)

H.R. 1151/P.L. 105–219

Credit Union Membership Access Act (Aug. 7, 1998; 112 Stat. 913)

H.R. 1385/P.L. 105–220

Workforce Investment Act of 1998 (Aug. 7, 1998; 112 Stat. 936)

H.R. 3152/P.L. 105–221

Amy Somers Volunteers at Food Banks Act (Aug. 7, 1998; 112 Stat. 1248)

H.R. 3731/P.L. 105–222

To designate the auditorium located within the Sandia Technology Transfer Center in Albuquerque, New Mexico, as the ''Steve Schiff Auditorium''. (Aug. 7, 1998; 112 Stat. 1249)

H.R. 4354/P.L. 105–223

To establish the United States Capitol Police Memorial Fund on behalf of the families of Detective John Michael Gibson and Private First Class Jacob Joseph Chestnut of the United States Capitol Police. (Aug. 7, 1998; 112 Stat. 1250)

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