12–15–98
Vol. 63 No. 240
Pages 68989–69176

Federal Register

Tuesday
December 15, 1998

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

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Presidential Documents

Title 3—

The President

Proclamation 7158 of December 10, 1998

Human Rights Day, Bill of Rights Day, and Human Rights Week, 1998

By the President of the United States of America

A Proclamation

Thanks to the foresight of our Founding Fathers and their commitment to human rights, we live in a Nation founded upon the principles of equality, justice, and freedom—principles guaranteed to us by our Constitution. With the memory of tyranny fresh in their minds, the members of the First Congress of the United States proposed constitutional amendments known as the Bill of Rights, making explicit and forever protecting our Nation's cherished freedoms of religion, speech, press, and assembly.

But human rights have never been solely a domestic concern. Americans have always sought to share these rights with oppressed people around the world. In his annual message to the Congress, on January 6, 1941, President Franklin Delano Roosevelt articulated this desire: ''In the future days, which we seek to make secure, we look forward to a world founded upon four essential human freedoms. The first is freedom of speech and expression—everywhere in the world. The second is freedom of every person to worship God in his own way—everywhere in the world. The third is freedom from want . . . . The fourth is freedom from fear . . . anywhere in the world . . . . The world order which we seek is the cooperation of free countries, working together in a friendly, civilized society.''

Fifty years ago, on December 10, 1948, the world reached a major milestone toward FDR's vision when the United Nations adopted the Universal Declaration of Human Rights. This Declaration—drafted by the U.N. Commission on Human Rights under the leadership of Eleanor Roosevelt—established an international standard that recognized the ''inherent dignity'' and the ''equal and inalienable rights of all members of the human family . . . .'' It denounced past ''disregard and contempt for human rights [that] have resulted in barbarous acts which have outraged the conscience of mankind . . . .''

Today, a majority of the world's people live in democracies and exercise their right to freely choose their own governments. International war crimes tribunals seek justice for victims and their families by working to ensure that war crimes, crimes against humanity, and genocide do not go unpunished. And we are heartened by the progress toward peace made in Northern Ireland, the Middle East, and elsewhere, which advances the cause of human rights. But there are still many areas where human rights abuses are committed with impunity—unchecked and unpunished.

To reaffirm our Nation's unequivocal commitment to upholding human rights, today I am issuing an Executive order to create an interagency working group to help enforce the human rights treaties we have already ratified and to make recommendations on treaties we have yet to ratify. In addition, my Administration is working to establish a genocide early warning center and to fund nongovernmental organizations that respond rapidly in human rights emergencies. The Department of State is working to provide additional assistance for Afghan women and girls under the oppressive rule of the Taliban. We are also supporting the work of the International Labor Organization in its efforts to eliminate child labor. Finally, the Immigration and

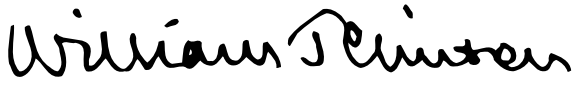
Naturalization Service is issuing guidelines on how to handle cases where children seek asylum in the United States.

This year, as we come together to celebrate the Declaration's 50th anniversary, let us not forget the driving force behind its creation. We are grateful that Eleanor Roosevelt brought her prodigious energies and talents to this task. And it is fitting that we have established the Eleanor Roosevelt Award for Human Rights, honoring others for their important contributions to protecting human rights around the world.

Eleanor Roosevelt once said that ''the future belongs to those who believe in the beauty of their dreams.'' Her accomplishments serve as an inspiration to us all, and each of us can play a part in preserving and promoting her enduring legacy. Let us each embrace the Declaration's promise by striving to uphold its principles and defending the rights it embodies.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 10, 1998, as Human Rights Day; December 15, 1998, as Bill of Rights Day; and the week beginning December 10, 1998, as Human Rights Week. I call upon the people of the United States to celebrate these observances with appropriate activities, ceremonies, and programs that demonstrate our national commitment to the Bill of Rights, the Universal Declaration of Human Rights, and the promotion and protection of human rights for all people.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of December, 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. 98–33347
Filed 12–14–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13107 of December 10, 1998

Implementation of Human Rights Treaties

By the authority vested in me as President by the Constitution and the laws of the United States of America, and bearing in mind the obligations of the United States pursuant to the International Covenant on Civil and Political Rights (ICCPR), the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the Convention on the Elimination of All Forms of Racial Discrimination (CERD), and other relevant treaties concerned with the protection and promotion of human rights to which the United States is now or may become a party in the future, it is hereby ordered as follows:

Section 1. *Implementation of Human Rights Obligations.* (a) It shall be the policy and practice of the Government of the United States, being committed to the protection and promotion of human rights and fundamental freedoms, fully to respect and implement its obligations under the international human rights treaties to which it is a party, including the ICCPR, the CAT, and the CERD.

(b) It shall also be the policy and practice of the Government of the United States to promote respect for international human rights, both in our relationships with all other countries and by working with and strengthening the various international mechanisms for the promotion of human rights, including, *inter alia*, those of the United Nations, the International Labor Organization, and the Organization of American States.

Sec. 2. *Responsibility of Executive Departments and Agencies.* (a) All executive departments and agencies (as defined in 5 U.S.C. 101–105, including boards and commissions, and hereinafter referred to collectively as ''agency'' or ''agencies'') shall maintain a current awareness of United States international human rights obligations that are relevant to their functions and shall perform such functions so as to respect and implement those obligations fully. The head of each agency shall designate a single contact officer who will be responsible for overall coordination of the implementation of this order. Under this order, all such agencies shall retain their established institutional roles in the implementation, interpretation, and enforcement of Federal law and policy.

(b) The heads of agencies shall have lead responsibility, in coordination with other appropriate agencies, for questions concerning implementation of human rights obligations that fall within their respective operating and program responsibilities and authorities or, to the extent that matters do not fall within the operating and program responsibilities and authorities of any agency, that most closely relate to their general areas of concern.

Sec. 3. *Human Rights Inquiries and Complaints.* Each agency shall take lead responsibility, in coordination with other appropriate agencies, for responding to inquiries, requests for information, and complaints about violations of human rights obligations that fall within its areas of responsibility or, if the matter does not fall within its areas of responsibility, referring it to the appropriate agency for response.

Sec. 4. *Interagency Working Group on Human Rights Treaties.* (a) There is hereby established an Interagency Working Group on Human Rights Treaties for the purpose of providing guidance, oversight, and coordination with respect to questions concerning the adherence to and implementation of human rights obligations and related matters.

(b) The designee of the Assistant to the President for National Security Affairs shall chair the Interagency Working Group, which shall consist of appropriate policy and legal representatives at the Assistant Secretary level from the Department of State, the Department of Justice, the Department of Labor, the Department of Defense, the Joint Chiefs of Staff, and other agencies as the chair deems appropriate. The principal members may designate alternates to attend meetings in their stead.

(c) The principal functions of the Interagency Working Group shall include:

(i) coordinating the interagency review of any significant issues concerning the implementation of this order and analysis and recommendations in connection with pursuing the ratification of human rights treaties, as such questions may from time to time arise;

(ii) coordinating the preparation of reports that are to be submitted by the United States in fulfillment of treaty obligations;

(iii) coordinating the responses of the United States Government to complaints against it concerning alleged human rights violations submitted to the United Nations, the Organization of American States, and other international organizations;

(iv) developing effective mechanisms to ensure that legislation proposed by the Administration is reviewed for conformity with international human rights obligations and that these obligations are taken into account in reviewing legislation under consideration by the Congress as well;

(v) developing recommended proposals and mechanisms for improving the monitoring of the actions by the various States, Commonwealths, and territories of the United States and, where appropriate, of Native Americans and Federally recognized Indian tribes, including the review of State, Commonwealth, and territorial laws for their conformity with relevant treaties, the provision of relevant information for reports and other monitoring purposes, and the promotion of effective remedial mechanisms;

(vi) developing plans for public outreach and education concerning the provisions of the ICCPR, CAT, CERD, and other relevant treaties, and human rights-related provisions of domestic law;

(vii) coordinating and directing an annual review of United States reservations, declarations, and understandings to human rights treaties, and matters as to which there have been nontrivial complaints or allegations of inconsistency with or breach of international human rights obligations, in order to determine whether there should be consideration of any modification of relevant reservations, declarations, and understandings to human rights treaties, or United States practices or laws. The results and recommendations of this review shall be reviewed by the head of each participating agency;

(viii) making such other recommendations as it shall deem appropriate to the President, through the Assistant to the President for National Security Affairs, concerning United States adherence to or implementation of human rights treaties and related matters; and

(ix) coordinating such other significant tasks in connection with human rights treaties or international human rights institutions, including the Inter-American Commission on Human Rights and the Special Rapporteurs and complaints procedures established by the United Nations Human Rights Commission.

(d) The work of the Interagency Working Group shall not supplant the work of other interagency entities, including the President's Committee on the International Labor Organization, that address international human rights issues.

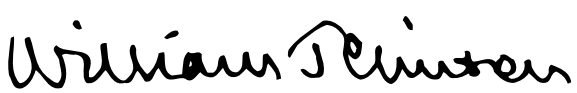
Sec. 5. *Cooperation Among Executive Departments and Agencies.* All agencies shall cooperate in carrying out the provisions of this order. The Interagency Working Group shall facilitate such cooperative measures.

Sec. 6. *Judicial Review, Scope, and Administration.* (a) Nothing in this order shall create any right or benefit, substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

(b) This order does not supersede Federal statutes and does not impose any justiciable obligations on the executive branch.

(c) The term ''treaty obligations'' shall mean treaty obligations as approved by the Senate pursuant to Article II, section 2, clause 2 of the United States Constitution.

(d) To the maximum extent practicable and subject to the availability of appropriations, agencies shall carry out the provisions of this order.



THE WHITE HOUSE,
December 10, 1998.

[FR Doc. 98–33348
Filed 12–14–98; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8793]

RIN 1545–AW38

Payment by Credit Card and Debit Card

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations that authorize the Secretary of the Treasury to accept payment of internal revenue taxes by credit card or debit card. The temporary regulations reflect changes to the law made by the Taxpayer Relief Act of 1997, and will affect all persons who pay their tax liabilities by credit card or debit card pursuant to guidance prescribed by the Secretary. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the Proposed Rules section of this issue of the **Federal Register**.

DATES: *Effective Date:* These temporary regulations are effective January 1, 1999.

Applicability Date: For dates of applicability, see § 301.6311–2T(h) of these regulations.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mitchel S. Hyman, (202) 622–3620 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains temporary regulations amending the Procedure and Administration Regulations (26 CFR part 301) under sections 6103 and 6311 of the Internal Revenue Code. The regulations reflect the amendment of sections 6103 and 6311 by section 1205 of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788, 995) (1997 Act) and section 4003(k) of the Tax and Trade Relief Extension Act of 1998 (Public Law 105–277, 112 Stat. 2681).

As amended by the 1997 Act, section 6311(a) provides that it shall be lawful for the Secretary to receive payment for internal revenue taxes by any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary. The legislative history accompanying the Act explains that commercially acceptable means includes ''electronic funds transfers, including those arising from credit cards, debit cards, and charge cards.'' H. Conf. Rep. 220, 105th Cong., 1st Sess. 652 (1997). The current regulations under Treas. Reg. § 301.6311–1 permit payment of taxes by checks, drafts drawn on financial institutions, or money orders. The temporary regulations add payments by credit cards (which includes charge cards) and debit cards to the acceptable methods of payment under section 6311.

Methods of payment by electronic funds transfer other than by credit card or debit card are currently authorized by section 6302 of the Internal Revenue Code and its implementing regulations. For example, Treas. Reg. § 1.6302–4 permits individuals to voluntarily remit payments of income taxes by electronic funds transfer. Thus, the temporary regulations only address payments by credit card and debit card. Section 6302 and its regulations will remain the authority for forms of payment by electronic funds transfer other than payments by credit card and debit card.

Section 6103(a) of the Code prohibits disclosure of returns and return information except as expressly provided in the Code. Section 1205(c)(1) of the 1997 Act (as amended by section 6012(b)(2) of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206) added section 6103(k)(9) to the Code. Section 6103(k)(9) authorizes the IRS to disclose returns and return information to financial institutions and others to the extent necessary for the administration of section 6311. Section 6103(k)(9) further provides that disclosures of information for purposes other than to accept payments by check or money order (for example, by credit card, or debit card) shall be made only to the extent authorized by written procedures promulgated by the Secretary. Section 6311(e) provides that no person shall use or disclose any information obtained pursuant to section 6103(k)(9) related to credit card or debit card transactions except to the extent authorized by written procedures promulgated by the Secretary.

Any person who uses or discloses information in violation of section 6311(e) is subject to civil liability for damages. See I.R.C. section 7431(h), added by section 1205(c)(2) of the 1997 Act (as amended by Public Law 105–206, section 6012(b)(3)).

Explanation of Provisions

The temporary regulations provide that internal revenue taxes may be paid by credit card or debit card. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. However, only credit cards or debit cards approved by the Secretary may be used for this purpose, only the types of tax liabilities specified by the Secretary may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions, and procedures prescribed by the Secretary. Thus, payments by credit card or debit card may be limited to certain designated cards, to payments made through certain service providers, or to payments of specific types of taxes. It is anticipated that the Secretary will be entering into contracts with specific card issuers or other persons such as third parties who will process the credit and debit card transactions, to facilitate payments by credit cards and debit cards, subject to the requirement that the Secretary may not pay any fee or provide any other monetary consideration under such contracts.

Under the temporary regulations, a payment by credit card or debit card received by the Secretary will be deemed made when the credit card or debit card transaction is authorized by the card issuer, provided the payment is actually received by the Secretary in the ordinary course of business and is not returned due to correction of errors relating to the credit card or debit card account.

The temporary regulations provide, as required by section 6311(d)(3), that payments of taxes by credit card or debit card are subject to the error resolution

procedures of section 161 of the Truth in Lending Act, 15 U.S.C. 1666, section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, only for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes, or adjustments relating to the underlying tax liability. These provisions ensure that any disputes concerning the merits of the tax liability will be resolved in the traditional administrative and judicial forums (e.g., filing a petition in Tax Court, paying the disputed tax and filing a claim for refund), and will not be raised in any dispute with the card issuer, financial institution, or other person participating in the credit card or debit card transaction.

As authorized by section 6311(d)(3)(E), the temporary regulations permit the Secretary to return funds erroneously received due to errors relating to the credit card or debit card account by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or other appropriate financial institution or person. Returns of funds through credit card or debit card credits, however, are only available to correct errors relating to the credit card and debit card account, and not to refund overpayments of taxes.

The temporary regulations also provide that the Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. The regulations provide that the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction are not prohibited. The Internal Revenue Service may not receive any part of any fees that may be charged.

The temporary regulations also provide the procedures required under sections 6103(k)(9) and 6311(e) with respect to use and disclosure of information relating to payment of taxes by credit card and debit card. IRS personnel are authorized to disclose to card issuers, financial institutions, and other persons information necessary to process the tax payment or to bill or collect the amount charged or debited (for example, to resolve billing errors). Pursuant to section 6311(e), information received by any person in connection with payment of tax by credit card or debit card shall be treated as confidential by all persons who receive such information, whether such information is received from the Secretary or from any other person including the taxpayer.

The temporary regulations set forth the limited purposes and activities for which such information may be used or disclosed by card issuers, financial institutions, and other persons. The permitted purposes and activities principally involve credit card and debit card processing, billing, collection, account servicing, account transfers, internal business records, legal compliance, and legal proceedings. The temporary regulations expressly prohibit selling the information, sharing it with credit bureaus, or using it for any marketing purpose, for example, marketing tax-related products or any marketing that targets those who have used a credit card or debit card to pay taxes.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that these regulations must be effective by January 1, 1999, to permit taxpayers the opportunity to pay taxes by credit card for the 1999 filing season, and, therefore, it has been determined that sections 553 (b) and (d) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations. It has also been determined that because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this temporary regulation will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Mitchel S. Hyman of the Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805 * * *.

Par. 2. Section 301.6103(k)(9)–1T is added to read as follows:

§ 301.6103(k)(9)–1T Disclosure of returns and return information relating to payment of tax by credit card and debit card (temporary).

Officers and employees of the Internal Revenue Service may disclose to card issuers, financial institutions or other persons such return information as the Secretary deems necessary in connection with processing credit card and debit card transactions to effectuate payment of tax as authorized by § 301.6311–2T. Officers and employees of the Service may disclose such return information to such persons as the Secretary deems necessary in connection with billing or collection of the amounts charged or debited, including resolution of errors relating to the credit card or debit card account as described in § 301.6311–2T(d).

Par. 3. Section 301.6311–2T is added to read as follows:

§ 301.6311–2T Payment by credit card and debit card (temporary).

(a) *Authority to receive*—(1) *Payments by credit card and debit card.* Internal revenue taxes may be paid by credit card or debit card as authorized by this section. Payment of taxes by credit card or debit card is voluntary on the part of the taxpayer. However, only credit cards or debit cards approved by the Secretary may be used for this purpose, only the types of tax liabilities specified by the Secretary may be paid by credit card or debit card, and all such payments must be made in the manner and in accordance with the forms, instructions and procedures prescribed by the Secretary. All references in this section to ''tax'' also include interest, penalties and additions to tax.

(2) *Payments by electronic funds transfer other than payments by credit card and debit card.* Provisions relating to payments by electronic funds transfer other than payments by credit card and debit card are contained in section 6302 and the Treasury Regulations promulgated pursuant to section 6302.

(3) *Definitions*—(i) *Credit card* means any credit card as defined in section 103(k) of the Truth in Lending Act, 15 U.S.C. 1602(k), including any credit card, charge card or other credit device issued for the purpose of obtaining

money, property, labor or services on credit.

(ii) *Debit card* means any accepted card or other means of access as defined in section 903(1) of the Electronic Funds Transfer Act, 15 U.S.C. 1693a(1), including any debit card or similar device or means of access to an account issued for the purpose of initiating electronic fund transfers to obtain money, property, labor or services.

(b) *When payment is deemed made.* A payment of tax by credit card or debit card shall be deemed made when the issuer of the credit card or debit card properly authorizes the transaction, provided the payment is actually received by the Secretary in the ordinary course of business and is not returned pursuant to paragraph (d)(3) of this section.

(c) *Payment not made*—(1) *Continuing liability of taxpayer.* A taxpayer who tenders payment of taxes by credit card or debit card is not relieved of liability for such taxes until the payment is actually received by the Secretary and is not required to be returned pursuant to paragraph (d)(3) of this section. This continuing liability of the taxpayer is in addition to, and not in lieu of, any liability of the issuer of the credit card or debit card or financial institution pursuant to paragraph (c)(2) of this section.

(2) *Liability of financial institutions.* If a taxpayer has tendered a payment of internal revenue taxes by credit card or been guaranteed expressly by a financial institution, and the United States is not duly paid, the United States shall have a lien for the guaranteed amount of the transaction upon all the assets of the institution making such guarantee. The unpaid amount shall be paid out of such assets in preference to any other claims whatsoever against such guaranteeing institution, except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such institution.

(d) *Resolution of errors relating to the credit card or debit card account*—(1) *In general.* Payments of taxes by credit card or debit card shall be subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act, 15 U.S.C. 1666, or section 908 of the Electronic Fund Transfer Act, 15 U.S.C. 1693f, or any similar provisions of state law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

(2) *Matters covered by error resolution procedures.* (i) The error resolution procedures of paragraph (d)(1) of this section apply to the following types of errors:

(A) An incorrect amount posted to the taxpayer's account as a result of a computational error, numerical transposition, or similar mistake.

(B) An amount posted to the wrong taxpayer's account.

(C) A transaction posted to the taxpayer's account without the taxpayer's authorization.

(D) Similar types of errors that would be subject to resolution under these procedures in ordinary commercial transactions.

(ii) An error described in paragraphs (d)(2)(i) (A) through (D) of this section may only be resolved through the procedures referred to in paragraph (d)(1) of this section and cannot be a basis for any claim or defense in any administrative or court proceeding involving the Secretary.

(3) *Return of funds pursuant to error resolution procedures.* Notwithstanding section 6402 of the Internal Revenue Code, if a taxpayer is entitled to a return of funds pursuant to the error resolution procedures of paragraph (d)(1) of this section, the Secretary may, in the Secretary's sole discretion, effect such return by arranging for a credit to the taxpayer's account with the issuer of the credit card or debit card or any other financial institution or person that participated in the transaction in which the error occurred.

(4) *Matters not subject to error resolution procedures.* The error resolution procedures of paragraph (d)(1) of this section do not apply to any error, question or dispute concerning the amount of tax owed by any person for any year. For example, these error resolution procedures do not apply to determine a taxpayer's entitlement to a refund of tax for any year for any reason, nor may they be used to pay a refund. All such matters shall be resolved through administrative and judicial procedures established pursuant to the Internal Revenue Code and the rules and regulations thereunder.

(5) Payments of taxes by credit card or debit card are not subject to section 170 of the Truth in Lending Act, 15 U.S.C. 1666i, or to any similar provision of state law.

(e) *Fees or charges.* The Internal Revenue Service may not impose any fee or charge on persons making payment of taxes by credit card or debit card. This section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institution or person participating in the credit card or debit card transaction. The Internal Revenue Service may not receive any part of any fees that may be charged.

(f) *Authority to enter into contracts.* The Secretary may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the Government. The determination of whether the contract is cost beneficial shall be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the Government's investment or interest. The Secretary may not pay any fee or charge or provide any other monetary consideration under such contracts for such payments.

(g) *Use and disclosure of information relating to payment of taxes by credit card and debit card.* Information obtained by any person other than the taxpayer in connection with payment of taxes by a credit card or debit card shall be treated as confidential, whether such information is received from the Secretary or from any other person (including the taxpayer). No person other than the taxpayer shall use or disclose such information except as follows:

(1) Card issuers, financial institutions, or other persons participating in the credit card or debit card transaction may use or disclose such information for the purpose and in direct furtherance of servicing cardholder accounts, including the resolution of errors in accordance with paragraph (d) of this section. This authority includes the following:

(i) Processing of the credit card or debit card transaction, in all of its stages through and including the crediting of the amount charged on account of tax to the United States Treasury.

(ii) Billing the taxpayer for the amount charged or debited with respect to payment of the tax liability.

(iii) Collection of the amount charged or debited with respect to payment of the tax liability.

(iv) Returning funds to the taxpayer in accordance with paragraph (d)(3) of this section.

(2) Card issuers, financial institutions or other persons participating in the credit card or debit card transaction may use and disclose such information for the purpose and in direct furtherance of any of the following activities:

(i) Assessment of statistical risk and profitability.

(ii) Transfer of receivables or accounts or any interest therein.

(iii) Audit of account information.

(iv) Compliance with Federal, State, or local law.

(v) Cooperation in properly authorized civil, criminal, or regulatory investigations by Federal, State, or local authorities.

(3) Notwithstanding the foregoing, use or disclosure of information relating to credit card and debit card transactions for purposes related to any of the following is not authorized:

(i) Sale or exchange of such information separate from the underlying receivable or account.

(ii) Marketing for any purpose, for example, marketing tax-related products or services, or marketing any product or service that targets those who have used a credit card or debit card to pay taxes.

(iii) Furnishing such information to any credit reporting agency or credit bureau, except with respect to the aggregate amount of a cardholder's account, with the amount attributable to payment of taxes not separately identified.

(4) Use and disclosure of information other than as authorized by this paragraph (g) may result in civil liability under section 7431(h) of the Internal Revenue Code.

(h) *Effective date.* This section applies to payments of taxes made on and after January 1, 1999, and through December 14, 2001.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 1, 1998.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 98–32926 Filed 12–14–98; 8:45 am]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in January 1999.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 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: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during January 1999.

For annuity benefits, the interest assumptions will be 5.30 percent for the first 20 years following the valuation date and 5.25 percent thereafter. The annuity interest assumptions (in comparison with those in effect during December 1998) reflect a 5-year decrease in the period during which the initial rate applies (from a period of 25 years following the valuation date to a period of 20 years following the valuation date). The initial rate, in effect during the 20-year period, represents a decrease (from the initial rate in effect for December 1998) of 0.10 percent. The ultimate rate, in effect thereafter, is unchanged. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.00 percent for the period during which a benefit is in pay status and during any years preceding the benefit's placement in pay status. The lump sum interest assumptions are unchanged from those in effect for December 1998.

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in plans with valuation dates during December 1998, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a ''significant regulatory action'' under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 4044

Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR part 4044 is amended as follows:

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

1. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, a new entry is added to Table I, and Rate Set 63 is added to Table II, as set forth below. The introductory text of each table is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 4044—Interest Rates Used to Value Annuities and Lump Sums

TABLE I.—ANNUITY VALUATIONS

[This table sets forth, for each indicated calendar month, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t =	i_t	for t =	i_t	for t =
* * *	*		*	*	*	
January 1999	.0530	1–20	.0525	>20	N/A	N/A

TABLE II.—LUMP SUM VALUATIONS

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate n_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following i_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
*	*		*	*	*	*	*	
63	01–1–99	02–1–99	4.00	4.00	4.00	4.00	7	8

Issued in Washington, DC, on this 9th day of December, 1998.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–33139 Filed 12–14–98; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–98–100]

RIN 2115–AE46

Special Local Regulations for Marine Events; Patapsco River, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: Temporary special local regulations are being adopted for the Baltimore New Year's Eve Extravaganza Fireworks display to be held over the waters of the Patapsco River, Baltimore, Maryland. These regulations are needed to protect spectator craft and other vessels transiting the event area from the dangers associated with the event. This action is intended to enhance the safety of life and property during the event.

DATES: This temporary final rule is effective from 11:30 p.m. on December 31, 1998 to 12:30 a.m. on January 2, 1999. For rain dates, refer to the regulatory text set out in this rule.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Office R. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, Maryland, 21226–1791, telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation. Following normal rulemaking procedures would have been impractical since there is not sufficient time remaining to publish a proposed rule in advance of the event or to provide for a delayed effective date. Immediate action is needed to protect vessel traffic from the potential hazards associated with this event. For these reasons, the Coast Guard finds good cause under 5 U.S.C. 553(b)(B) that notice and public comment are impracticable.

Background and Purpose

The Baltimore Office of Promotions has submitted a marine event application to the U.S. Coast Guard for the Baltimore New Year's Eve Extravaganza Fireworks display, to be held over the waters of the Inner Harbor and Northwest Harbor, near Baltimore, Maryland. The event will consist of pyrotechnic displays fired from 2 barges positioned in the Inner Harbor. A large fleet of spectator vessels is anticipated. Due to the need for vessel control during the fireworks displays, vessel traffic will be temporarily restricted to provide for the safety of spectators and transiting vessels.

Discussion of Regulations

The Coast Guard is establishing temporary special local regulations on specified waters of the Inner Harbor and Northwest Harbor. The temporary special local regulations will be in effect from 11:30 p.m. on December 31, 1998 to 12:30 a.m. on January 1, 1999 and will restrict general navigation in the regulated areas during the event. If the event is postponed due to weather conditions, the temporary special local regulations will be effective from 11:30 p.m. on January 1, 1999 to 12:30 a.m. on January 2, 1999. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated areas. These regulations are needed to control vessel traffic during the fireworks displays to enhance the safety of spectators and transiting vessels.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the regulated areas will only be in effect for a limited amount of time.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because is expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this temporary final rule will not have a significant economic impact on a substantial number of small entities because of the event's short duration.

Collection of Information

These regulations contain no Collection of Information requirements under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(h) of COMDTINST M16475.1C, this rule is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

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

Temporary Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary section, § 100.35–T05–100 is added to read as follows:

§ 100.35–T05–100 Patapsco River, Baltimore, Maryland.

(a) *Definitions:*

(1) *Inner Harbor Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 400 feet and with its center located at latitude 39°16.9′ North, longitude 076°36.3′ West. All coordinates reference Datum NAD 1983.

(2) *Northwest Harbor Regulated Area.* The waters of the Patapsco River enclosed within the arc of a circle with a radius of 500 feet and with its center located at latitude 39°16.6′ North, longitude 076°35.8′ West. All coordinates reference Datum NAD 1983.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

(b) *Special Local Regulations:*

(1) All persons and/or vessels not authorized as participants or official patrol vessels are considered spectators. The ''official patrol'' consists of any Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(2) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated areas.

(3) The operator of any vessel in these areas shall:

(i) Stop the vessel immediately when directed to do so by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any official patrol, including any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(c) *Effective Dates:* The regulated areas are effective from 11:30 p.m. on December 31, 1998 to January 1, 1999. If the event is postponed due to weather conditions, the regulated areas are effective from 11:30 p.m. on January 1, 1999 to 12:30 a.m. on January 2, 1999.

Dated: November 19, 1998.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–33081 Filed 12–14–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–98–039]

RIN 2115–AE47

Drawbridge Operation Regulations: Fort Point Channel, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the operating rules for the Congress Street Bridge, mile 0.3, and the Summer Street Bridge, mile 0.4, across the Fort Point Channel in Boston, Massachusetts.

The Congress Street and Summer Street Bridges have been rebuilt as fixed bridges and the operating regulations are no longer necessary. Notice and public procedure have been omitted from this action because the bridges the regulations formerly governed are fixed and no longer open for navigation.

DATES: This final rule is effective December 15, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the First Coast Guard District Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Background

The Congress Street and Summer Street Bridges have been rebuilt as fixed bridges that no longer open for navigation. The operating regulations are now unnecessary and will be removed by this action.

The Coast Guard has determined that good cause exists under the Administrative Procedure Act (5 U.S.C. 553) to forego notice and comment for this rulemaking because notice and comment are unnecessary. Notice and comment are unnecessary because the bridges the regulations governed no longer open for navigation.

The Coast Guard, for the reason just stated, has also determined that good

cause exists for this rule to be effective upon publication in the **Federal Register**.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This conclusion is based on the fact that the bridges are fixed bridges that no longer open for marine traffic and the regulations for these bridges are no longer needed.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000. Therefore, for the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. *et seq.*).

Federalism

The Coast Guard has analyzed this final rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that, under Figure 2–1, paragraph 32(e), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found not to have a significant effect on the environment. A written ''Categorical Exclusion Determination'' is not required for this final rule.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

§ 117.599 [Amended]

2. In § 117.599, remove paragraph (b) and the designation for paragraph (a).

Dated: December 1, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–33077 Filed 12–14–98; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 354

RIN 3067–AC87

Fee for Services To Support FEMA's Offsite Radiological Emergency Preparedness Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim final rule with request for comments.

SUMMARY: This rule establishes the policies and administrative basis for FEMA to assess fees on Nuclear Regulatory Commission (NRC) licensees to recover the full amount of the funds that we obligate to provide services for offsite radiological emergency planning and preparedness beginning in Fiscal Year (FY) 1999.

DATES: This rule is effective December 15, 1998. Please submit your comments on or before February 16, 1999.

ADDRESSES: We invite your comments on this rule. Please submit them to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (telefax) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Preparedness, Training, and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3664, (telefax) 202–646–3508, (email) *vanessa.quinn@fema.gov*.

SUPPLEMENTARY INFORMATION:

Background: A Chronology

- *1991.* On March 6, 1991, we published in the **Federal Register** (56 FR 9452–9459) a final rule, 44 CFR part 353, that established a structure for assessing and collecting user fees from NRC licensees. Under 44 CFR part 353, Radiological Emergency Preparedness (REP) services provided by FEMA personnel and FEMA contractors were reimbursable only if these services were site-specific in nature and directly contributed to the fulfillment of emergency preparedness requirements needed for licensing by the NRC under the Atomic Energy Act of 1954, as amended. Although we are publishing a new approach for the assessment and collection of fees from licensees for FY 1999 and beyond, part 353 remains in effect and will apply in any subsequent fiscal year for which the Congress does not authorize us to collect user fees for generic services.
- *1992.* Pub. L. 102–389, October 6, 1992, 106 Stat. 1571–1606, expanded reimbursable REP Program activities by authorizing us to charge licensees of commercial nuclear power plants fees to recover the full amount of the funds anticipated to be obligated for our REP Program for FY 1993.
- *1993.* On July 1, 1993, we published in the **Federal Register** (58 FR 35770–35775) an interim final rule, 44 CFR part 354, to establish and set forth the policies and administrative basis for assessing and collecting these fees. We reserved the option to reissue or amend part 354 for other fiscal years provided that the Congress enacted appropriate authority.
- Pub. L. 103–124, September 23, 1993, 107 Stat.1297, directed us to continue assessing and collecting fees to recover the full amount of the funds anticipated to be obligated for our REP Program for FY 1994. In addition, the Administration proposed to assess such fees for subsequent fiscal years.
- Using the methodology established by the interim final rule, 44 CFR part 354, we calculated the final hourly user

fee rate for FEMA personnel during FY 1993 at $122.88. On December 13, 1993, we published a notice to this effect in the **Federal Register** (58 FR 65274). The notice explained that we would not publish a final rule at that time, pending a reconsideration of the methodology used for FY 1993 and taking into consideration the comments received on interim final rule 44 CFR part 354.

- *1994.* We continued the methodology established by the interim final rule 44 CFR part 354 in effect for FY 1994 by notice in the **Federal Register** (59 FR 26350), published May 19, 1994.
- Using the methodology established by the interim final rule, we calculated the final hourly user fee rate for FEMA personnel during FY 1994 at $120.79. On November 28, 1994, we published a notice to this effect in the **Federal Register** (59 FR 60792–60793).
- On July 27, 1994, we published a proposed rule in the **Federal Register**, 59 FR 38306—38309, 44 CFR part 354. Predicated on Congress passing authorizing legislation, this rule proposed to establish fees for FY 1995 assessed at a flat rate based on fiscal year budgeted funds for REP Program services performed by FEMA personnel and by FEMA contractors whether or not those services directly supported NRC licensing requirements.
- *1995.* Under our appropriation for FY 1995, Pub. L. 103–327, September 28, 1994, 108 Stat. 2325, the Congress authorized us to assess and collect fees from Nuclear Regulatory Commission (NRC) licensees to recover approximately, but not less than, 100 percent of the amounts that we anticipated would be obligated for our Radiological Emergency Preparedness (REP) Program. This appropriations act further required us to publish through rulemaking a fair and equitable methodology for the assessment and collection of fees applicable to persons subject to FEMA's radiological emergency preparedness regulations. Pub. L. 103–327 granted authority for these user fees to be assessed and collected for fiscal year 1995 services only. Although the public law was limited to FY 1995, we reserved the option of reissuing or amending part 354 for other fiscal years provided that the Congress enacts appropriate authority.
- Under final rule 44 CFR part 354, 60 FR 15628–15634, published on March 24, 1995, we acted to recover fiscal year budgeted funds for REP Program services performed by FEMA personnel and by FEMA contractors whether or not those services directly supported NRC licensing requirements. We assessed fees for FY 1995-FY 1998 using a historically-based methodology in which we calculated two components for each site: (1) A site-specific, biennial exercise-related component and (2) a flat fee component.
- Pub. L. 105–276, 112 Stat. 2502, established in the Treasury a Radiological Emergency Preparedness Fund, which will be available for offsite radiological emergency planning, preparedness, and response. This Act gives continuing authority to the Director of FEMA, beginning in fiscal year 1999 and thereafter, to publish fees to be assessed and collected, applicable to persons subject to our radiological emergency preparedness regulations. As in previous Acts, we must collect not less than 100 percent of the amounts needed for our radiological emergency preparedness program, and the methodology for assessment and collection of fees must be fair and equitable. Fees received must be deposited in the Fund as offsetting collections and become available on October 1, 1999, and remain available until expended.

Historically-based methodology. Final rule 44 CFR part 354 adopted the historically-based approach to the methodology in place of the flat fee approach described in the proposed rule. We adopted this approach based on the numerous public comments that we received on our proposed flat fee methodology and on the results of our comparison of different user fee methodologies, which used actual data from fiscal years 1993 and 1994.

The historically-based methodology contains elements of the flat fee methodology and of the Nuclear Energy Institute (NEI) methodology. The methodology responds to commenters who objected to the flat fee's lack of site-specific considerations and accountability by factoring in site-specific information relating to the majority of site-specific activities, i.e., plume pathway emergency planning zone (EPZ) biennial REP exercises.

The historically-based methodology also preserves many of the benefits of a flat fee methodology, specifically:

(1) The ability to provide each licensee with a bill early in the fiscal year, thus facilitating the licensee's planning and budgeting process by greatly increasing the predictability of the licensee's bill;

(2) The ability of States and licensees to request needed technical assistance;

(3) The earlier deposit of funds in the U.S. Treasury, thus benefiting the U.S. taxpayer;

(4) A reduction of our resources needed to track administrative costs, thus making the accounting and billing process more efficient and cost-effective for the Government and freeing up our scarce resources for other REP Program activities; and

(5) The historically-based methodology ensures fairness and equity in billing licensees.

Agreements and criteria for services we provide. We provide services primarily under a Memorandum of Understanding (MOU) between the NRC and FEMA, published on September 14, 1993 (58 FR 47996—48001) and under regulations issued by both FEMA (44 CFR parts 350, 351, and 352) and the NRC (10 CFR parts 50 and 52).

We evaluate radiological emergency response plans and exercises using joint FEMA–NRC criteria, NUREG–0654/FEMA–REP–1, Revision 1 and Supplement 1. When State and local governments do not participate in the development of an emergency plan, the licensee may submit a licensee offsite plan to the NRC. Under the MOU, the NRC can request that we review a licensee offsite plan and provide its assessments and findings on the adequacy of such plans and preparedness evaluated under Supplement 1.

Electronic billing and payment. We will deposit all funds collected under this rule to the newly established Radiological Emergency Preparedness Fund as offsetting collections, which will be available for our REP Program. The Department of the Treasury recently revised § 8025.30 of publication I–TFM 6–8000 to require Federal agencies to collect funds by electronic funds transfer when such collection is cost-effective, practicable, and consistent with current statutory authority. Working with the Department of the Treasury we now provide for payment of bills by electronic transfers through Automated Clearing House (ACH) credit payments.

Revisions Pertaining to This Interim Rule

This Interim Final Rule makes two principal changes to 44 CFR part 354. The first revision is that we increase the billing cycle from four years to six years. The first six-year cycle will encompass FY 1999–2004. We will continue to track and monitor exercise activity during this period of time and will make appropriate adjustments to this component to calculate user fee assessments for later six-year cycles.

Under the second revision fees received under this rule will be deposited in the newly established Radiological Emergency Preparedness Fund. Fees received will be deposited in

the Fund as offsetting collections and will be available for offsite radiological emergency preparedness, planning, and response activities beginning on October 1, 1999.

Administrative Procedure Act Determination

We are publishing this interim final rule without opportunity for prior public comment under the Administrative Procedure Act, 5 U.S.C. 553. I have determined that a comment period would be unnecessary, impractical, and contrary to the public interest. This interim final rule does not contain any significant, substantive changes from previous REP regulations, but reflects changes to internal procedures under which we will assess and collect fees from NRC licensees.

Procedures affecting NRC licensees remain substantially unchanged. The procedural changes do not affect the rights of NRC licensees to dispute the nature or the amount of the assessment or method of collection. Further, the procedural changes in this interim final rule primarily affect how we will participate in the offset program. In order to implement the program for assessments made for FY 1999 and beyond, we need to modify and publish our regulations. We invite public comments on the interim final rule, and will take any comments into account when we publish the final rule. I determine that good cause exists and that it is in the public interest to issue this interim final rule without opportunity for prior public comment.

Regulatory Flexibility Act

I certify that this interim final rule is exempt from the requirements of the Regulatory Flexibility Act because it makes minor and technical amendments mandated by statute, 31 U.S.C. 3720A and by the Department of the Treasury Interim Rule. This interim final rule does not contain any significant substantive changes from FEMA's present debt collection regulations and does not substantially change how FEMA collects debts owed the United States that arise under FEMA programs. The Regulatory Flexibility Act does not apply to this interim final rule and no regulatory analysis has been prepared.

Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this interim final rule under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has assigned OMB control number 3067–0122.

Executive Order 12866, Regulatory Planning and Review

Promulgation of this interim final rule is required by statute, 31 U.S.C. 3716 and 3720A, and is not a significant regulatory action within the definition of E.O.12866. To the extent possible under the statutory requirements of 31 U.S.C. 3720A this interim final rule adheres to the principles of regulation set forth in Executive Order 12866. The Office of Management and Budget did not review this interim final rule under Executive Order 12866.

Congressional Review of Agency Rulemaking

We have sent this interim final rule to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. This interim final rule is not a ''major rule'' within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This interim final rule is exempt from the requirements of the Regulatory Flexibility Act, as certified previously, and complies with the Paperwork Reduction Act.

This interim final rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. The rule does not meet the $100,000,000 threshold before that Act applies.

List of Subjects in 44 CFR Part 354

Disaster assistance, Commercial nuclear power plants and reactors, Intergovernmental relations, Radiation protection, and Technical assistance.

Accordingly, we revise 44 CFR part 354 to read as follows:

PART 354—FEE FOR SERVICES TO SUPPORT FEMA'S OFFSITE RADIOLOGICAL EMERGENCY PREPAREDNESS PROGRAM

Sec.

Authority: Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; sec. 109, Pub. L. 96–295, 94 Stat. 780; sec. 2901, Pub. L. 98–369, 98 Stat. 494; Title III, Pub. L. 103–327, 108 Stat. 2323–2325; Pub. L. 105–276, 112 Stat. 2502; EO 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; EO 12657, 53 FR 47513, 3 CFR, 1988 Comp., p. 611.

§ 354.1 Purpose.

This part establishes the methodology for FEMA to assess and collect user fees from Nuclear Regulatory Commission (NRC) licensees of commercial nuclear power plants to recover at least 100 percent of the amounts that we anticipate to obligate for our Radiological Emergency Preparedness (REP) Program as authorized under Title III, Pub. L. 105–276, 112 Stat. 2461, 2502. Under Pub. L. 105–276 the methodology for assessment and collection of fees must be fair and equitable and must reflect the full amount of costs of providing radiological emergency planning, preparedness, response and associated services. Our assessment of fees will include our costs for use of agency resources for classes of regulated persons and our administrative costs to collect the fees. Licensees will deposit fees by electronic transfer into the Radiological Emergency Preparedness Fund in the U.S. Treasury as offsetting collections.

§ 354.2 Scope of this regulation.

The regulation in this part applies to all persons or licensees who have applied for or have received from the NRC:

(a) A license to construct or operate a commercial nuclear power plant;

(b) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;

(c) An early site permit for a commercial nuclear power plant;

(d) A combined construction permit and operating license for a commercial nuclear power plant; or

(e) Any other NRC licensee that is now or may become subject to requirements for offsite radiological emergency planning and preparedness.

§ 354.3 Definitions.

The following definitions of terms and concepts apply to this part:

Biennial exercise means the joint licensee/State and local government exercise, evaluated by FEMA, conducted around a commercial nuclear power plant site once every two years in conformance with 44 CFR part 350.

EPZ means emergency planning zone.

FEMA means the Federal Emergency Management Agency.

Federal Radiological Preparedness Coordinating Committee (FRPCC) means a committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Interior, Department of Energy, Department of Transportation, Department of Agriculture, Department of Commerce, Department of State, Department of Veterans Affairs, General Services Administration, National Communications System, the National Aeronautics and Space Administration and other Federal departments and agencies as appropriate.

Fiscal Year means the Federal fiscal year commencing on the first day of October through the thirtieth day of September.

NRC means the U.S. Nuclear Regulatory Commission.

Obligate or obligation means a legal reservation of appropriated funds for expenditure.

Persons or Licensee means the utility or organization that has applied for or has received from the NRC:

(1) A license to construct or operate a commercial nuclear power plant;

(2) A possession-only license for a commercial nuclear power plant, with the exception of licensees that have received an NRC-approved exemption to 10 CFR 50.54(q) requirements;

(3) An early site permit for a commercial nuclear power plant;

(4) A combined construction permit and operating license for a commercial nuclear power plant; or

(5) Any other NRC license that is now or may become subject to requirements for offsite radiological emergency planning and preparedness activities.

Plume pathway EPZ means for planning purposes, the area within approximately a 10-mile radius of a nuclear plant site.

RAC means Regional Assistance Committee chaired by FEMA with representatives from the Nuclear Regulatory Commission, Environmental Protection Agency, Department of Health and Human Services, Department of Energy, Department of Agriculture, Department of Transportation, Department of Commerce, Department of Interior, and other Federal departments and agencies as appropriate.

REP means Radiological Emergency Preparedness as in FEMA's REP Program.

Site means the location at which one or more commercial nuclear power plants (reactor units) have been, or are planned to be built.

Site-specific services mean offsite radiological emergency planning, preparedness and response services provided by FEMA personnel and by FEMA contractors that pertain to a specific commercial nuclear power plant site.

Technical assistance means services provided by FEMA to accomplish offsite radiological emergency planning, preparedness and response, including provision of support for the preparation of offsite radiological emergency response plans and procedures, and provision of advice and recommendations for specific aspects of radiological emergency planning, preparedness and response, such as alert and notification and emergency public information.

§ 354.4 Assessment of fees.

(a)(1) We, FEMA, assess user fees from licensees using on a methodology that includes charges for REP Program services provided by both our personnel and our contractors. Beginning in FY 1995, we established a four-year cycle from FY 1995–1998 with predetermined user fee assessments that were collected each year of the cycle. The following six-year cycle will run from FY 1999 through FY 2004. The fee for each site consists of two distinct components:

(i) A *site-specific, biennial exercise-related component* to recover the portion of the REP program budget associated only with plume pathway emergency planning zone (EPZ) biennial exercise-related activities. We determine this component by reviewing average biennial exercise-related activities/hours that we use in exercises conducted since the inception of our REP user fee program in 1991. We completed an analysis of REP Program activities/hours used during the FY 1991–1995 cycle at the end of that four-year cycle. We will make adjustments to the site-specific user fees for the next proposed FY 1999–2004 six-year cycle.

(ii) A *flat fee component* that is the same for each site and recovers the remaining portion of the REP Program budgeted funding that does not include biennial exercise-related activities.

(2) We will assess fees only for REP Program services provided by our personnel and by our contractors, and we will not assess fees for those services that other Federal agencies involved in the FRPCC or the RACs provide.

(b) *Determination of site-specific, biennial exercise-related component for our personnel.* We will determine an average biennial exercise-related cost for our personnel for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average number of hours spent by our personnel in REP exercise-related activities for each site. We will determine the average number of hours using an analysis of site-specific exercise activity spent since the beginning of our user fee program (1991). We determine the actual user fee assessment for this component by multiplying the average number of REP exercise-related hours that we determine and annualize for each site by the average hourly rate in effect for the fiscal year for a REP Program employee. We will revise the hourly rate annually to reflect actual budget and cost of living factors, but the number of annualized, site-specific exercise hours will remain constant for user fee calculations and assessments throughout the six-year cycle. We will continue to track and monitor exercise activity during the six-year cycle, FY 1999–2004. We will make appropriate adjustments to this component to calculate user fee assessments for later six-year cycles.

(c) *Determination of site-specific, biennial exercise-related component for FEMA contract personnel.* We have determined an average biennial exercise-related cost for REP contractors for each commercial nuclear power plant site in the REP Program. We base this annualized cost (dividing the average biennial exercise-related cost by two) on the average costs of contract personnel in REP site-specific exercise-related activities since the beginning of our user fee program (1991). We will continue to track and monitor activity during the initial six-year cycle, FY 1999–2004, and we will make appropriate adjustments to this component for calculation of user fee assessments during subsequent six-year cycles.

(d) *Determination of flat fee component.* For each year of the six-year cycle, we recover the remainder of REP Program budgeted funds as a flat fee component. Specifically, we determine the flat fee component by subtracting the total of our personnel and contractor site-specific, biennial exercise-related components, as outlined in § 354.4 (a) and (b), from the total REP budget for that fiscal year. We then divide the resulting amount equally among the total number of licensed commercial nuclear power plant sites (defined under § 354.2, Scope) to arrive at each site's flat fee component for that fiscal year.

(e) *Discontinuation of charges.* When we receive a copy from the NRC of their

approved exemption to 10 CFR 50.54(q) requirements stating that offsite radiological emergency planning and preparedness are no longer required at a particular commercial nuclear power plant site, we will discontinue REP Program services at that site. We will no longer assess a user fee for that site from the beginning of the next fiscal year.

§ 354.5 Description of services.

Site-specific and other REP Program services provided by FEMA and FEMA contractors for which FEMA will assess fees on licensees include the following:

(a) *Site-specific, plume pathway EPZ biennial exercise-related component services.*

(1) Schedule plume pathway EPZ biennial exercises.

(2) Review plume pathway EPZ biennial exercise objectives and scenarios.

(3) Provide pre-plume pathway EPZ biennial exercise logistics.

(4) Conduct plume pathway EPZ biennial exercises, evaluations, and post exercise briefings.

(5) Prepare, review and finalize plume pathway EPZ biennial exercise reports, give notice and conduct public meetings.

(6) Activities related to Medical Services and other drills conducted in support of a biennial, plume pathway exercise.

(b) *Flat fee component services.*

(1) Evaluate State and local offsite radiological emergency plans and preparedness.

(2) Schedule other than plume pathway EPZ biennial exercises.

(3) Develop other than plume pathway EPZ biennial exercise objectives and scenarios.

(4) Pre-exercise logistics for other than the plume pathway EPZ.

(5) Conduct other than plume pathway EPZ biennial exercises and evaluations.

(6) Prepare, review and finalize other than plume pathway EPZ biennial exercise reports, notice and conduct of public meetings.

(7) Prepare findings and determinations on the adequacy or approval of plans and preparedness.

(8) Conduct the formal 44 CFR part 350 review process.

(9) Provide technical assistance to States and local governments.

(10) Review licensee submissions pursuant to 44 CFR part 352.

(11) Review NRC licensee offsite plan submissions under the NRC/FEMA Memorandum of Understanding on Planning and Preparedness, and NUREG–0654/FEMA–REP–1, Revision 1, Supplement 1. You may obtain copies of the NUREG–0654 from the Superintendent of Documents, U.S. Government Printing Office.

(12) Participate in NRC adjudication proceedings and any other site-specific legal forums.

(13) Alert and notification system reviews.

(14) Responses to petitions filed under 10 CFR 2.206.

(15) Disaster-initiated reviews and evaluations.

(16) Congressionally-initiated reviews and evaluations.

(17) Responses to licensee's challenges to FEMA's administration of the fee program.

(18) Response to actual radiological emergencies.

(19) Develop regulations, guidance, planning standards and policy.

(20) Coordinate with other Federal agencies to enhance the preparedness of State and local governments for radiological emergencies.

(21) Coordinate REP Program issues with constituent organizations such as the National Emergency Management Association, Conference of Radiation Control Program Directors, and the Nuclear Energy Institute.

(22) Implement and coordinate REP Program training with FEMA's Emergency Management Institute (EMI) to assure effective development and implementation of REP training courses and conferences.

(23) REP personnel participation as lecturers or to perform other functions at EMI, conferences and workshops.

(24) Services associated with the assessment of fees, billing, and administration of this part.

§ 354.6 Billing and payment of fees.

We will send bills that are based on the assessment methodology set out in § 354.4 to licensees to recover the full amount of the funds that we budget to provide REP Program services. Licensees that have more than one site will receive consolidated bills. We will forward one bill to each licensee during the first quarter of the fiscal year, with payment due within 30 days. If we exceed our original budget for the fiscal year and need to make minor adjustments, the adjustment will appear in the bill for the next fiscal year.

§ 354.7 Failure to pay.

Where a licensee fails to pay a prescribed fee required under this part, we will implement procedures under 44 CFR part 11, Subpart C, to collect the fees under the Debt Collection Act of 1982 (31 U.S.C. 3711 *et seq.*).

Dated: December 10, 1998.

James L. Witt,

Director.

[FR Doc. 98–33198 Filed 12–14–98; 8:45 am]

BILLING CODE 6718–06–P

DEPARTMENT OF DEFENSE

48 CFR Part 204

[DFARS Case 98–D010]

Defense Federal Acquisition Regulation Supplement; E-Mail/Internet Addresses on Contracts and Modifications

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to specify that contracting officers must include an e-mail/Internet address, when available, on contracts and modifications.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D010.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 204.101 to add the contracting officer's e-mail/Internet address to the information included on contracts and modifications.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D010.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 204

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 204 is amended as follows:

PART 204—ADMINSITRATIVE MATTERS

1. The authority citation for 48 CFR Part 204 continues to read as follows:

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

2. Section 204.101 is amended by revising paragraph (a)(i) to read as follows:

204.101 Contracting officer's signature.

(a)(i) Include the contracting officer's telephone number and, when available, e-mail/Internet address on contracts and modifications.

* * * * *

[FR Doc. 98–33179 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 228 and 252

[DFARS Case 98–D002]

Defense Federal Acquisition Regulation Supplement; Compliance with Spanish Laws and Insurance

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify requirements for use of a clause pertaining to compliance with Spanish laws and insurance under contracts for services or construction to be performed in Spain.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D002.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 228.370 to clarify the prescription for use of the clause at 252.228–7006, Compliance with Spanish Laws and Insurance. The rule also amends the clause at 252.228–7006 to clarify that the requirements of the clause apply only if the contractor is not a Spanish concern; and that the requirements of the clause apply to subcontracts with non-Spanish concerns that will perform work in Spain under the contract.

A proposed rule with request for comments was published in the **Federal Register** on March 27, 1998 (63 FR 14885). No comments were received. The proposed rule is adopted as a final rule without change.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule is a clarification of existing requirements and applies only to contracts for services or construction to be performed in Spain.

C. Paperwork Reduction Act

The existing information collection requirements of the clause at DFARS 252.228–7006 have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0704–0216 for use through May 31, 2001. The rule is not expected to result in a change in the estimated burden hours.

List of Subjects in 48 CFR Parts 228 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 228 and 252 are amended as follows:

PART 228—BONDS AND INSURANCE

1. The authority citation for 48 CFR Parts 228 and 252 continues to read as follows:

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

2. Section 228.370 is amended by revising paragraph (f) to read as follows:

228.370 Additional clauses.

* * * * *

(f) Use the clause at 252.228–7006, Compliance with Spanish Laws and Insurance, in solicitations and contracts for services or construction to be performed in Spain, unless the contractor is a Spanish concern.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.228–7006 is amended by revising the clause date; redesignating paragraphs (a) through (e) as paragraphs (b) through (f), respectively; adding a new paragraph (a); and revising newly designated paragraph (e) to read as follows:

252.228–7006 Compliance with Spanish laws and insurance.

* * * * *

Compliance With Spanish Laws and Insurance (Dec 1998)

(a) The requirements of this clause apply only if the Contractor is not a Spanish concern.

* * * * *

(e) The Contractor shall provide the Contracting Officer with a similar representation for all subcontracts with non-Spanish concerns that will perform work in Spain under this contract.

* * * * *

[FR Doc. 98–33178 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 232

[DFARS Case 98–D001]

Defense Federal Acquisition Regulation Supplement; Electronic Signature of Receiving Reports

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify that DoD contract administration procedures permit electronic notification to the payment office of Government acceptance or approval of supplies or services.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Haberlin, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D001.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 232.905 to clarify that DoD Manual 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), authorizes electronic notification to the payment office of Government acceptance or approval of supplies delivered or services performed under a contract.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D001.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 232

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 232 is amended as follows:

PART 232—CONTRACT FINANCING

1. The authority citation for 48 CFR Part 232 continues to read as follows:

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

2. Section 232.905 is amended by revising paragraph (f)(6) to read as follows:

232.905 Invoice payments.

* * * * *

(f)(6) DoD Manual 4000.25–5–M, Military Standard Contract Administration Procedures (MILSCAP), authorizes electronic notification to the payment office of Government acceptance or approval, as appropriate.

[FR Doc. 98–33177 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 235 and 253

[DFARS Case 97–D030]

Defense Federal Acquisition Regulation Supplement; Short Form Research Contract

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove obsolete guidance pertaining to short form research contracts with educational institutions and nonprofit organizations.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Pelkey, Defense Acquisition Regulations Council, PDUSD (A&T) DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 97–D030.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule removes obsolete guidance at DFARS 235.015–71, and associated DD Forms 2222, 2222–1, and 2222–2, pertaining to short form research contracts. DoD now uses the streamlined procedures in DFARS Subpart 235.70 for research and development contracting.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 97–D030.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Parts 235 and 253

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Parts 235 and 253 are amended as follows:

PART 235—RESEARCH AND DEVELOPMENT CONTRACTING

1. The authority citation for 48 CFR Parts 235 and 253 continues to read as follows:

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

§ 235.015–71 [Removed]

2. Section 235.015–71 is removed.

PART 253—FORMS [AMENDED]

3. The note at the end of Part 253 is amended by removing the entries at 253.303–2222, 253.303–2222–1, and 253.303–2222–2.

[FR Doc. 98–33180 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Part 236

[DFARS Case 98–D313]

Defense Federal Acquisition Regulation Supplement; Architectural and Engineering Services and Construction Design

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 2801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. Section 2801 increases, from $300,000 to $500,000, the threshold at which notice to Congress is required before the award of a contract for architect-engineer services or construction design.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D313.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends DFARS 236.601 to implement Section 2801 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). Section 2801 amends 10 U.S.C. 2807(b) to increase the dollar threshold for Congressional notification prior to award of a contract for architect-engineer services or construction design.

B. Regulatory Flexibility Act

The final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D313.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 236

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 236 is amended as follows:

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for 48 CFR Part 236 continues to read as follows:

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

236.601 [Amended]

2. Section 236.601 is amended in paragraph (1)(ii) by removing ''$300,000'' and adding in its place ''$500,000''.

[FR Doc. 98–33176 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE42

Endangered and Threatened Wildlife and Plants; Final Rule To List the Topeka Shiner as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service determines the Topeka shiner (*Notropis topeka*) to be an endangered species under the authority of the Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 et seq.). The Topeka shiner is a small fish presently known from small tributary streams in the Kansas and Cottonwood river basins in Kansas; the Missouri, Grand, Lamine, Chariton, and Des Moines river basins in Missouri; the North Raccoon and Rock river basins in Iowa; the James, Big Sioux and Vermillion river watersheds in South Dakota; and, the Rock and Big Sioux river watersheds in Minnesota. The Topeka shiner is threatened by habitat destruction, degradation, modification, and fragmentation resulting from siltation (the build up of silt), reduced water quality, tributary impoundment, stream channelization, and stream dewatering. The species also is impacted by introduced predaceous fishes. This determination implements Federal protection provided by the Act for *Notropis topeka.* We further determine that designation of critical habitat is neither beneficial nor prudent.

EFFECTIVE DATE: January 14, 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, Kansas Ecological Services Field Office, 315 Houston Street, Suite E, Manhattan, Kansas 66502.

FOR FURTHER INFORMATION CONTACT: William H. Gill, Field Supervisor, or Vernon M. Tabor, Fish and Wildlife Biologist, at the above address (913/539–3474).

SUPPLEMENTARY INFORMATION:

Background

The Topeka shiner was first described by C.H. Gilbert in 1884, using specimens captured from Shunganunga Creek, Shawnee County, Kansas (Gilbert 1884). The Topeka shiner is a small, stout minnow, not exceeding 75 millimeters (mm) (3 inches (in)) in total length. The head is short with a small, moderately oblique (slanted or sloping) mouth. The eye diameter is equal to or slightly longer than the snout. The dorsal (back) fin is large, with the height more than one half the predorsal length of the fish, originating over the leading edge of the pectoral (chest) fins. Dorsal and pelvic fins each contain 8 rays (boney spines supporting the membrane of a fin). The anal and pectoral fins contain 7 and 13 rays respectively, and there are 32 to 37 lateral line scales. Dorsally the body is olivaceous (olive-green), with a distinct dark stripe preceding the dorsal fin. A dusky stripe is exhibited along the entire longitudinal length of the lateral line. The scales above this line are darkly outlined with pigment, appearing cross-hatched. Below the lateral line the body lacks pigment, appearing silvery-white. A distinct chevron-like spot exists at the base of the caudal (tail) fin (Cross 1967; Pflieger 1975; Service 1993).

The Topeka shiner is characteristic of small, low order (headwater), prairie streams with good water quality and cool temperatures. These streams generally exhibit perennial (year round) flow, however, some approach intermittency (periodic flow) during summer. At times when surface flow ceases, pool levels and cool water temperatures are maintained by percolation (seepage) through the streambed, spring flow and/or groundwater seepage. The predominant substrate (surface) types within these streams are clean gravel, cobble and sand. However, bedrock and clay hardpan (layer of hard soil) overlain by a thin layer of silt are not uncommon (Minckley and Cross 1959). Topeka shiners most often occur in pool and run areas of streams, seldom being found in riffles (choppy water). They are pelagic (living in open water) in nature, occurring in mid-water and surface areas, and are primarily considered a schooling fish. Occasionally, individuals of this species have been found in larger streams, downstream of known populations, presumably as waifs (strays) (Cross 1967; Pflieger 1975; Tabor *in litt.* 1992a).

Data regarding the food habits and reproduction of Topeka shiners are limited and detailed reports have not been published. However, Pflieger (Missouri Department of Conservation, *in litt.* 1992) reports the species as a nektonic (swimming independently of currents) insectivore (insect eater). In a graduate research report, Kerns (University of Kansas, *in litt.* 1983) states that the species is primarily a diurnal (daytime) feeder on insects, with chironomids (midges), other dipterans (true flies), and ephemeropterans (mayflies), making up the bulk of the diet. However, the microcrustaceans cladocera and copapoda (zooplanktons) also contribute significantly to the species' diet. The Topeka shiner is reported to spawn in pool habitats, over green sunfish (*Lepomis cyanellus*) and orangespotted sunfish (*Lepomis humilis*) nests, from late May through July in Missouri and Kansas (Pflieger 1975; Kerns *in litt.* 1983). Males of the species are reported to establish small territories near these nests. Pflieger (*in litt.* 1992) states that the Topeka shiner is an obligate (essential) spawner on silt-free sunfish nests, while Cross (University of Kansas, pers. comm. 1992) states that it is unlikely that the species is solely reproductively dependent on sunfish, and suggests that the species also utilizes other silt-free substrates as spawning sites. Data concerning exact spawning behavior, larval stages, and subsequent development is lacking. Maximum known longevity for the Topeka shiner is 3 years, however, only a very small percentage of each year class attains the third summer. Young-of-the-year attain total lengths of 20 mm to 40 mm (.78 to 1.6 in), age 1 fish 35 mm to 55 mm (1.4 to 2.2 in), and age 2 fish 47 mm to 65 mm (1.8 to 2.5 in) (Cross and Collins 1975; Pflieger 1975).

Historically, the Topeka shiner was widespread and abundant throughout low order tributary streams of the central prairie regions of the United States. The Topeka shiner's historic range includes portions of Iowa, Kansas, Minnesota, Missouri, Nebraska, and South Dakota. Stream basins within the range historically occupied by Topeka shiners include the Des Moines, Raccoon, Boone, Missouri, Big Sioux, Cedar, Shell Rock, Rock, and Iowa basins in Iowa; the Arkansas, Kansas, Big Blue, Saline, Solomon, Republican, Smoky Hill, Wakarusa, Cottonwood, and Blue basins in Kansas; the Des Moines, Cedar, and Rock basins in Minnesota; the Missouri, Grand, Lamine, Chariton, Des Moines, Loutre, Middle, Hundred and Two, and Blue basins in Missouri; the Big Blue, Elkhorn, Missouri, and lower Loup basins in Nebraska; and the Big Sioux, Vermillion, and James basins in South Dakota. The number of known occurrences of Topeka shiner populations has been reduced by approximately 80 percent, with approximately 50 percent of this decline occurring within the last 25 years. The species now primarily exists as isolated and fragmented populations.

Recent fish surveys were conducted across the Topeka shiner's range. In Missouri, 42 of the 72 sites historically supporting Topeka shiners were resurveyed in 1992. The species was collected at 8 of the 42 surveyed locales (Pflieger, *in litt.* 1992). In 1995, the remaining 30 historical sites not surveyed in 1992 and an additional 64 locales, thought to have potential to support the species, were sampled. Topeka shiners were found at 6 of the 30 remaining historical locations and at 6 of the 64 additional sites sampled. In total, recent sampling in Missouri identified Topeka shiners at 14 of 72 (19 percent) historic localities, and at 20 of 136 (15 percent) total sites sampled (Gelwicks and Bruenderman 1996). Gelwicks and Bruenderman (1996) also note that the species has apparently experienced substantial declines in abundance in the remaining extant (existing) populations in Missouri, with the exception of Moniteau Creek.

In Iowa, 24 locales within 4 drainages were sampled in 1994 at or near sites from which the species was reported extant during surveys conducted between 1975 and 1985. The Topeka shiner was captured at 3 of 24 sites, with these 3 captures occurring in the North Raccoon River basin (Tabor, U.S. Fish and Wildlife Service, *in litt.* 1994). Menzel (*in litt.* 1996) reports 6 collections of the species in 1994 and 1995, also from the same drainage. In 1997, surveys in Iowa found the species at 1 site in the North Raccoon basin, and at a new locality in the Little Rock drainage in Oscelola County. Less than 5 individual Topeka shiners were identified in 1997.

In Kansas, 128 sites at or near historic collection localities for the Topeka shiner were sampled in 1991 and 1992. The species was collected at 22 of 128 (17 percent) sites sampled (Tabor, *in litt.* 1992a; Tabor, *in litt.* 1992b). Extensive stream surveys completed from 1995 through 1997 identified 10 new localities for Topeka shiners and reconfirmed the species in a historic locale where it was previously believed extirpated (removed) (Mammoliti, *in litt.* 1996).

In South Dakota in the early 1990s, the species was captured from one stream in the James River basin and four streams in the Vermillion River basin. (Braaten, South Dakota State University, *in litt.* 1991; Schumacher, South Dakota State University, *in litt.* 1991). In 1997, stream surveys were conducted in the Big Sioux and James river watersheds. No Topeka shiners were captured from the Big Sioux basin during these surveys. However, collections made in the Big Sioux basin by South Dakota State University students in 1997 identified several specimens from two streams in Brookings County, South Dakota. In the James River basin, 3 new localities for the species were identified, and the species was reconfirmed from a historic locality. Two of the new locations were in Beadle County, where 29 and 4 individual Topeka shiners were captured. The other new location was in Hutchinson County, where 1 Topeka shiner was captured. The reconfirmed historic locale was in Davison County, where 1 Topeka shiner was captured.

In Minnesota, 14 streams in the range of the Topeka shiner were surveyed between 1985 and 1995. The species was collected from 5 of 9 (56 percent) streams with historic occurrences, and was not found in the 5 streams with no historic occurrences. These locales were in the Rock River drainage (Baker, *in litt.* 1996). In 1997, additional surveys were completed with the species being captured at 15 sites in 8 streams, including a stream in the Big Sioux River basin (Baker, *in litt.* 1997). These surveys are continuing.

In Nebraska, the species was assumed extirpated (absent) from all historic locales. However, in 1989 the species was discovered in the upper Loup River drainage, where two specimens were collected (Michl and Peters 1993). In 1996, a single specimen was collected from a stream in the Elkhorn River basin (Nebraska Game and Parks Commission, *in litt.* 1997). In Nebraska, these were the first collections of Topeka shiners since 1940. It is presently considered extant (in existence) at these two localities (Cunningham, University of Nebraska—Omaha, pers. comm. 1996).

The Topeka shiner began to decline throughout the central and western portions of the Kansas River basin in the early 1900's. Cross and Moss (1987) report the species present at sites in the Smoky Hill and Solomon River watersheds in 1887, but by the next documented fish surveys in 1935, the Topeka shiner was absent. The Topeka shiner was extirpated (extinct) from the Wakarusa River watershed during the 1970's (Cross, University of Kansas, pers. comm. 1995). The species disappeared from the Big Blue River watershed (Kansas River basin) in Nebraska after 1940 (Clausen, Nebraska Game and Parks Commission, *in litt.* 1992). The last record of the Topeka shiner from the Arkansas River basin, excluding the Cottonwood River watershed, was in 1891 near Wichita, Kansas (Cross and Moss 1987). In Iowa, the species was extirpated from all Missouri River tributaries except the Rock River watershed prior to 1945. It also was eliminated from the Cedar and Shell Rock River watersheds prior to 1945. Since 1945, the Topeka shiner has subsequently been extirpated from the Boone, Iowa, and Des Moines drainages, with the exception of the North Raccoon River watershed (Harlan and Speaker 1951; Harlan and Speaker 1987; Menzel, Iowa State University, *in litt.* 1980; Dowell, University of Northern Iowa, *in litt.* 1980; Tabor *in litt.* 1994). In Missouri, the species has been apparently extirpated since 1940 from many of the tributaries to the Missouri River where it formerly occurred, including Perche Creek, Petite Saline Creek, Tavern Creek, Auxvasse Creek, Middle River, Moreau River, Splice Creek, Slate Creek, Crooked River, Fishing River, Shoal Creek, Hundred and Two River, and Blue River watersheds.

Previous Federal Action

The Topeka shiner first received listing consideration when the species was included in the Animal Candidate Review for Listing as Endangered or Threatened Species, as a category 2 candidate species, published in the **Federal Register** (56 FR 58816) on November 21, 1991. Category 2 candidate species were those species for which information in the possession of the Service indicated that a proposal to list the species as endangered or threatened was possibly appropriate,

but sufficient data on biological vulnerability and threats were not currently available to support proposed rules. In 1991, our Kansas Field Office began a status review of the Topeka shiner, including information gathered from stream sampling, and by request from knowledgeable individuals and agencies. Included were State fish and wildlife conservation agencies, State health and pollution control agencies, colleges and universities, and other Service offices. A status report, dated February 16, 1993 (Service 1993), was subsequently prepared on this species. In the November 15, 1994, Animal Candidate Review for Listing as Endangered or Threatened Species, published in the **Federal Register** (59 FR 58999), the Topeka shiner was reclassified as a category 1 candidate species. Category 1 candidates comprised taxa for which we had substantial information on biological vulnerability and threats to support proposals to list the taxa as endangered or threatened. We have since discontinued the category designations for candidates and have established a new policy defining candidate species. Candidate species are currently defined as those species for which the Service has sufficient information on file detailing biological vulnerability and threats to support issuance of a proposed rule, but issuance of the proposed rule is precluded by other listing actions. In the February 28, 1996, Review of Plant and Animal Taxa That Are Candidates for Listing as Endangered or Threatened Species, published in the **Federal Register** (61 FR 7596), the Topeka shiner was reclassified as a candidate species. A proposed rule to list the Topeka shiner as endangered with no critical habitat was published in the **Federal Register** on October 24, 1997 (62 FR 55381).

Processing of this proposed rule conforms with the Service's Listing Priority Guidance for Fiscal Years 1998 and 1999, published on May 8, 1998 (63 FR 25502). The guidance clarifies the order in which the Service will process rulemakings giving highest priority (Tier 1) to processing emergency rules to add species to the Lists of Endangered and Threatened Wildlife and Plants (Lists); second priority (Tier 2) to processing final determinations on proposals to add species to the Lists, processing administrative findings on petitions (to add species to the Lists, delist species, or reclassify listed species), and processing a limited number of proposed or final rules to delist or reclassify species; and third priority (Tier 3) to processing proposed or final rules designating critical habitat. Processing of this Final rule is a Tier 2 action.

Summary of Comments and Recommendations

In the October 24, 1997, proposed rule (62 FR 55381), the December 24, 1997, notice of public hearings and reopening of comment period (62 FR 67324), and other associated notifications, all interested parties were requested to submit comments or information that might bear on whether to list the Topeka shiner. The first comment period was open from October 24, 1997, to December 23, 1997. The second comment period, to accommodate the public hearings, was opened January 12, 1998, to February 9, 1998. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. Newspaper notices inviting public comment were published in the following newspapers: In Iowa, *Des Moines Register, Greene County Bee Herald, Calhoun County Advocate,* and *Oscelola County Tribune*; in Kansas, *Emporia Gazette, Manhattan Mercury,* and *Topeka Capital-Journal;* in Minnesota, *Minneapolis Star-Tribune and Pipestone County Star;* in Missouri, *Kansas City Star, Columbia Daily Tribune, Grundy County Republican Times, Bethany Republican-Clipper, Galatin North Missourian,* and *Clark County Kahoka Weekly;* in Nebraska, *Omaha World Herald* and *Norfolk News;* and in South Dakota, *Sioux Falls Argus-Leader* and *Huron Plainsman*. In these newspapers, notices announcing the proposal, opening of the first comment period, and the request for public hearings were published between October 24, 1997, and November 12, 1997. Notices announcing the public hearing schedule and the reopening of the comment period were published in these same newspapers between January 4, 1998, and January 17, 1998.

We received 12 requests for hearings in four states. Locations and times of hearings were published in the December 24, 1997, **Federal Register** notice (62 FR 67324), and the above listed newspapers. We held 4 public hearings from January 26—29, 1998, in Manhattan, Kansas; Bethany, Missouri; Fort Dodge, Iowa; and Sioux Falls, South Dakota. Attendance at the hearings was 104, 86, 17, and 54 persons, respectively. Transcripts from the hearings are available for inspection (see **ADDRESSES**).

A total of 184 written comments were received at our Kansas Field Office: 92 supported the proposed listing; 80 opposed the proposed listing; and 12 expressed neither support nor opposition.

Oral or written comments were received from 60 parties at the hearings: 21 supported the proposed listing; 33 opposed the proposed listing; and 6 expressed neither support nor opposition, but provided additional information to the proposed listing.

In total, oral or written comments were received from 23 Federal and State agencies or officials, 24 local agencies or officials, and 197 private organizations, companies, and individuals. All comments received during the comment period are addressed in the following summary. Comments of a similar nature are grouped into a number of general issues.

Issue 1: The Service did not have sufficient status information to make a determination that the species should be listed, and the quality of the data that the Service is using to make its determination is questionable. Section 4 of the Act requires that you use the ''best scientific and commercial data available,'' to make the determination. Additional recent surveys in Kansas produced the discovery of new populations. Could additional survey work produce similar results in other states?

Service Response: Our determination is based on accurate and thorough data for the Topeka shiner. The large number of historic records of occurrence in concert with general fish surveys and recent intensive surveys for the species, throughout its range, provide a factual picture of a species undergoing serious decline. Population losses estimated for the Topeka shiner are based on total number of known localities of occurrence, in ratio to the present number of locations where the species is known to exist. Since 1989, over one thousand stream fish samples have been collected throughout the historic range of the species. This sampling was conducted at or near present and historic localities for the species, as well as in other stream sites within the historic range. These surveys were completed by biologists from various State natural resource and environmental agencies, universities, and the Service. These surveys, whether for general fish fauna information, fishery research, or water quality; and/or specifically for the Topeka shiner, in reference to the known historic range of the species, constitute a very sound data base for the determination of the present status of the species. Additional surveys throughout the range of the species continue to refine current understanding of the distribution and

abundance of the species; with a few new populations found, and many other populations determined to be lost or in decline. However, we believe that current data adequately support our listing proposal. Additional Topeka shiner surveys are in progress in Minnesota. Preliminary results suggest the species may be more abundant than previously reported in the Rock River system of Minnesota, especially in streams surrounded by pasture land, as opposed to crop land. The Rock River of Minnesota makes up only a small portion of the range of the species. Even if the Rock River population is found to be relatively abundant, the range-wide status of the species remains unchanged. These surveys are continuing, and their results will be incorporated into recovery planning for the species, and may play an important role in identifying recovery populations and establishing delisting goals for the species. Survey efforts for the species have been greatly increased during the last few years; therefore, it is expected that a few new locations will continue to be discovered. The significance of the results of these intensive survey efforts is that very few additional sites have been discovered. Further, very low numbers of individual Topeka shiners have been found at new sites during recent surveys, indicating that population densities at these sites also is very low. This leads us to conclude that our current understanding of the species' range and its historical contraction is accurate.

Issue 2: The Service has not demonstrated that the species meets any of the 5 listing criteria specified under the Act.

Service Response: There are 5 criteria for listing under the Act, of which 1 or more must be met to consider a species for listing. Data indicates that criterion A, ''The present or threatened destruction, modification, or curtailment of its [Topeka shiner] habitat or range,'' is clearly met, and is the major factor leading to the species listing. Criteria C, ''Disease or predation,'' D, ''The inadequacy of existing regulatory mechanisms,'' and E, ''Other natural or manmade factors affecting its continued existence,'' are also factors considered in this listing determination, as discussed under the subheading, ''Summary of Factors Affecting the Species.''

Issue 3: The Service has failed to provide data that sustains a determination of endangered. During a public hearing it was stated that several populations in Kansas would not go extinct even if the species is not listed.

Service Response: The Act defines an endangered species as, ''any species which is in danger of extinction throughout all or a significant portion of its range.'' In determining a status of endangered we considered the following factors and threats: (1) continued implementation of the small watershed flood control programs in portions of the species' range that threatens the continued existence of the most viable populations and population complexes remaining; (2) numerous recent extirpations, and dramatic reductions in abundance of the Topeka shiner in Missouri streams; (3) the nearly complete extirpation of the species from Iowa in recent years, once a major portion of the species' range; (4) data solicited and received from various State agencies, universities, and knowledgeable individuals, and findings from stream fish surveys across the remaining portion of the species' range that indicates an overall, and often critical, decline in numbers of populations, and abundance within these populations over the recent past. These factors and threats were considered in respect to the widespread, chronic degradation of Topeka shiner habitat, the characteristic isolated nature of most of the persisting populations, and the potential viability of these populations in relation to population trends and required habitat conditions range-wide.

Since publication of the proposed rule, an additional serious threat to South Dakota's Vermillion River basin population has developed. Multiple reservoir construction is now planned on streams occupied by the Topeka shiner in this basin, further threatening the species.

The statement that several populations in Kansas would not go extinct even if the species is not listed has been misinterpreted. There are indeed a number of populations in Kansas that are quite viable, inhabiting very high quality streams. Unfortunately, the continued existence of these populations is now severely threatened by tributary dam development. Several populations that inhabited this area, previously considered some of the best remaining, are now gone.

Issue 4: There is no recent scientific survey work in areas inhabited by the species in South Dakota, and Federal and State officials admittedly do not know where the Topeka shiner exists within the State, thus they are unable to determine the species' status. Data for South Dakota populations of Topeka shiners are very limited.

Service Response: In July and September, 1997, 36 sites on 20 streams in the James and Big Sioux river basins of South Dakota were surveyed for Topeka shiners. All sites sampled were at or near previous collection locations for the species with the exception of 3 sites in the Big Sioux drainage which were upstream from previously recorded sites. Topeka shiners were collected from 4 of the 36 sites sampled (Cunningham and Hickey 1997). In 1991 and 1992, 66 fish collections were completed in the Vermillion River basin. Topeka shiners were collected from 11 sites in 4 streams (Braaten 1993; SD Natural Heritage data *in litt.* 1997). In 1989, multiple fish collections were made in the James River basin. Topeka shiners were collected at 1 site (Schumacher *in litt.* 1991). Although the data used by the Service to determine the status of the species in South Dakota are not as extensive as that available for other States within the species' range, these data do provide both an accurate assessment of the present and historic extent, and population trends for the species in South Dakota.

Issue 5: Most populations of Topeka shiners occur on private land. Both the interests of the Topeka shiner and the landowner would be better served through voluntary landowner agreements and cooperative conservation methods in lieu of listing. In Kansas, watershed districts have entered into conservation agreements with the Kansas Department of Wildlife and Parks, and the Service for the protection of the Topeka shiner. These agreements are an example of what can happen when all parties work together.

Service Response: We recognize that there are many potential benefits to the Topeka shiner from the development and implementation of conservation agreements. At present one conservation agreement affecting the species, with the Mill Creek Watershed District (in Wabaunsee County, Kansas), the Kansas Department of Wildlife and Parks, and the Service, has been developed and signed. Development of this agreement began in 1995 and was signed by the involved parties in August, 1997. We recognize the Mill Creek agreement as a good example of Federal-State-private cooperation; however, this agreement is yet to be fully implemented and has not resulted in the expected on-the-ground conservation benefits to the species. In entering this agreement the Mill Creek watershed board of directors was aware that this agreement by itself would not prevent the listing of the Topeka shiner. We are hopeful that this agreement will eventually become fully implemented. However, similar agreements must be

achieved for a large percentage of private properties, throughout the entire range of the species, to halt or reverse the species' declining trend. Cooperation with private landowners is very important in conserving this species, and will be critical in its recovery, but the species is in trouble now and the criteria for listing has been substantially met. We also believe that listing the Topeka shiner does not preclude or discourage the development of additional cooperative agreements.

We are cooperating with private landowners in several important other ways. Specifically, the Habitat Conservation Planning (HCP) program under section 10(a)(1)(B) of the Act provides for species protection and habitat conservation within the context of non-Federal development and land-use activities. It provides a tool that promotes negotiated solutions that reconcile species conservation with economic activities. The purpose of the habitat conservation planning process and subsequent issuance of incidental take permits is to authorize the incidental take of threatened or endangered species. The incidental take permit and associated HCP must ensure that the effects of the authorized incidental take will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. Additionally, the impacts to the covered species must be adequately minimized and mitigated to the maximum extent practicable through the development and implementation of a HCP. The incidental take permit allows the permittee to engage in otherwise lawful activities that result in incidental take of covered species without violating section 9 of the ESA.

Safe Harbor agreements are voluntary, cooperative ventures between a landowner and us that can provide benefits to both the landowner and listed species. Under these agreements, a landowner would be encouraged to maintain or enhance existing populations of listed species, to create, restore, or maintain habitats, and/or to manage their lands in a manner that will benefit listed species. In return, we would provide assurances that future landowner activities would not be subject to ESA restrictions above those applicable to the property at the time of enrollment in the program.

Issue 6: Private landowners and drainage districts in Iowa are being told that they will not be able to clean and maintain drainage ditches without section 7 consultation with the Service if the species is listed. This is the case even though Topeka shiners are not known to inhabit drainage ditches. A blanket exemption for drainage ditches should be given for all maintenance activities on ditches to avoid this burdensome regulation.

Service Response: Section 9 of the Act prohibits the taking of listed species. ''Take'' is further defined to include a number of activities, including those that result in ''harm'' or ''harassment'' to the species, prohibiting actions which impair normal breeding, feeding, or sheltering activities. Blanket exemptions from the section 9 prohibition against ''take'' of an endangered species are not available under the Endangered Species Act. However, the issue of drainage ditch maintenance can be handled in one of two ways.

(1) Section 404 Permit Stipulations—Private landowners and drainage districts are required to obtain a permit from the U.S. Army Corps of Engineers for dredge and fill activities in waters of the United States under section 404 of the Clean Water Act. The Clean Water Act also provides for an exemption from this permit requirement for the maintenance (but not construction) of drainage ditches associated with normal farming, silviculture, and ranching practices (40 CFR 232.3 (c)(1)(ii)(B)(3)). In this regard, some discrepancies may exist in defining the differences between ''drainage ditches'' and ''channelized streams.'' We defer to the Corps of Engineers, on a case-by-case basis, as to the classification of these conveyance structures and whether the exemption from 404 applies to them. However, there is still some potential for downstream impact to the Topeka shiner and its habitat from activities which are otherwise exempt from 404 permitting.

In cases where in-stream activities and ditch maintenance activities exceed original ditch dimensions and thus are determined to be non-exempt from section 404 permitting requirements, and such activities may affect the Topeka shiner, formal consultation under section 7 of the Endangered Species Act, would be required. The Corps of Engineers, as the permitting agency, would initiate consultation with us. The Incidental Take Statement resulting from this section 7 consultation could address the taking of a certain number of Topeka shiners or the disturbance of a certain area of habitat resulting from ditching activities. In cases where no Topeka shiners are present in watersheds where in-stream maintenance is needed, there will be no need for section 7 consultation. Although channelized streams and drainage ditches are not considered suitable permanent habitat for Topeka shiners, if Topeka shiners are present downstream of ongoing maintenance activities, potential impacts to the species could be possible (i.e., releases of habitat-damaging sediment to downstream reaches). However, technology exists, and is frequently used (i.e., sediment screens or curtains), to reduce or eliminate this type of impact. The use of such methods can be stipulated in the conditions of permits (if required) to allow the necessary protection of Topeka shiner habitat and the required channel maintenance.

(2) Habitat Conservation Plans and Incidental Take Permits—In cases where an activity is exempt from the permitting requirements of section 404, and the activity is determined to have a potential for take of Topeka shiner, an option is available for drainage districts and other non-federal entities to complete a Habitat Conservation Plan for their actions and apply for an incidental take permit under section 10 of the Endangered Species Act. Such a plan would outline the proposed activities, the potential nature of the adverse impact on the listed species, and the steps the applicant plans to take to avoid or minimize the impact, and to provide mitigation for habitat which may be lost. Upon approval by the Director of the Service, the incidental take permit would authorize maintenance of the ditches and specify the level of habitat disturbance or species take that would not be considered excessive and that would be allowed under the Act. In all cases, even where 404 permits are not required, drainage districts will still have responsibilities to avoid unpermitted ''take'' of the Topeka shiner as outlined under section 9 of the Endangered Species Act and codified at CFR 50 17.21.

Issue 7: In the last several years, severe flooding has affected many streams within the Topeka shiner's range. This flooding quite likely shifted populations, and the Service does not take into account the possibility that populations might have moved to other locations.

Service Response: It has been established that flood flows can increase the level of dispersion in some stream fishes, particularly in channelized and manipulated streams (Simpson et al. 1982). However, in natural systems flood flows do not displace entire populations of native stream fishes (Minckley and Mefee 1987). Bank overflow areas, debris piles, and other stream structures provide refuge areas for fishes during flood flows. This is certainly true for Topeka shiners. Capture of Topeka shiners from areas

with marginal or temporary habitat suitability may occur in years immediately following large flood flows, presumably as a function of some level of dispersion (Cross, pers. comm. 1998; Tabor, pers. comm. 1998). However, those individuals will not survive and develop into new viable populations unless they have dispersed into suitable habitat. While it is true that the species can occupy different microhabitats temporally (i.e. areas near flowing water margins during summer, and slack water near overhanging vegetation and debris in winter), the species as a whole does not disperse from suitable habitat.

Issue 8: The proposed rule maintains, and the Service has similarly stated in public hearings, that there will be little, if any, impacts to private citizens or agricultural producers resulting from a listing of the Topeka shiner. However, in 3 of the 4 actions addressed in the proposed rule that you believe would not result in a violation of section 9, you caveat each of the actions with the phrase, '' . . . except where the Service has determined that such an activity would negatively impact the species.'' This caveat leads the average landowner to believe you may force reductions in the number of cattle grazed, require trees to be planted along all streams, and restrict annual burning within the range. What does ''long-term management of the range or prairie ecosystem,'' really mean? The costs to bring all farm land into the description of number 2 of the actions identified will run in the billions of dollars. The landowner cannot afford this expense.

Service Response: Many current farming and ranching practices are consistent with the long-term conservation of the local land and water resources, and thus will not negatively impact the species. However, without knowing precisely what changes may take place on the agricultural landscape in the future, we are unable to make a blanket statement that each of the referenced practices will never result in a violation of section 9 of the Act. We have neither the authority nor the desire to force landowners to plant trees, manipulate cattle numbers, or implement specific burning regimes. While we are willing to cooperate whenever possible with landowners who desire technical and financial assistance to implement habitat improvements on their property, forcing such actions is beyond the scope of the Act. However, where a landuse is resulting in degradation of Topeka shiner habitat that could lead to take of the species, responsible persons will be notified of the problems caused by such use, and duly advised of the potential for violations of the Act posed by the continuation of such use.

Issue 9: It is irresponsible for the Federal government to list an endangered species found primarily in public waters adjacent to private lands without identifying specific mechanisms for the conservation and recovery of the species.

Service Response: We are directed under the Act to develop and implement recovery plans for the survival and conservation of a listed species, unless it is determined that such a plan would not promote the conservation of the species. However, recovery plan development is not a concurrent activity with the listing process. It would not be prudent to utilize resources on recovery planning during the listing phase, when additional information and comments, which may impact the listing decision, are still being solicited. It is our intent on publication of this final rule, to begin the recovery process with the formation of a recovery team. A recovery team is usually composed of a number of individuals with expertise regarding the species. Also, stakeholder groups interested in, or potentially affected by, recovery actions may be involved in recovery team activities and development of recovery plans.

Issue 10: Listing the Topeka shiner as an endangered species will cause State, county, and township road, bridge, and culvert maintenance and construction projects to be delayed or eliminated due to required extra measures such as, erosion control, fish surveys, and utilization of the individual 404 permitting process instead of the nationwide 404. This additional process will require added manpower and expense for compliance. It also will be detrimental in areas where governmental entities utilize gravel from local streams, because of likely bans on dredging of stream gravel.

Service Response: In section 7 consultation involving 404 permits, individual 404 permits will only be required when the proposed activity may adversely affect the Topeka shiner. The nationwide 404 will still be the appropriate permitting tool in the vast majority of road and bridge projects occurring throughout the range of the Topeka shiner. However, individual permits will be required in some cases. In most instances, it is already known whether the Topeka shiner occurs within a particular stream system, eliminating the need for extensive extra surveys. It should be realized however, that the occurrence of the species and its direct taking at a specific construction site is not the only consideration for a permittee. Potential adverse affects for the Topeka shiner, as well as other aquatic species, may extend considerably downstream from construction sites. This is the case with project-associated erosion and resulting downstream sedimentation. However, such projects should not require extra erosion control measures because, if the permittee is in compliance with their permit, even in the case of a nationwide permit, these control measures should already be in place. A nationwide permit does not allow for uncontrolled release of sediment into stream waters.

We have not stated that bans on gravel removal from streams will occur; and we would only be involved in such regulation, through section 7 review and the Corps' 404 permitting process, if the gravel removal activity was proposed in or near Topeka shiner habitat. Through this review, permit stipulations that allow for gravel excavation while still maintaining viable Topeka shiner habitat can most likely be developed. This is the case for another listed species, Niangua darter, in central Missouri (Corps of Engineers, *in litt.* 1995).

Issue 11: The Service held public hearings only to fulfill a legal obligation and will not pay attention to the public comments.

Service Response: We disagree with this characterization of the role of public hearing and the fairness of the notice and comment administrative process to listing determinations. Section 553 of the Administrative Procedure Act (APA) requires agencies to give the public notice and an opportunity to comment on a proposed rule and to discuss in the final rule the significant issues raised in the comments. The validity of an agency action is subject to judicial review under the APA. Because of these requirements, all comments are carefully evaluated before we make a determination on whether to proceed with a final rule. The purpose of the public hearings and comment periods is to allow the public to present additional data that may or may not support the listing, and to hear the concerns the public has regarding the proposed listing. In this case our analysis of the information provided by the public comments in light of the best available scientific information supports an endangered finding. The concerns expressed during the hearings and comment period are also very important in that they provide a focal point for inclusion of the public in the development of the recovery plan, and in working with the concerned groups

and landowners during the recovery process.

Issue 12: The public was not adequately notified of the listing proposal or that public hearings were to be held.

Service Response: We made substantial efforts to notify the public of the listing proposal, public comment periods, request for public hearings, and schedule of public hearings throughout the present range of the Topeka shiner. Contacts include congressional delegations, Federal and State agencies, county governments, and a variety of interested groups and individuals. Immediately following publication of the proposed rule in the **Federal Register** on October 24, 1997, we published public notices in newspapers in and near areas where the species occurs. These notices announced the proposal to list the Topeka shiner, and announced the opening of 45 day and 90 day periods for request for public hearings, and request for public comments, respectively. Following the request for public hearings, we published a **Federal Register** notice on December 24, 1997, announcing the hearing locations and times, and reopening the public comment period. During the second week of January, 1998, we again published public notices in these same newspapers announcing hearing locations and times, and the reopening of the public comment period. In addition, we twice issued general press releases concerning the Topeka shiner from our Minneapolis, Minnesota and Denver, Colorado Regional Offices.

We also provided information on the listing proposal, comment period, and public hearings on the World Wide Web at two different Service web sites:

http://www.fws.gov/r3pao/eco__serv/endangrd/fishes/fishindx.html#Topekashiner and

http://www.r6.fws.gov/endspp/shiner/index.htm.

Issue 13: Listing is not necessary because of existing protections afforded under various State laws, including State threatened and endangered species legislation, and the new Kansas Non-game and Endangered Species Task Force legislation (HB 2361); section 404 of the Clean Water Act; Fish and Wildlife Coordination Act; and, National Environmental Policy Act. Any activity that could affect the habitat of the species would have to undergo these reviews, and such work could not be done with impunity.

Service Response: To date, the species has declined even with these regulations in place. These regulations do not ensure that habitat for the Topeka shiner will be protected. We believe the protection mechanisms of the Act are necessary to prevent the species' extinction. See factors considered in this listing determination, as discussed under the subheading, ''Summary of Factors Affecting the Species.''

Issue 14: The agriculture industry as a whole, has recently taken a very pro-active stance on environmental issues involving the management and use of pesticides and fertilizers. Certification requirements for applicators, technology in application, and general field practices, such as minimum tillage and no-till, has resulted in very minimal runoff and very efficient utilization of pesticides and fertilizers in crop fields. These factors, in combination with the increased planting of filter strips and grass waterways, have minimized agricultural chemical impact to water quality and should be a factor in the withdrawl of the listing proposal.

Service Response: The use of pesticides, consistent with approved labeling and application protocol, and the use of fertilizer consistent with sound, scientifically based application rates, in combination with stable riparian vegetation buffers serving as filtering mechanisms to reduce non-point source runoff, will not be considered to be a violation of section 9 of the Act. However, many agricultural chemicals have yet to undergo section 7 consultation and the subsequent Environmental Protection Agency implementation of reasonable and prudent measures to minimize incidental take of listed species. Evaluation of all chemicals for their impacts on Topeka shiners has yet to be completed. In the future, we anticipate working with the Environmental Protection Agency to identify alternative chemicals and methods to reduce any impacts which are identified to this species. In many areas dispersed throughout the range of the Topeka shiner, filter strips and riparian areas do not exist, with rowcropping extending to the stream channel. Pesticide and fertilizer applications in these non-protected stream areas have the potential to impact the species, particularly through runoff following heavy precipitation events where these buffer mechanisms are not in place. Although it is recognized that increasingly filter strips, grass waterways, and other riparian protections are being established, there are presently numerous areas along streams without buffers that may impact the species.

Issue 15: Livestock grazing does not impact the Topeka shiner. The Topeka shiner evolved with varying degrees of grazing pressure by historically occurring animals; including, bison, deer, and elk. The Service will make all landowners fence their streams to exclude cattle from water sources and natural cover.

Service Response: Many grazing regimes are consistent with the conservation of the Topeka shiner. The extent to which grazing will result in degradation of Topeka shiner habitat will vary with differing riparian ecosystems, type of livestock, seasonality of use, and other factors. In some instances, livestock management can impact stream habitat and water quality. The primary example of this activity is livestock feeding and wintering activities concentrated in small confinements within perennial or ephemeral stream channels. This practice leads to chronic and/or acute inputs of sediment, feces, nutrients, and other organic material directly into streams, which impacts stream habitat and water quality. Although prairie ecosystems evolved with native grazing ungulates, domestic livestock do not, and most often cannot (i.e. due to fencing) forage, herd, or move in the same manner as native species. We have neither the authority nor the desire to require the fencing of streams for the exclusion of livestock. However, in cases where existing management could impact the Topeka shiner, livestock exclusion can provide benefit.

Issue 16: The Service is remiss in its obligation to designate critical habitat. Listing critical habitat is prudent and determinable. If the Service does not designate critical habitat, affected landowners will not be informed and they will forfeit their right to demonstrate economic impacts to their land. The Service states, ''* * * conservation and recovery actions could be significantly impaired by public apprehension or misunderstanding of a critical habitat designation.'' This is a poor reason not to list critical habitat. The Service also states, ''* * * intentional taking of the Topeka shiner is not known to be a problem * * *'', then states that designation, ''* * * would reasonably be expected to increase the degree of threat to the species * * *.'' If intentional taking is not a known problem, then it is not reasonable to expect designation to result in increased threat. Also, designation of critical habitat would benefit the species because it would allow the public to be better informed of Federal projects/actions through inclusion in public notices; it would be

useful in delineating areas to avoid for pesticide spraying; and, better clarify the importance of certain stream reaches in providing for the long term survival of the species.

Service Response: Federal regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. In the notice proposing to designate the Topeka shiner as endangered, published in the **Federal Register** on October 24, 1997, we indicated our determination that designation of critical habitat was not prudent at this time. The reasons for this determination were outlined in that publication, and still apply today.

Although the comments are accurate that intentional taking is not known to be a significant problem, designation of critical habitat could exacerbate whatever threat may exist. A notable example of this occurred recently where an individual at one of the public hearings concerning the proposed listing indicated a willingness to ''take care of the problem'' of having a federally-protected species on their property, indicating a potential for intentional taking of this species. Whether such threats are serious is uncertain, however, they must be considered when weighing the positive and negative aspects of critical habitat for this species. Even if specific threats against the species are never carried out, a negative perception among landowners could be fostered by critical habitat designation. Some individuals are wary of a federal designation on their property, and such an action would likely cause some landowners to be more reluctant to cooperate with our efforts to enact voluntary conservation measures on private property. In this instance, designation of critical habitat could result in an actual adverse effect on conservation of the species.

It is also our position that designation of critical habitat would provide no additional benefit to the species above that afforded by endangered species designation. Because the Topeka shiner is so closely tied to its specific perennial stream habitats, and is a year-round resident rather than a seasonal migrant, impacts to the species and to its habitat are generally considered one and the same. Therefore, prohibitions against taking specified under section 9, and consultation with federal action agencies who provide permit authority for stream modification and for water quality modification specified under section 7, should adequately address the potential for adverse impacts to the species once it becomes listed as endangered, precluding any additional benefits from designation of critical habitat.

There is no requirement to evaluate the economic effect on surrounding property due to a species listing whether or not critical habitat is being designated. If critical habitat is being designated for a species, the Act specifies that the additional economic impact that may result from such designation be assessed and identified in the designation rule. However, the Act specifically prohibits us from considering economic impacts when making listing decisions. When deciding whether to list a species, we are required to rely solely on the best scientific and commercial data available regarding the species' status, without regard to any other factors.

Issue 17: A determination of critical habitat will place undue restrictions and bureaucratic process in areas where Topeka shiner habitat is in good shape and the species is not threatened. Critical habitat will impact private property rights.

Service Response: As indicated in our response to Issue 16, impacts to Topeka shiner habitat are virtually indistinguishable from impacts to the species itself. However, as also indicated in the previous response, designation of critical habitat may carry with it negative connotations for landowners on whose property such designation is made, thereby increasing the level of anxiety surrounding the listing process, resulting in a decreased willingness to participate in voluntary conservation measures to benefit the species. For these and other reasons, we have determined that it is not prudent to designate critical habitat for the Topeka shiner.

Issue 18: In this area of the Topeka shiner's range, people are doing good things for soil and water conservation, many of which will benefit the species. If other States have problems with Topeka shiner habitat then list it in those States, but not where we are improving habitat.

Service Response: The Act does have provisions for the listing of ''distinct population segments'' (DPS), as defined by the joint Fish and Wildlife Service and National Marine Fisheries Service, Final Vertebrate Population Policy (61 FR 4721). However, a DPS cannot be defined by State boundaries, and must be based on biological and geographic factors. In areas where habitat improvements are occurring, the effect on in-stream activities of listing the Topeka shiner would be lessened. This is because activities to conserve the fish are already being undertaken, therefore little change in activities affecting streams would be needed compared to areas where streams remain in a degraded condition.

Issue 19: Grade stabilization structures and small impoundments, such as stock ponds, are being planned and constructed on normally dry gullies, ravines, and streambeds in several portions of the Topeka shiner's range. Most of these structures are designed not only to control erosion and provide livestock water, but are stocked with largemouth bass, bluegill, and catfish to provide additional recreational benefits. Will the threat of escapement of bass prevent fish stocking and/or establishment of permanent pools in these impoundments?

Service Response: Predation by introduced or stocked fishes can impact localized populations of Topeka shiners. However, this is mainly the case where impoundments are created on perennial (recurrent) streams. Many small perennial streams contain habitat that allows introduced predatory fishes to persist, both upstream and downstream from the dam for varying periods of time, often in addition to existing levels of naturally occurring predators. In the case of stock ponds and grade stabilization structures located on drainages that flow only following significant precipitation events, the likelihood and degree of escapement and survivability of individual predators is significantly less. This is primarily due to lack of established aquatic habitat in these normally dry drainages. Upstream movement of predators out of these impoundments into normally dry channels during periods of runoff is inconsequential to populations of Topeka shiners downstream of such structures. In cases where large numbers of structures planned are concentrated on normally dry drainages, in proximity to downstream Topeka shiner populations, and thus the potential numbers of ''washed out'' predators increases, plans for locations and number of structures stocked or having permanent pools may need to be altered to avoid possible negative affects to the species. However, it is anticipated that project changes will not be required in the vast majority of cases involving dam construction on normally dry streambeds. The section 7 process and development of conservation agreements can provide an

avenue for examining and mitigating these impacts.

Issue 20: The Topeka shiner has been recently found in a creek within our watershed that was severely polluted with animal wastes and turbidity and at another location immediately below an impoundment. These findings run counter to the Service's claim of the Topeka shiner being dependent on good water quality, thus invalidating them.

Service Response: Our position on water quality and habitat requirements is based on many years of study and observation of the species by several highly professional scientists. The Topeka shiner has the ability to persist in varying degrees in acutely and chronically reduced water quality and habitat situations. Although the Topeka shiner can tolerate some degree of short-term degradations (Cross, pers. comm. 1998; Tabor, pers. obs. 1998), long-term degradations are undoubtedly detrimental to the species.

At two isolated sites degraded by heavy sediment accumulation and nutrient enrichment, where Topeka shiners persist, there is inflow from seeps and springs which may have a bearing on their continued existence in these areas (Cunningham, pers. comm. 1998; Tabor, pers. obs.). This is in contrast to other streams exhibiting the same degradations within the same general areas, without spring and seep inflow, from which the species is absent. We believe that these populations are likely to disappear during the next period when these springs and seeps cease flowing. Situations that allow severe pollution from animal wastes in streams are not just a threat to the Topeka shiner and the aquatic community in general, but likely a threat to human health as well.

Impacts from watershed dams in basins with Topeka shiners are generally chronic impacts to the species. The development of a dam on a single stream in a basin with several occupied streams would likely impact the single stream. This would allow Topeka shiners to still move from the other occupied, undammed streams into the dammed stream, dependent on the level of stream impacts from the dam. However, when most or all streams are dammed within a basin, hydrology, habitat, and aquatic systems and communities are altered. The dams further serve as barriers to fish passage, all contributing to the decline and extirpation of the species within the basin.

Issue 21: This watershed district has proposed construction of a dam utilizing an altered design to meet flood control purposes and the preservation of a population of Topeka shiners. This proposal was made at a joint meeting with our district, the State, and the Service, but this has now been ostensibly delayed because of the Service's listing proposal.

Service Response: We encourage and recognize all proposals involving the conservation of the Topeka shiner. The listing proposal in no way diminishes, discourages, or delays the ability of a watershed district, or any other entity, to propose conservation activities for the species, including plans for construction of structures that allow fish passage and provide flood control benefits.

Issue 22: Sportfishing is big business throughout many portions of the Topeka shiner's range and Federal dollars are spent to enhance and restore these sportfisheries. The proposed rule includes sportfishes, such as northern pike and largemouth bass, as being threats to the Topeka Shiner. It does not seem logical to spend Federal dollars to stock these sportfishes and spend Federal dollars to list the Topeka shiner.

Service Response: In many cases, Federal funds are appropriated to enhance and stock sportfishes in large reservoir, lake, and river systems. Typically these habitat types are not used by Topeka shiners, and thus would not present significant impacts. However, in certain cases where enhancement is occurring in proximity to populations of Topeka shiners and Federal funds are being utilized, we, as the administrators of Federal Aid in Sportfishing funds, must consider the possible impacts to Topeka shiners resulting from such activity. This would most likely be completed through intra-agency consultation, and communication with the various State fish and wildlife agencies who administer these actions on the ground. A ''Policy for Conserving Species Listed or Proposed for Listing Under the Endangered Species Act While Providing and Enhancing Recreational Fisheries Opportunities'' (61 FR 27978), was developed to meet the requirements set forth in section 4 of Executive Order 12962, Recreational Fisheries. This policy identifies measures to ensure consistency in the administration of the Act, promote collaboration with other Federal, State, and Tribal fisheries managers, and improve and increase efforts to inform nonfederal entities of the requirements of the Act while enhancing recreational fisheries. We believe that there will be minimal impact to sportfishing enhancement activities resulting from the listing of the Topeka shiner.

Peer Review

In accordance with the policy promulgated July 1, 1994 (59 FR 34270), we have solicited the expert opinions of independent specialists regarding the proposed rule. The purpose of such review is to ensure listing decisions are based on scientifically sound data, assumptions, and analyses, including input of appropriate experts and specialists. Peer reviewers were mailed copies of the proposed rule to list the Topeka shiner as an endangered species immediately following publication in the **Federal Register** on October 24, 1997 (62 FR 55381). The reviewers were invited to comment during the public comment period upon the specific assumptions and conclusions regarding the proposed listing. These comments were considered in the preparation of the final rule as appropriate. In conjunction with the proposed rule the comments of three independent experts and/or conservation biologists were solicited. One response was received, which supported the proposal to list the Topeka shiner as an endangered species. The respondent's comments have been considered in the development of this final rule and incorporated where applicable.

Summary of Factors Affecting the Species

After a thorough review and consideration of all available information, we have determined that the Topeka shiner should be classified as an endangered species. Procedures found at section 4(a)(1) of the Act and regulations implementing the listing provisions of the Act (50 CFR part 424) were followed. 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 Topeka shiner (*Notropis topeka*) throughout the species' range are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range.

Once abundant and widely distributed throughout the central Great Plains and western tallgrass prairie regions, the Topeka shiner now inhabits less than 10 percent of its original geographic range. The action most likely impacting the species to the greatest degree in the past is sedimentation and eutrophication (increase of minerals and organic nutrients within a body of water resulting in the decrease of dissolved oxygen) resulting from intensive agricultural development. Most

populations of Topeka shiners occurring west of the Flint Hills region of Kansas are believed to have been extirpated prior to 1935 (Cross and Moss 1987). Minckley and Cross (1959) report that watersheds with high levels of cultivation, and subsequent siltation and domestic pollution, are unsuitable for the species. These streams often cease to flow and become warm and muddy during the summer months. Cross (1970) indicates that some of the areas where depletion of the species has occurred also coincide with areas having poor aquifers resulting from historical changes in drainage patterns affecting the quantity of water. Pflieger (1975) reports that increased siltation as a result of intensive cultivation may have reduced the amount of Topeka shiner habitat in Missouri. Pflieger (*in litt.* 1991) also reports that a known population of the species in Boone County, Missouri was extirpated between 1970 and 1976, presumably due to increased turbidity and nutrient enrichment resulting from urbanization and highway construction. Feedlot operations on or near streams are also known to impact prairie fishes due to organic input resulting in eutrophication (Cross and Braasch 1968).

The species was historically known from open pools of small prairie streams with cool, clear water. Many streams of this nature reportedly existed throughout the geographic range of the Topeka shiner ''prior to the plowing of the prairie sod'' (Cross 1967). These conditions continue to exist in many of the streams in the Flint Hills region of Kansas, primarily due to shallow, rocky soils with numerous limestone exposures which prevent cultivation. This is in contrast to the perturbation of the natural fish faunas and their associated habitats in prairie areas more suitable to intensive rowcrop agriculture, which is characteristic of the vast majority of the natural range of the species (Menzel et al. 1984). Menzel et al. (1984) also notes accelerated rates of soil erosion and instream deposition of fluvium (deposits caused by the action of flowing water) throughout many modified prairie streams in Iowa, encompassed by the former range of the species. Today, outside the Flint Hills region of Kansas, only a few, small isolated areas not severely impacted, or impacted to an extent within the tolerance of the species, continue to exist.

Mainstem reservoir development, tributary impoundment, and channelization also have impacted the species in many areas. Populations located within small tributary streams upstream from both mainstem and tributary impoundments attempt to utilize these water bodies as refuges from drying streams during periods of drought. During this time, the populations are subject to predation by larger predatory fish inhabiting the impounded water bodies. In unaltered systems, fish move downstream during drought to find suitable habitat. Deacon (1961) reports fishes characteristic of the small and mid-sized tributaries of the Neosho and Marais des Cygnes rivers' watersheds occurred in the mainstems following several years of protracted drought in the mid-1950's. Tributary dams also serve to block migration of fishes upstream following drought, prohibiting recolonization of upstream reaches.

Several recently extant populations have been extirpated from tributaries to Tuttle Creek and Clinton reservoirs, both mainstem impoundments in the Kansas River basin of eastern Kansas. The species continues to exist in two tributaries to Tuttle Creek Reservoir. However, during sampling on one of these streams in 1994 only a single Topeka shiner was captured. All populations within the Wakarusa River watershed (Clinton Reservoir) are believed extirpated. Clinton Reservoir's completion coincided with large scale development of tributary impoundments throughout the Wakarusa's upper basin which may have compounded impacts to the species. Layher (1993) reports the extirpation of Topeka shiners from a stream following construction of a single tributary impoundment in Chase County, Kansas. Layher reported that the species had disappeared both upstream and downstream of the dam site, and noted significant habitat changes below the impoundment. Pflieger (*in litt.* 1992) reports that an abundant population of the species in Missouri was extirpated following construction of an impoundment. This population, located downstream from the dam site, was not present when revisited several years after construction. The habitat had changed from clear rocky pools, to pools filled with gravel, layered over by silt and choked with filamentous (threadlike) algae. Pflieger further reports that ''the SCS (Soil Conservation Service) reservoir has profoundly altered the hydrology and biota of this stream by eliminating the scouring floods that formerly created pool habitat and maintained the rocky, silt-free substrate.'' During 1994 sampling efforts in southeast Iowa, a stream with recent records of the species had been undoubtedly impacted by the construction of multiple impoundments throughout its upper reaches and tributaries, as no Topeka shiners were captured (Tabor *in litt.* 1994). Impoundment of prairie streams has also resulted in the documented extirpation of other prairie stream minnow species (Winston et al. 1991), the speckled chub (*Macrhybopsis aestivalis*) and the chub shiner (*Notropis potteri*).

In Kansas, substantial tributary impoundment is occurring throughout the Flint Hills region, endangering the viability of Topeka shiner populations at these locales. As of 1993, 46 tributary impoundments had been completed in or near habitat for the Topeka shiner in the Cottonwood River basin, with an additional 115 planned for construction (Service *in litt.* 1993). Presently in the Mill Creek watershed, which contains the largest remaining complex of habitat for the species, 16 dams have been constructed with additional structures planned (Hund, Mill Creek Watershed District, pers. comm. 1997; State Conservation Commission of Kansas, *in litt.* 1992). However, the Mill Creek watershed district board has entered into a conservation agreement with us and Kansas Department of Wildlife and Parks to conserve the species. This conservation agreement allows for continued dam development in portions of the basin without Topeka shiners or where there are less viable populations, and eliminates development in ''critical use'' areas with stable, self-sustaining populations. The agreement also requires habitat improvement and enhancement throughout the occupied portion of the basin. However, this agreement can be terminated by any signatory during the included 5-year review. Also, the agreement would be ineffective if not implemented. In South Dakota, a major flood control project is planned in the Vermillion watershed, involving the construction of numerous structures. The Vermillion River basin contains the largest complex of Topeka shiner populations in South Dakota. Dam construction also is a threat to the species throughout the rest of its range, but to a lower degree due to less immediate and intensive development.

Stream channelization also has occurred throughout much of the Topeka shiner's range. Channelization negatively impacts many aquatic species, including the Topeka shiner, by eliminating and degrading instream habitat types, altering the natural hydrography (physical characteristics of surface waters), and by changing water quality (Simpson et al. 1982). Intensive channelization of low order streams

throughout the species' Iowa range is suspect in the species' drastic decline in this State (Bulkley et al. 1976). Menzel (*in litt.* 1980) reports the extirpation of Topeka shiners from previous collection sites following stream channelization projects in Iowa. During 1994 status surveys across this portion of the range, most streams were found to have been severely altered (Tabor *in litt.* 1994). Changes included elimination of pool habitats, instream debris, and woody riparian vegetation. Water velocities were consistently high throughout the channel and deep silt was the dominant substrate. It is suspected that the Topeka shiner is an obligate or at least a facultative (adaptive) spawner on sunfish (Lepomis spp.) nests (Pflieger *in litt.* 1992) or other silt-free substrates, but no sunfish were captured, nor suitable sunfish spawning habitat observed in these channelized streams. At Iowa sites where Topeka shiners were captured, streams were not as intensively channelized and many natural conditions persist. While channelized streams and drainage ditches do not provide suitable permanent habitat for Topeka shiners, maintainence of previously altered stream systems, such as periodic sediment dredging, could potentially impact the species downstream in more-natural type stream habitat.

Intensive land-use practices, maintainence of altered waterways, dewatering of streams, and continuing tributary impoundment and channelization represent the greatest existing threats to the Topeka shiner. Over-grazing of riparian zones (banks of a natural course of water) and the removal of riparian vegetation to increase tillable acreage greatly diminish a watershed's ability to filter sediments, organic wastes and other impurities from the stream system (Manci 1989). Irrigation draw-down of groundwater levels affects surface and subsurface flows which can impact the species. At present, both Federal and State planning for development of watershed impoundments and channelization and/or its maintainence continue in areas with populations of Topeka shiners. Several impoundments are planned for construction on streams with abundant numbers of the species. Portions of these stream reaches will be inundated by the permanent pools of the reservoirs, imperiling the species' future existence in these localities. Prior to the planning of the impoundments, these populations of Topeka shiners were considered to be the most stable range-wide, due to their occurrence in watersheds dominated by high quality prairie with generally very good grazing management and land stewardship.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Some collecting of Topeka shiners by individuals for use as bait fish and display in home aquaria does occur. However, overutilization is not thought to currently contribute to the decline of the Topeka shiner.

C. Disease or Predation

There have been no studies conducted on the impacts of disease or predation upon the Topeka shiner, so the significance of such threats to the species is presently unknown. Disease is not likely to be a significant threat except under certain habitat conditions, such as crowding during periods of reduced flows, or episodes of poor water quality, such as low dissolved oxygen or elevated nutrient levels. During these events, stress reduces resistance to pathogens and disease outbreaks may occur. Parasites, bacteria, and viral agents are generally the most common causes of mortality. Lesions caused by injuries, bacterial infections, and parasites often become the sites of secondary fungal infections. However, Topeka shiners captured from a Missouri stream in 1996 were discovered to be afflicted with scoliosis, a condition of deformity affecting the vertebrae. Scoliosis can result from contact with environmental contaminants, or severely reduced genetic variability resulting from geographic isolation. No causal factor for this occurrence has been identified.

The green sunfish (*Lepomis cyanellus*) is the most common predator typical of Topeka shiner habitat throughout its range. The spotted bass (*Micropterus punctulatus*) and largemouth bass (*M. salmoides*) are also naturally occurring predators of the Topeka shiner in portions of its range but to a much lower degree due to minimal habitat overlap. These bass species typically occur in only the downstream extremes of Topeka shiner habitat. The construction of impoundments on streams with Topeka shiners and the subsequent introduction of piscivorous (fish eating) fish species not typically found in headwater habitats, such as largemouth bass, crappie (*Pomoxis spp.*), white bass (*Morone chrysops*), northern pike (*Esox lucius*), and channel catfish (*Ictalurus punctatus*), may affect the species during drought or periods of low flows when Topeka shiners seek refuge in the impoundments or permanent stream pools now occupied by these introduced fishes. The most common fishes captured in streams directly upstream and downstream of tributary impoundments in Kansas are largemouth bass, crappie, and bluegill (*Lepomis macrochirus*), and these species are often captured to the exclusion of cyprinids, including Topeka shiner (Mammoliti, Kansas Department of Wildlife and Parks, pers. comm., 1997). Tabor (*in litt.* 1994) captured only largemouth bass from a stream segmented by numerous dams in Iowa. A cooperative report completed by the Soil Conservation Service and Kansas Department of Health and Environment (1981) on the effects of watershed impoundments on Kansas streams states that predacious game fishes increased in abundance, and several minnow species, including the Topeka shiner, decreased in abundance upstream and downstream from dam sites following impoundment. While the extent of predation is undocumented, known populations have apparently been extirpated in the time period immediately following impoundment of several low order streams (Layher 1993; Pflieger, *in litt.* 1992; Tabor, *in litt.* 1992b). Topeka shiners were also reportedly extirpated from a small impoundment previously lacking largemouth bass, following stocking of largemouth bass (Prophet et al. 1981). Extirpation of the Topeka shiner from small, direct tributary streams to large mainstem impoundments has also been documented. These extirpations presumably occurred in part due to predation by introduced piscivorous fishes during drought and low flow periods when Topeka shiners seek refuge in permanent water downstream from their typical headwater habitats (Service 1993).

D. The Inadequacy of Existing Regulatory Mechanisms

In Kansas, the Topeka shiner is listed as ''species in need of conservation,'' under the Kansas Nongame and Endangered Species Conservation Act of 1975. This status prohibits the direct taking of specimens but does not protect habitat or give opportunity to review actions or projects which may affect the species in Kansas. Under Missouri law, the species is listed as endangered. This status prohibits direct taking of specimens and provides a limited review process to suggest remediation for actions potentially impacting the species' habitat. Minnesota, Nebraska, and South Dakota consider it a species of concern, with no legal protection. In Iowa, the species has no legal status.

No significant protections exist for Topeka shiner habitat throughout its range. Listing under the Act would

provide significant protection against taking of the species, ensure coordinated review of Federal actions which may affect its habitat, and encourage proactive management throughout its range. As discussed previously, section 404 of the Clean Water Act regulates certain activities in streams and wetlands, and through the section 7 consultation process we are provided the opportunity to review actions proposed for permitting under this section. Listing of the Topeka shiner would require a review of potential section 404 actions which may impact the species, which is not a requirement as long as the species remains unlisted and unprotected by Federal law.

E. Other Natural and Manmade Factors Affecting Its Continued Existence

In the species' Missouri range, possible interspecific (arising between species) competition between the Topeka shiner and the introduced blackstripe topminnow (*Fundulus notatus*) has been suggested (Pflieger, *in litt.* 1992). The absence of the Topeka shiner from suitable habitat, where blackstripe topminnow is present, also has been observed in Kansas (Mammoliti, pers. comm. 1997). Both species are nektonic insectivores utilizing similar pool habitat. At present, the extent of possible competition between these species is undocumented. In degraded or suboptimal habitat conditions where Topeka shiners persist, competition by species more tolerant to these conditions, such as red shiner (*Cyprinella lutrensis*), may negatively affect the species. In portions of the species' Kansas range, interspecific competition may exist to some extent between the Topeka shiner, the southern redbelly dace (*Phoxinus erythrogaster*), and the cardinal shiner (*Luxilus cardinalis*) (Tabor pers. obs.).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list the Topeka shiner as endangered. Endangered status, which means that the species is in danger of extinction throughout all or a significant portion of its range, is appropriate for the Topeka shiner. We believe the species' recent significant reduction in range and the extirpation of the species throughout most of its historic range, within the context of the continuing and expected impacts from present and planned projects and activities, support the determination of endangered status. Threatened status is not appropriate considering the extent of the species' population decline and the vulnerability of the remaining populations.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographic area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographic areas occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that a designation of critical habitat is not prudent when one or both of the following situations exist—(1) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. We find that designation of critical habitat is not prudent for the Topeka shiner at this time for the following reasons.

Section 7 of the Act requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat in any action authorized, funded or carried out by such agency (agency action). This requirement is in addition to the section 7 prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations (50 CFR part 402) define ''jeopardize the continuing existence of'' and ''destruction or adverse modification of'' in very similar terms. To jeopardize the continuing existence of a species means to engage in an action ''that reasonably would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species.'' Destruction or adverse modification of habitat means an ''alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species.'' Common to both definitions is an appreciable detrimental effect to both the survival and the recovery of a listed species. In the case of adverse modification of critical habitat, the survival and recovery of the species has been significantly diminished by reducing the value of the species' designated critical habitat. Thus, actions satisfying the standard for adverse modification also jeopardize the continued existence of the species concerned.

Many activities that pose threats to the continued existence of the Topeka shiner are funded, permitted, or carried out by Federal agencies (e.g., channelization, impoundment, dredge and fill, and other stream and wetland modification projects). Programs that result in these activities in Topeka shiner habitat are most often regulated by the U.S. Army Corps of Engineers and the U.S. Department of Agriculture, Natural Resources Conservation Service, under a variety of authorities, and are thus subject to section 7 consultation under the Act.

Other State or private actions resulting in ''take'' of Topeka shiners would be prohibited by section 9 of the Act, and remediation of those potential threats would not be significantly advanced by designation of critical habitat.

Recovery activities to assist landowners in maintaining or improving the habitat quality of their streams or otherwise addressing known threats to Topeka shiners would not benefit from a designation of critical habitat. However, such conservation and recovery actions could be significantly impaired by public apprehension or misunderstanding of a critical habitat designation.

Intentional taking of the Topeka shiner is not presently known to be a problem. However, the Topeka shiner is found in very specialized, easily accessible and identifiable habitat characterized by small volumes of flow. Local populations are thus highly vulnerable and can be intentionally targeted for elimination, as suggested at a recent public hearing. The listing of Topeka shiner as an endangered species also publicizes the present vulnerability of this species. Publication of maps providing precise locations and descriptions of critical habitat, as required for the designation of critical habitat, would reasonably be expected to increase the degree of threat of vandalism or the intentional destruction of the species' habitat, increase the

difficulties of enforcement, and could further contribute to the decline of the Topeka shiner.

In light of the above, we conclude that designation of critical habitat would not be beneficial to the species and would increase the degree of threat to the species from taking. We have, therefore, determined that the designation of critical habitat for the Topeka shiner is neither beneficial nor prudent.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Our ''Partners for Fish and Wildlife'' program can also provide a means to help share the cost of conservation measures such as constructing fencing to keep cattle out of streams and providing alternative water source, if necessary. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act 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 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 ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency is required to enter into formal consultation.

A number of Federal agencies have jurisdiction and responsibilities potentially affecting the Topeka shiner, and section 7 consultation may be required in a number of instances. Federal involvement is expected to include the Corps of Engineers (Corps) throughout the species' range pursuant to the Corps administration of Section 404 of the Clean Water Act. The U.S. Environmental Protection Agency will need to consider the Topeka shiner in the registration of pesticides, adoption of water quality criteria, and other pollution control programs. The U.S. Department of Transportation, Federal Highway Administration, will need to consider the effects of bridge and road construction at locations where known habitat may be impacted. The U.S. Department of Agriculture, Natural Resources Conservation Service and Farm Service Agency, will need to consider the effects of structures and channelization projects installed under the Watershed Protection and Flood Prevention Act, (16 U.S.C. 1001–1009, Chapter 18; Pub.L. 83–566, August 4, 1954, c 656, Sec. 1, 68 Stat. 666; as amended), ''Farm Bill'' programs, and other activities which may impact water quality, quantity, or timing of flows. The Federal Energy Regulatory Commission will need to consider potential impacts to the Topeka shiner and its habitat resulting from gas pipeline construction over streams and from hydroelectric development.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. The prohibitions, codified at 50 CFR 17.21, 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 to 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 also is illegal to possess, sell, deliver, carry, transport, or ship any species that has been taken illegally. Certain exceptions apply to entities having an agency relationship with us (agents) and to State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. 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.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225 (303/236–8189) or facsimile (303/236–0027).

It is our policy to identify (59 FR 34272), to the extent known at the time a species is listed, specified activities that will and will not be considered likely to result in violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on ongoing and likely activities within a species' range. We believe the following actions would not likely result in a violation of section 9:

(1) Actions that may affect Topeka shiner that 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;

(2) Actions that may result in take of Topeka shiner when the action is conducted in accordance with a permit under section 10 of the Act; and

(3) Private actions which avoid ''take'' under section 9, that are not federally funded or permitted, undertaken within or near habitat occupied by Topeka shiners, and not be subject to the regulations as stated above in section 7 of the Act. Private actions not subject to section 7 consultation include, but are not limited to: farming and ranching practices, construction of private stock watering ponds on normally dry channels, and fuelwood harvest.

We believe that the actions listed below may result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Actions that take Topeka shiner that are not authorized by either a permit under section 10 of the Act, or an incidental take permit under section 7 of the Act; the term ''take'' includes harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting, or attempting any of these actions;

(2) Possess, sell, deliver, carry, transport, or ship illegally taken Topeka shiner;

(3) Interstate and foreign commerce (commerce across State and international boundaries) without the appropriate permits under section 10(a)(1)(a)and 50 CFR 17.32.

(4) Unauthorized collecting or handling of the species;

(5) Destruction or alteration of the species' habitat (i.e., actions that change water quality, quantity, and/or timing of flows; dredging or other physical modifications that impact instream habitat, including trampling of stream habitat by livestock and allowing animal wastes from feedlots or waste lagoons to

enter streams) such that it would result in take of the species;

(6) The intentional introduction of nonnative fish species that result in direct competition with or predation on the Topeka shiner at known locations of occupied habitat;

(7) Use of fertilizers or pesticides inconsistent with approved labeling and application procedures; and

(8) Contamination of soil, streams, or groundwater by illegal spills, discharges, or dumping of chemicals, silt, or other pollutants.

Questions regarding whether a specified activity will constitute a violation of section 9 should be directed to the Field Supervisor of our Manhattan, Kansas Field office (see **ADDRESSES** section).

National Environmental Policy Act

We have 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 Endangered Species Act of 1973, as amended. A notice outlining the reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determination

This rule does not contain any information collection requirements for which the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 et seq. is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. This rule does not alter that information collection requirement. For additional information concerning permits and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Manhattan, Kansas Field Office (See **ADDRESSES** section).

Author

The primary author of this document is Vernon M. Tabor, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended 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							
*	*	*	*	*	*	*	
Shiner, Topeka	*Notropis topeka (=Notropis tristis).*	KS, IA, MN, MO, NE, SD.	Entire	E	654	NA	NA
*	*	*	*	*	*	*	

Dated: November 25, 1998.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 98–33100 Filed 12–14–98; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 260

[Docket No. 981023266–8266–01; I.D. 091598A]

Inspection and Certification Fees and Charges

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

ACTION: Notification of inspection fees.

SUMMARY: NMFS announces changes in its fees and charges for voluntary fishery products inspection, grading, and certification services. NMFS increased the basic fee for full-time in-plant inspection services by $1.95, making the hourly rate $46.35. The fees for NMFS laboratory services and inspection services conducted by the State of Alaska remain unchanged. It also includes a 3.6-percent base salary increase and varying locality pay increases effective January 1999. NMFS is continuing its separate fee structure for facilities with less than full-time contract services. This fee reflects increases in salary, general operating, and overhead costs that are charged by NMFS and NOAA.

DATES: These fee changes were effective on October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Richard V. Cano, Chief, Seafood Inspection Division, 301–713–2355.

SUPPLEMENTARY INFORMATION: The Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1627) authorizes the voluntary fishery products inspection, grading, and certification program, as well as assessment and collection of such fees as will be reasonable and as nearly as may be to cover the cost of the service rendered. Reorganization Plan No. 4 of 1970 delegated these authorities to NMFS. Regulations at 50 CFR 260.70 authorize the Secretary of Commerce to review and revise annually the rates for voluntary fishery products inspection, grading, and certification services by publishing a notice of fee changes in the **Federal Register**. NMFS' annual review

of the projected income and costs for its various services is the basis for determining the fees as set forth below.

Effective October 1, 1998, the National Seafood Inspection Program (Program) increased the basic fee for full-time in-plant inspection services by $1.95, making the hourly rate $46.35. This fee reflects increases in salary, general operating, and overhead costs that are charged by NMFS and NOAA. The fees for NMFS laboratory services and inspection services conducted by the State of Alaska remain unchanged.

The basic fee will continue to apply to establishments contracting for 40 hours of inspection service per week. However, to recover estimated additional costs associated with servicing contract establishments receiving less than full-time inspection services, the fee for establishments with Type 1 and Type 3 contracts from 25 to 39 hours per week will be 5 percent above the basic fee; and for establishments with contracts less than 25 hours per week, the fee will be 10 percent above the basic fee.

NMFS' annual analysis of the actual costs and projected revenue for Type 2 and Type 3 services indicates that these fees are determined by adding factors of 60 and 35 percent, respectively, to the Type 1 service fee. Similarly, to ensure cost recovery, the fee for the Hazard Analysis Critical Control Point (HACCP)-based service is calculated by adding a factor of 65 percent to the Type 1 service fee. The regulations at 50 CFR § 260.70 will be amended accordingly in a separate action.

Users of in-plant (Type 1) services are again advised that the Program will charge for certain label reviews. There is a mechanism to permit pre-approval on labels reviewed by facilities that have demonstrated an adequate understanding of basic labeling requirements and proper use of the Program's marks. Charges for label review will be assessed at the consultative rate to those facilities not given pre-approval authority.

The Program will continue to require that new users of inspection services, except label review services, that are not under contract prepay via certified check, money order, Master Card or VISA, or maintain a surety (bond or check) equivalent to 3 months of estimated inspection services. Current users not under contract that have a record of ''late'' or ''nonpayment'' of fees, as determined by each Regional Inspection Branch, will also be required to prepay or submit a surety. Prepayment is recommended for all non-contract users.

Effective October 1, 1998, the fees and charges for Type 1, 2, and 3 fishery products inspection services (except Alaska) are as follows:

	Per hour
a. Type 1—In-plant Inspection Services	
Non-HACCP 40 Hr/Wk Contracts:	
Regular time	$46.35
Overtime	69.53
Sunday and legal holidays	92.70
Non-HACCP 25–39 Hr/Wk Contracts:	
Regular time	48.67
Overtime	73.00
Sunday and legal holidays	97.34
Non-HACCP <25 Hr/Wk Contracts:	
Regular time	50.99
Overtime	76.48
Sunday and legal holidays	101.97
HACCP Contracts:	
Regular time	76.48
Overtime	114.72
Sunday and legal holidays	152.96
b. Type 2—Lot Inspection—Officially and Unofficially Drawn Samples	
Regular time	74.16
Overtime	111.24
Sunday and legal holidays	148.32
c. Type 3—Miscellaneous Inspection and Consultative Services	
40 Hr/Wk Contracts:	
Regular time	62.57
Overtime	93.86
Sunday and legal holidays	125.15
25–39 Hr/Wk Contracts:	
Regular time	65.70
Overtime	98.55
Sunday and legal holidays	131.40
Under 25 Hr/Wk Contracts and Non-contract Consultative Services:	
Regular time	68.83
Overtime	103.24
Sunday and legal holidays	137.66

The basis for determining the appropriate fee to be charged is as follows:

a Type 1—In-plant inspection services:

1 Regular time—Services provided during any 8-hour shift.

2 Overtime—Services provided in excess of 8 hours per shift per day.

In addition to any hourly service charge, a night differential fee of $2.25 per hour will be charged for each hour of service provided after 6 p.m. and before 6 a.m. Similarly, a Sunday differential fee of $5.75 per hour will be charged for each hour of service provided between midnight Saturday and midnight Sunday. A cost of living allowance (COLA) fee of $2.25 per hour will be charged for services in Puerto

Rico; $5.75 per hour will be charged for services in American Samoa and Alaska.

b.Type 2 and 3—Lot inspection and miscellaneous services:

1. Regular time—Services provided within the inspector's normal work schedule, Monday through Friday.

2. Overtime—Services provided outside the inspector's normal work schedule, Monday through Friday, and on Saturday.

It is the intent of the authorizing legislation and the policy of the Program to charge fees to recover, as nearly as possible, the costs of providing inspection services. Therefore, the hourly rates charged to contract lot inspection users who provide complete and acceptable inspection facilities will be those delineated under Type 1. In all other cases, contract lot inspection users will be charged Type 3 rates.

Analytical Services

Analyses performed in a private laboratory will be charged at the current rate of that laboratory. Shipping costs for samples will also be assessed. Charges based on these fees will be in addition to any hourly rates charged for lot, miscellaneous, and consultative inspection service as well as to any hourly rates charged for inspection services provided under a contract. Applicants requesting specific analyses to be performed in a NMFS laboratory will be charged at the following rates:

	Per analysis
Microbiology	
Total aerobic plate count	$19.00.
Presumptive coliform	15.00.
Confirmed total/fecal coliforms	15.00 additional.
E. coli	15.00 additional.
Staph. aureus	54.00.
Salmonella BAM/ARS/TECRA Method:	
Step 1	40.00.
Step 2	18.00 additional.
Step 3	26.00 additional.
Listeria	
Presumptive	28.00.
Confirmed	42.00.
Chemistry	
Histamine	120.00.
Indole	90.00.
Ammonia	66.00.
Sodium Bisulfite	108.00.
Isoelectric Focusing (Species Identification)	108.00.
Methylmercury	225.00.
Chlorinated pesticides	300.00.
Polychlorinated biphenyls	300.00.
Domoic acid	90.00.
Bioassay	
Paralytic Shellfish Poison (minimum of 3 samples)	150.00 per sample.

Notes on Analytical Services

Sampling time and travel time where applicable will be assessed using the Type 2 rates. Mileage costs will be assessed at the current rate. For other analyses not shown or not frequently requested, the charge will be assessed at the Type 3 hourly rate of $68.83 (2-hour minimum) or separately established based on the particular issues of the case involved. All charges are per sample.

Charges for services provided in Alaska by NMFS Inspectors will be at the rates specified above, plus cost of living allowances.

The following rates for the State of Alaska are for services provided by cross-licensed State of Alaska inspectors. The rates charged in the State of Alaska are subject to change based on information supplied by the Alaska Department of Environmental Conservation.

STATE OF ALASKA

	Aleutian Chain, Bristol Bay, Dillingham	Southeast and South Central, Anchorage, Kenai, Juneau, Ketchikan	Remainder of Alaska, including Kodiak
Type 1	Per hour	Per Hour	Per Hour
Non-HACCP:			
Regular Time	$55.88	$46.10	$49.38
Overtime	83.82	69.15	74.07
Sunday/Holiday	111.76	92.20	98.76
HACCP:			
Regular Time	83.82	69.15	74.07
Overtime	125.75	103.73	111.05
Sunday/Holiday	167.64	138.30	148.14

STATE OF ALASKA—Continued

	Aleutian Chain, Bristol Bay, Dillingham	Southeast and South Central, Anchorage, Kenai, Juneau, Ketchikan	Remainder of Alaska, including Kodiak
Type 2			
Regular Time	95.00	78.37	83.95
Overtime	142.50	117.56	125.92
Sunday/Holiday	190.00	156.74	167.90
Type 3			
Regular Time	83.82	69.15	74.07
Overtime	125.73	103.73	111.11
Sunday/Holiday	167.64	138.03	148.14

Classification

This action is taken under the authority of 50 CFR 260.70 and has been determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Act Analysis

The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and delayed effectiveness are inapplicable because this rule falls within the proprietary exception of subparagraph (a)(2) of section 553. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*) are not applicable.

Paperwork Reduction Act of 1980

These regulations will impose no information collection requirements subject to the Paperwork Reduction Act of 1980.

Executive Order 12612

This rule does not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 260

Fees, Food grades and standards, Food labeling, Inspection, Seafood.

Authority: 7 U.S.C. 1622, 1624 and 16 U.S.C. 742e.

Dated: December 4, 1998.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–33184 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 980826225–8296–02; I.D. 081498C]

RIN 0648–AL50

Fisheries of the Exclusive Economic Zone Off Alaska; Extension of the Interim Groundfish Observer Program through 2000

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

ACTION: Final rule.

SUMMARY: NMFS issues a final rule to implement a regulatory amendment to extend the current groundfish observer coverage requirements and implementing regulations for the North Pacific Groundfish Observer Program (Observer Program) that expire December 31, 1998. This action is necessary to assure uninterrupted observer coverage requirements through 2000.

This action is intended to accomplish the objectives of the Fishery Management Plan for Groundfish of the Gulf of Alaska and of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs).

DATES: Effective January 1, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for the 1997 Interim Groundfish Observer Program, the RIR/FRFA prepared for the 1998 Interim Groundfish Observer Program, and the RIR/FRFA prepared for this final regulatory action may be obtained from the Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori J. Gravel, or by calling 907–586–7228.

FOR FURTHER INFORMATION CONTACT: Sue Salveson, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

NMFS manages the U.S. groundfish fisheries of the Gulf of Alaska and the Bering Sea and Aleutian Islands management area in the Exclusive Economic Zone under the FMPs. The North Pacific Fishery Management Council (Council) prepared the FMPs under the Magnuson-Stevens Fishery Conservation and Management Act. Regulations implement the FMPs at 50 CFR part 679. General regulations that also pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

In 1996, the Council adopted, and NMFS implemented, the Interim Groundfish Observer Program. The Interim Groundfish Observer Program extended the 1996 mandatory groundfish observer requirements through 1997 (61 FR 56425, November 1, 1996) and again through 1998 (62 FR 67755, December 30, 1997). The intent of the Interim Observer Program is to provide for the collection of observer data necessary to manage the Alaska groundfish fisheries while the Council develops a long-term program that addresses concerns about observer data integrity, observer compensation and working conditions, and equitable distribution of observer coverage costs.

At its June 1998 meeting, the Council requested NMFS to develop new options for an alternative infrastructure for the Observer Program that would (1) better assure the continued collection of quality observer data, and (2) address observer coverage cost distribution issues through a fee collection or alternative funding mechanism. The Council also recognized that the development of measures to address

concerns about the continued integrity of observer data and industry cost distribution issues would take time and coordination among NMFS staff, different industry sectors, and representatives for observer interests. At its June 1998 meeting, the Council unanimously requested NMFS to extend through 2000 the current Interim Observer Program.

On September 8, 1998, NMFS published a proposed rule in the **Federal Register** (63 FR 47462) to implement the Council's recommended extension of the Interim Observer Program through December 31, 2000. The preamble to the proposed rule discussed NMFS and Council activities and events that led to the proposed extension of this program. NMFS invited comments on the proposed rule through October 8, 1998, but did not receive any by the end of the comment period.

A description of the regulatory provisions of the Interim Groundfish Observer Program was provided in the proposed rule and final rule implementing this program (61 FR 40380, August 2, 1996; 61 FR 56425, November 1, 1996) as well as in the proposed and final rule that extended the interim program through 1998 (62 FR 49198, September 19, 1997; 62 FR 67755, December 30, 1997). Consistent with the final rule extending the observer program into 1998, § 679.50(i)(1)(i) of the final rule specifies that observer contractors certified prior to January 1, 1999, and providing observer services during 1998 will be exempt from the requirement to submit an application for certification. The intent of this provision is to alleviate an unnecessary paperwork burden on those observer contractors who are certified by NMFS and currently provide observer services. No other changes to the existing regulations are implemented at this time.

Classification

This final rule has been determined to be not significant for the purposes of E.O. 12866.

This rule would extend without change existing collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget (OMB) under OMB control numbers 0648–0318 and 0648–0307.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

NMFS prepared a final regulatory flexibility analysis that consists of the RIR/FRFA and the preambles to the proposed and final rules. A copy of the RIR/FRFA is available from NMFS (see **ADDRESSES**). No comments on the Initial Regulatory Flexibility Analysis were received during the public comment period on the proposed rule. NMFS has determined that this final rule could have a significant economic impact on a substantial number of small entities. Alternatives that addressed modifying reporting requirements for small entities or the use of performance rather than design standards for small entities were not included in the analysis because such alternatives are not relevant to the proposed action and would not mitigate impacts on small entities. Allowing exemptions for small entities would not be appropriate because the objective to assure uninterrupted observer coverage requirements through 2000 would not be achieved.

However, this action does include measures that will minimize the significant economic impacts of observer coverage on a least some small entities. Vessels less than 60 ft (18.3 m) length overall (LOA) are not required to carry an observer while fishing for groundfish. Vessels between 60 ft (18.3 m) and 125 ft LOA have lower levels of observer coverage than those for vessels over 125 ft (38.1 m) LOA. These measures, which have been incorporated into the requirements of the North Pacific Groundfish Observer Program since its inception in 1989, effectively mitigate the economic impacts on some small entities without adversely affecting the implementation of the conservation and management responsibilities imposed by the FMPs and the Magnuson-Stevens Fishery Conservation and Management Act.

The Assistant Administrator for Fisheries, NOAA, finds there is good cause under the authority contained in 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness because this rule is not establishing any new requirements with which affected parties must come into compliance. As such, there is no need for a delay in effective date. This rule will become effective on January 1, 1999, at the expiration of the existing rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: December 9, 1998.

Andrew Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.50, the section heading and paragraphs (i)(1)(i) and (i)(1)(iii) are revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 2000.

* * * * *

(i) * * *

(1) * * *

(i) *Application*. An applicant seeking to become an observer contractor must submit an application to the Regional Administrator describing the applicant's ability to carry out the responsibilities and duties of an observer contractor as set out in paragraph (i)(2) of this section and the arrangements and methods to be used. Observer contractors who were certified prior to January 1, 1999, and who have provided observer services during 1998 are exempt from this requirement to submit an application and are certified for the term specified in paragraph (i)(1)(iii) of this section.

* * * * *

(iii) *Term*. Observer contractors will be certified through December 31, 2000. NMFS can decertify or suspend observer contractors pursuant to paragraph (j) of this section.

* * * * *

[FR Doc. 98–33186 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 63, No. 240
Tuesday, December 15, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 35

RIN 3150–AC42

Comprehensive Quality Assurance in Medical Use and a Standard of Care; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking: Withdrawal; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on December 2, 1998 (63 FR 66496), that withdraws an advance notice of proposed rulemaking that requested public comments on questions related to comprehensive quality assurance and a standard of care in medical uses of byproduct material. This action is necessary to correct an erroneous telephone number.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415–7162.

SUPPLEMENTARY INFORMATION:

On page 66496, in the center column, under the **ADDRESSES** section, the telephone number, ''(202) 512–2249'' is corrected to read ''(202) 634–3273.''

Dated at Rockville, Maryland, this 10th day of December, 1998.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–33209 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF04

Steam Generator Tube Integrity for Operating Nuclear Power Plants; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on December 2, 1998 (63 FR 66496), that withdraws a notice of proposed rulemaking that requested public comments pertaining to steam generator tube integrity. This action is necessary to correct an erroneous telephone number.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415–7162.

SUPPLEMENTARY INFORMATION: On page 66496, in the third column, under the **ADDRESSES** section, the telephone number, ''(202) 512–2249'' is corrected to read ''(202) 634–3273.''

Dated at Rockville, Maryland, this 10th day of December, 1998.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–33205 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF33

Reporting Reliability and Availability Information for Risk-Significant Systems and Equipment; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of proposed rulemaking: Withdrawal; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on December 2, 1998 (63 FR 66497), that withdraws a notice of proposed rulemaking that requested public comments on proposed amendments to its regulations that would have required licensees for commercial nuclear power reactors to report to the NRC, plant-specific summary reliability and availability data for certain risk-significant systems and equipment. This action is necessary to correct an erroneous telephone number.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415–7162.

SUPPLEMENTARY INFORMATION: On page 66498, in the first column, in the third line from the top, the telephone number, ''(202) 512–2249'' is corrected to read ''(202) 634–3273.''

Dated at Rockville, Maryland, this 10th day of December, 1998.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–33207 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 60

RIN 3150–AC03

Elimination of Inconsistencies Between NRC Regulations and EPA High-Level Waste Standards; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Withdrawal; Correction.

SUMMARY: This document corrects a notice appearing in the **Federal Register** on December 2, 1998 (63 FR 66498), that withdraws a notice of proposed rulemaking that would have eliminated several inconsistencies with the generic Environmental Protection Agency standards to be developed for the disposal of high-level waste in deep geologic repositories. This action is necessary to correct an erroneous telephone number.

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, telephone (301) 415–7162.

SUPPLEMENTARY INFORMATION: On page 66498, in the third column, under the **ADDRESSES** section, the telephone number, ''(202) 512–2249'' is corrected to read ''(202) 634–3273.''

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 10th day of December, 1998.

David L. Meyer,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 98–33210 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 229

[Regulation CC; Docket No. R–1031]

Availability of Funds and Collection of Checks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board requests comment on the potential benefits and drawbacks of a modification to its Regulation CC, Availability of Funds and Collection of Checks, that would shorten the maximum hold for many nonlocal checks. This modification would shorten the availability schedule for nonlocal checks from five to four business days except that a depositary bank could retain a five-day schedule for categories of nonlocal checks for which it certifies that it does not receive a sufficient proportion of returned checks within four business days. This proposal is one of several alternative modifications to the nonlocal check availability schedule that the Board is considering. The Board may request comment on this or alternative modifications in a future notice of proposed rulemaking after analyzing the comments received in response to this notice.

DATES: Comments must be submitted on or before March 15, 1999.

ADDRESSES: Comments, which should refer to Docket No. R–1031, may be mailed to Ms. Jennifer Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington DC 20551. Comments may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. on weekdays and to the security control room at all other times. The mail room and the security control rooms are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments will be available for inspection and copying by members of the public in the Freedom of Information Office, Room MP–500, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in Section 261.14 of the Board's Rules Regarding Availability of Information.

FOR FURTHER INFORMATION CONTACT: Jack K. Walton II, Manager, Check Payments Section (202/452–2660) or Michele Braun, Project Leader (202/452–2819), Division of Reserve Bank Operations and Payment Systems. For the hearing impaired *only,* contact Diane Jenkins, Telecommunications Device for the Deaf (TDD) (202/452–3544).

SUPPLEMENTARY INFORMATION:

I. Overview

As a result of concerns about some banks' practice of delaying funds availability by placing holds on the proceeds of checks deposited into customers' transaction accounts, Congress passed the Expedited Funds Availability Act (EFAA) in 1987 (12 U.S.C. 4001–4010).[1] The EFAA specifies maximum time limits on the holds that banks may place on funds deposited into transaction accounts.

Prior to enactment of the EFAA, some banks had argued that their availability schedules reflected the time needed for the collection and return of checks that were not paid and provided a measure of protection against the risk that the bank could not recover funds from the depositor if those funds had already been withdrawn from the depositor's account. To balance depositors' interest in receiving prompt access to their funds with banks' ability to manage their risks, Congress required the Board to reduce the EFAA's funds availability schedules to as short a time as possible and equal to the period achievable under the improved check clearing system for a receiving depository institution to reasonably expect to learn of the nonpayment of most items for each category of checks. (12 U.S.C. 4002(d))

The Board's Regulation CC (12 CFR part 229), which implements the EFAA, includes maximum availability schedules for funds deposited into transaction accounts as well as provisions designed to accelerate the check return system. Currently, funds deposited by most nonlocal checks (checks payable by banks located in different check processing regions than the depositary bank) must be made available for withdrawal within five business days (five-day availability).[2] The Board is investigating whether it would be appropriate to define separate categories for various types of nonlocal checks so that it can assign maximum availability schedules to these categories of nonlocal checks. These categories would be designed to preserve hold periods as a fraud-protection tool while providing depositors earlier access to their funds. Analysis of available data suggests that several alternative methods for defining categories of nonlocal checks might reasonably meet the Congressional mandate. Several of these alternatives rely on data collected by the Reserve Banks. One alternative relies on data collected by depositary banks that elect to use the full five-day hold period for some nonlocal checks.

The purpose of this notice is to gather information on the potential benefits and drawbacks of this latter alternative for assigning availability schedules to categories of checks because it relies on a self-certification procedure that differs from the approach the Board has previously used in Regulation CC. Based on its analysis of the comments to this notice, the Board will assess the feasibility of this method and may request comment on one or more specific regulatory proposals to modify the nonlocal check availability schedule.

[1] As used in this notice and in Regulation CC, the term bank includes commercial banks, savings institutions, and credit unions. *Depositary bank* refers to the bank of first deposit (see 12 CFR § 229.2 (e) and (o)).

[2] Under Regulation CC's temporary availability schedule, which was in effect from September 1, 1988, through August 31, 1990, funds deposited by most nonlocal checks had to be made available for withdrawal within seven business days. Other than the change from the temporary to the current, permanent schedule, the EFAA's nonlocal check availability schedules have not been modified since the EFAA was enacted. During this period, the Federal Reserve has consolidated several of its check processing regions, listed in Regulation CC's Appendix A, which has resulted in some checks being reclassified from nonlocal to local. Thus, the availability that must be accorded to some deposits has improved.

II. Background

When Congress established the EFAA funds availability schedules, it attempted to balance banks' concerns about managing their risk with consumers' concerns about the availability of their funds. Congress recognized that banks would be exposed to risks if they were required to make funds available before they had a reasonable opportunity to learn of the return of an unpaid check.

Congress's 1987 Conference Report on the EFAA tied availability schedules to banks' ability to reasonably expect to learn of the nonpayment of a significant number of checks. The Report suggested that if improvements in the check clearing system make it possible for two-thirds of the items in a category of checks to meet this test in a shorter period of time, then the Federal Reserve must shorten the schedules accordingly.[3] The Board has considered this ''two-thirds test'' in evaluating alternative amendments to Regulation CC that would implement the statutory requirement for shortened availability schedules for nonlocal checks.

The Conference Report also recognized that geographic proximity or transportation arrangements between check processing regions would permit the Federal Reserve to provide shorter times than the general schedule for nonlocal checks would require. The Conference Report noted that shorter times would be possible for checks transported between such nearby territories as New York City and Jericho, Long Island, and for checks transported between banks in cities with Federal Reserve check processing offices, such as banks in Boston and San Francisco.[4] The Board recognized regional differences in the times needed to return checks in Regulation CC by establishing appendix B–1 under the temporary schedule and appendix B–2 under the permanent schedule.[5] Appendix B–1 identified Federal Reserve check processing regions in which depositary banks were required to make funds from specified nonlocal checks available within four or five business days from the day of deposit, compared with the seven business days otherwise applicable under the temporary schedule. Appendix B–2 provided a similar listing for nonlocal checks for which proceeds must be made available within three business days from the day of deposit rather than the five days otherwise applicable under the permanent schedule.[6]

III. Shortening the Nonlocal Check Availability Schedule

The Board is currently considering whether the check clearing system has improved sufficiently to warrant amending Regulation CC to require that funds deposited by nonlocal checks be made available earlier than now provided. The legislative history does not indicate whether the Board should interpret the two-thirds test precisely, and the EFAA requirement that the Board reduce maximum holds to as short a time as possible in which a bank could reasonably expect to learn of the nonpayment appears to provide the Board with some discretion. The Board is also exploring various methods that are reasonable and cost effective for defining categories of nonlocal checks for the purposes of determining appropriate funds availability schedules.

A. Returned Check Surveys

The Board drew on data from four surveys to determine whether it would be appropriate to reduce the nonlocal hold period. In 1996, the Board's comprehensive survey of check-fraud losses at banks asked respondents to indicate the proportion of returned checks that they typically received on each business day following the initial deposit of a check (1996 bank survey). In conjunction with that check-fraud study, Federal Reserve staff also collected detailed data from a sample of checks processed during one week through the Federal Reserve Banks (1996 Reserve Bank survey).[7] In 1997, Federal Reserve staff repeated the Reserve Bank survey for six weeks and thereby increased the number of nonlocal returned checks sampled compared with the prior survey (1997 Reserve Bank survey).[8] The results of the 1997 survey were generally consistent with those of the 1996 survey. For historical comparison, the Board also reviewed a survey of checks returned through the Reserve Banks conducted shortly after the implementation of Regulation CC (1990 Reserve Bank survey).[9] The table below summarizes the average nonlocal return cycles observed in the 1990, 1996, and 1997 surveys.

CUMULATIVE PERCENTAGE OF NONLOCAL CHECKS RETURNED WITHIN NUMBER OF BUSINESS DAYS

	1997 reserve bank survey [1]	1996 reserve bank survey [1]	1996 bank survey	1990 reserve bank survey	Percent improvement 1990–97
3 business days	27.8	33.3	32.0	21.0	32.4
4 business days	59.9	64.1	64.9	47.0	27.5
5 business days	82.8	83.3	84.3	73.0	13.4
Number of nonlocal checks sampled	31,646	5,707	[2] 773	n.a.	n.a.

[1] Excludes outlier observations defined as nonlocal checks that exceed 15 business days. For example, the 1997 survey data exclude 1.6 percent of nonlocal checks sampled.

[2] Reflects the number of commercial banks, savings institutions, and credit unions sampled. Source. Board of Governors of the Federal Reserve System. See text notes 7, 8, and 9 for sources of data.

In the 1996 and 1997 surveys, over eighty percent of nonlocal unpaid checks were returned to the depositary bank within the maximum availability period of five business days, up from 73 percent in 1990. The percentage of nonlocal checks returned unpaid within four business days ranged from 60 to 65 percent in the 1996 and 1997 surveys,

[3] H.R. Conf. Rep. No. 100–261, at 179 (1987).

[4] H.R. Conf. Rep. No. 100–261, at 179 (1987).

[5] Appendix B–1 was removed and appendix B–2 was redesignated as appendix B in 1995 (60 FR 51669, Oct. 3, 1995).

[6] Locations were included in these appendixes based on an informal survey of the transportation arrangements that existed when Regulation CC was developed.

[7] *Report to the Congress on Funds Availability Schedules and Check Fraud at Depository Institutions* (Board of Governors of the Federal Reserve System, October 1996).

[8] The 1997 survey was designed to provide a sufficient number of checks to estimate the proportion of nonlocal checks returned within four and five days nationwide. The sample was not intended to provide statistically valid results between each possible pairing of check processing regions throughout the country (previously unpublished 1997 Reserve Bank data).

[9] *Report to Congress Under the Expedited Funds Availability Act* (Board of Governors of the Federal Reserve System, March 1990).

roughly a 30 percent improvement over 1990. Although returns within four days remained slightly below two-thirds, they were close to that threshold. The survey results suggest that it may be appropriate for the Board to reduce availability schedules for all or some categories of nonlocal checks from five business days to four.[10]

B. Alternative Approaches

In developing guidelines to identify categories of nonlocal checks that could be subject to shorter availability schedules, the Board sought to define as precisely as possible those check categories returned to the depositary bank in fewer than five days at least two-thirds of the time, taking into consideration the practical limitations of the data collection needed to support the categorization. Identifying a large number of categories of nonlocal checks should increase the likelihood that the checks are accurately categorized based on when they are returned. The greater accuracy afforded by a large number of categories would lower the risk that a particular check would have to be made available before it would normally be returned. Similarly, a higher degree of accuracy would increase the probability that customers would receive faster availability for those checks that are normally returned within fewer than five days. Thus, a large number of categories of nonlocal checks should provide a better balance, as sought by Congress, between banks' needs to manage their fraud-loss risk and their customers' interests in having as early access to their funds as possible.

The Board has been exploring alternative approaches for defining appropriately precise categories of nonlocal checks that should receive earlier availability. These approaches range from categorizing the almost 2,000 possible pairs of check processing regions to a more aggregated approach that would group nonlocal checks into only three categories nationwide based on the availability zone (city, RCPC, or country) of the paying bank.[11] Each approach recognizes the roles of geographic proximity and transportation arrangements in the check clearing and return cycle. It is not clear, however, what might be the most appropriate (reasonable and cost effective) way to identify those categories of nonlocal checks that should receive earlier availability. Collecting data, however, to support a valid analysis of return cycles for nonlocal checks becomes increasingly expensive and, in some cases, impractical as the number of categories increases.[12]

The Board is considering reducing the availability schedules for nonlocal checks from five to four business days but permitting an individual bank to delay funds availability for a particular category of nonlocal check for five business days if it certifies that it does not receive at least two-thirds of nonlocal returned checks in that category within fewer than five days. This approach would match the bank's actual return experience for nonlocal checks with permitted availability schedules more precisely than any approach that relies on data that the Reserve Banks could collect. Under this alternative, banks that wished to use a five business day availability schedule for a category of checks would be required to conduct their own periodic data collection, based on criteria that would be included in Regulation CC, and to certify that they do not receive at least two-thirds of that category of nonlocal returned checks in fewer than five days.[13] The bank's primary supervisor would be responsible for reviewing the self-certification and supporting data.

Permitting a bank to certify that it qualifies to use five-day availability schedules for some categories of nonlocal checks gives it the flexibility to weigh; (1) the costs of collecting data with which to certify that it should be permitted to hold certain categories of nonlocal checks for five days, (2) the fraud risk associated with its hold policy, and (3) the customer benefits of that policy. If a bank determines, for example, that the administrative cost associated with demonstrating that certain categories of nonlocal checks should be subject to five-day availability and the resulting increased complexity of its availability schedules outweighs the incremental fraud protection, then it could simply adopt a four-day or shorter schedule for all of its nonlocal check deposits.[14]

IV. Request for Comment

The Board requests comment on the benefits and drawbacks of modifying Regulation CC to shorten the availability schedule for nonlocal checks from five business days to four unless a depositary bank certifies that it does not receive most of its nonlocal returned checks in fewer than five business days. Commenters' overall perspectives on the issues raised in this notice as well as their answers to the specific questions listed below will be useful in the Board's analysis of the alternative approaches to modify the nonlocal check availability schedules. Comments will help the Board balance consumers' interests in receiving access to their funds and banks' interest in minimizing check-fraud losses and will help the Board develop an appropriate method to implement Congress's directive to improve funds availability to match improvements in the check clearing system.

The Board does not plan to implement any changes to Regulation CC's nonlocal check availability schedules prior to the spring of 2000 so that banks can minimize changes to

[10] The General Accounting Office (GAO) recently conducted a study to identify, among other things, whether electronic check presentment affects the length of time necessary for a dishonored check to be returned to the depositary bank. The GAO concluded that the check return performance of electronically presented nonlocal checks was not very different from that of physically presented checks. (U.S. General Accounting Office, GAO Report, *Retail Payment Issues: Experience with Electronic Check Presentment,* (July 14, 1998)).

[11] In general, nonlocal checks payable by banks located closest to Federal Reserve check processing offices are returned fastest. Nonlocal checks payable by banks located further away require somewhat more time. The first four digits of the routing number (the routing symbol) on every check identify the location of the paying bank in relationship to the local Federal Reserve office. The locations are organized roughly in concentric circles. City checks are payable by banks located relatively close to a Federal Reserve office, RCPC checks are payable by banks located somewhat further from a Federal Reserve office, and country checks are payable by banks even more geographically remote. Only eight of forty-four check processing regions have country availability zones.

[12] While the alternatives thus far analyzed rely on data collected from nonlocal checks returned through a Federal Reserve Bank, the results of the 1996 bank and the 1996 Reserve Bank surveys suggest that there is little difference between nonlocal return times for checks returned through the Reserve Banks and for all nonlocal returned checks.

[13] If a bank imposes an exception hold on a customer's deposit in accordance with § 229.13, it may extend the time within which it is required to make funds available for withdrawal by a reasonable period. Regulation CC deems a six business day extension of its nonlocal check available schedule to be reasonable; a longer extension may be reasonable, but the bank has the burden of so establishing. This safe-harbor extension would be added to the four-day nonlocal check schedule or to the five-day schedule for those categories of nonlocal checks that a bank certifies are eligible for the longer hold.

A bank that has a policy of generally making deposited funds available for withdrawal sooner than required may extend the hold up to the time allowed by the regulation on a case-by-case basis. (Under § 229.16(c), a bank must provide a notice when funds from a particular deposit will not be available by the time a bank generally make funds available for withdrawal.) A bank would be permitted to hold a nonlocal check on a case-by-case basis up to five business days for those categories of nonlocal checks that the bank certifies are eligible for the longer hold.

[14] The Board's 1996 check-fraud study found that 70 percent of banks make funds deposited by nonlocal checks available to their customers earlier than Regulation CC now requires. *Report to the Congress on Funds Availability Schedules and Check Fraud at Depository Institutions,* p. 39.

their internal systems during the period surrounding the century rollover.

A. Defining Categories of Checks

For the purpose of assigning availability schedules, the Board is exploring several methods for categorizing nonlocal checks that rely on the check processing region and the availability zones in which banks are located. Because proximity and transportation infrastructure affect the time period needed to present and return nonlocal checks, the Board is considering several possible methods to define categories of nonlocal checks, including:

(a) Pairs of check processing regions, for example checks deposited at banks in the Columbus check processing region and payable by banks located in the Utica check processing region;

(b) The check processing region of the depositary bank and the availability zone of the paying bank, for example checks deposited at banks in the Columbus check processing region and payable by nonlocal banks in city availability zones; and

(c) The availability zone of the paying bank, regardless of the location of the depositary bank, that is, any check payable by a nonlocal bank located in a city availability zone.

Regulation CC could be modified to define appropriate categories of nonlocal checks for the analysis of return cycles. Alternatively, the regulation could permit banks to define their own categories, perhaps within some guidelines.

1. Should Regulation CC define categories of checks for which a bank could certify that it should be permitted to hold funds for five days? If yes, what categories would be appropriate? If not, should a bank be permitted to define its own categories or select from among a variety of categories?

2. Given the pace of change in the improvement of the check clearing system, how frequently should a bank be required to re-certify that it should be permitted to withhold the funds availability of a category of nonlocal returned checks for five business days? Every two years? Every five years? Some other time period?

B. Bank Hold Policies

3. If this approach is adopted, to what extent will banks use the certification process to continue placing five-day holds on certain categories of nonlocal checks to protect themselves against some check-fraud losses?

C. Data Collection and Statistical Significance

Under the approach being considered in this notice, the Board anticipates requiring banks to use the two-thirds test indicated by Congress to assess whether a category of nonlocal checks at a bank should be subject to four- or five-day availability. Banks that choose to hold some categories of checks for five business days would be required to collect representative data that demonstrates that, for those categories of checks, they do not receive two-thirds of the returned nonlocal checks within four business days.

4. What information should a bank be required to collect to certify that it does not receive at least two-thirds of a category of nonlocal returned checks within four business days? What would constitute representative data for a bank and over what period should it be collected? What procedures would reasonably ensure that a bank appropriately certifies that it is eligible to use five-day holds? Should the same methodology apply to small, medium, and large banks?

5. Do banks currently collect the data needed for certification?

D. Consumer Disclosures

Section 229.16(a) of Regulation CC provides that disclosures reflect the policy followed by the bank in most cases. The commentary to that section provides that a bank may not place a hold longer than the period disclosed. Therefore, a bank that discloses that it generally makes funds from nonlocal checks available in four business days but certifies that it is eligible to use the five-day availability schedule for some categories of nonlocal checks would have to disclose which categories of nonlocal checks would be available in five business days.[15]

6. If the proportion of nonlocal checks available in five business days does not represent ''most cases,'' to what extent would the complexity of the disclosure requirement affect a bank's decision to use five-day availability for some categories of nonlocal checks?

7. What amendments to the disclosure rules would assist banks in adopting a policy to hold some categories of nonlocal checks for four days and others for five days as well as assist customers to understand which nonlocal checks would be available for withdrawal in four days and which in five days? Would it be sufficient to provide detailed information as to which checks will receive four or five day availability only when requested by a customer or prospective customer?

[15] In contrast, based on guidance in the supplementary information to the Board's notice adopting the initial Regulation CC, a bank that discloses that it generally makes funds from nonlocal checks available in five business days would have to disclose the reduction in schedules to customers only upon request. (53 FR 19400, May 27, 1988)

By order of the Board of Governors of the Federal Reserve System, December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33175 Filed 12–14–98; 8:45 am]

BILLING CODE 6210–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1212

Multi-Purpose Lighters; Notice of Opportunity for Oral Presentation of Comments

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for oral presentation of comments.

SUMMARY: The Commission announces that there will be an opportunity for interested parties to present oral comments on a proposed rule that, if issued, would require that multi-purpose lighters resist operation by children under age 5. Oral comments will become part of the rulemaking record.

DATES: Requests to present oral comments must be received by January 4, 1998. Persons requesting an oral presentation must file a written text of their presentations no later than January 11, 1999. If requests for oral presentations of comments are received, the presentations will begin at 10 a.m., January 20, 1999, in Room 420 in the Commission's offices at 4330 East-West Highway, Bethesda, MD 20814.

ADDRESSES: Requests for oral presentations of comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001, or delivered to the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland; telephone (301) 504–0800. Requests may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Requests to make oral presentations and texts of presentations should be captioned ''Oral Comment; NPR for Multi-Purpose Lighters.''

FOR FURTHER INFORMATION CONTACT: Concerning the substance of the proposed rule: Barbara Jacobson, Project

Manager, Directorate for Epidemiology and Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1206; email bjacobson@cpsc.gov. Concerning requests and procedures for oral presentations of comments: Rockelle Hammond, Docket Control and Communications Specialist, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0800 ext. 1232.

SUPPLEMENTARY INFORMATION: Multi-purpose lighters are hand-held, flame-producing products that have ignition mechanisms and operate on fuel. Typically, they are used to light devices such as charcoal and gas grills and fireplaces. These products include those referred to as utility lighters or micro-torches. Devices intended primarily for igniting smoking materials are excluded; such products are already subject to a child-resistance standard at 16 CFR part 1210.

In the **Federal Register** of September 30, 1998, the Commission proposed a rule that, if issued, would require that multi-purpose lighters resist operation by children under age 5. 63 FR 52397; see also 63 FR at 52394. The Commission proposed this rule because it believes that unreasonable risks of injury and death from fire are associated with multi-purpose lighters that can be operated by young children. Written comments on the proposal should be received by December 14, 1998.

As required by section 9(d)(2) of the Consumer Product Safety Act, 15 U.S.C. 2058(d)(2), there will be an opportunity for interested parties to present oral comments on the proposal. If requests for oral presentations of comments are received, the presentations will be at 10 a.m., January 20, 1999, in the Room 420 in the Commission's offices at 4330 East-West Highway, Bethesda, MD 20814.

Requests for oral presentations of comments must be received by January 4, 1998. Persons requesting an oral presentation must file the text of their presentation on or before January 11, 1999.

Commenters should limit their presentations to approximately 10 minutes, exclusive of any periods of questioning by the Commissioners or the CPSC staff. The Commission reserves the right to further limit the time for any presentation and to impose restrictions to avoid excessive duplication of presentations.

Dated: December 9, 1998.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 98–33122 Filed 12–14–98; 8:45 am]

BILLING CODE 6355–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–111435–98]

RIN 1545–AW37

Payment by Check or Money Order; Payment by Credit Card and Debit Card

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations portion of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to payment of internal revenue taxes by credit card or debit card. The text of the temporary regulations also serves as the text of these proposed regulations. This document also contains proposed regulations that provide that payments of tax by check or money order should be made payable to the United States Treasury, in order to implement changes to the law made by the Internal Revenue Service Restructuring and Reform Act of 1998. These proposed regulations will affect all persons who pay taxes by check or money order.

DATES: Written or electronically generated comments and requests for a hearing must be received by March 15, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–111435–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–111435–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the ''Tax Regs'' option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_regs/comments.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Mitchel S. Hyman, (202) 622–3620; concerning submissions, Michael Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains a proposed amendment to the Procedure and Administration Regulations (26 CFR Part 301) amending § 301.6311–1 to reflect the enactment of section 3703 of the Internal Revenue Service Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685)(1998 Act). Section 301.6311–1 currently states that checks or money orders should be made payable to the Internal Revenue Service. Section 3703 of the 1998 Act states that the Secretary of the Treasury shall establish such rules, regulations, and procedures as are necessary to allow payment of taxes by check or money order to be made payable to the United States Treasury. The amendment accordingly provides that checks and money orders should be made payable to the United States Treasury. However, checks and money orders made payable to the Internal Revenue Service pursuant to the current regulation and prior instructions will continue to be accepted.

Additionally, the temporary regulations in the Rules and Regulations portion of this issue of the **Federal Register** amend the Procedure and Administration Regulations (26 CFR part 301) to add new §§ 301.6103(k)(9)–1T and 301.6311–2T, providing for payment of internal revenue taxes by credit card or debit card. The temporary regulations reflect the amendment of sections 6103 and 6311 by section 1205 of the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788, 995) and section 4003(k) of the Tax and Trade Relief Extension Act of 1998 (Public Law 105–277, 112 Stat. 2681). The text of the temporary regulations serves as the text of these proposed regulations. The preamble to the temporary regulations explains the regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C.

chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronically generated comments that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested by a person that timely submits comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Mitchel S. Hyman, Office of Assistant Chief Counsel (General Litigation) CC:EL:GL, IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.6103(k)(9)–1 is added to read as follows:

§ 301.6103(k)(9)–1 Disclosure of returns and return information relating to payment of tax by credit card and debit card.

[The text of this proposed section is the same as the text of § 301.6103(k)(9)–1T published elsewhere in this issue of the **Federal Register**.]

§ 301.6311–1 [Amended]

Par. 3. Section 301.6311–1(a)(1)(i) is amended by removing the language ''Internal Revenue Service'' from the third sentence and adding the language ''United States Treasury'' in its place.

Par. 4. Section 301.6311–2 is added to read as follows:

§ 301.6311–2 Payment by credit card and debit card.

(The text of this proposed section is the same as the text of § 301.6311–2T published elsewhere in this issue of the **Federal Register**.]

Michael P. Dolan,

Deputy Commissioner of Internal Revenue.

[FR Doc. 98–32927 Filed 12–14–98; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6200–8]

National Oil and Hazardous Substances Pollution Contingency Plan National Priorities List

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent for partial deletion of the Treasure Island Naval Station—Hunters Point Annex Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA), Region 9, announces its intent to delete operable unit (OU) No. 1, also known as Parcel A, of Treasure Island Naval Station—Hunters Point Annex, also known as Hunters Point Naval Shipyard (HPS), Superfund Site (EPA ID # CA1170090087) from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substance Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

This proposal for partial deletion pertains to Parcel A, which includes the upland area of HPS and a portion of the lowlands. A majority of Parcel A had functioned as a residential area for Navy personnel and is designated, by the City of San Francisco Redevelopment Agency, for future residential use. The Navy has issued a ''no action'' Record of Decision (ROD) for Parcel A. EPA bases its proposal to delete Parcel A on the determination by EPA and the State of California, through the California Environmental Protection Agency (Cal/EPA), Department of Toxic Substances Control (DTSC), that all appropriate actions under CERCLA have been implemented to protect human health, welfare, and the environment at Parcel A.

This partial deletion pertains only to Parcel A of the HPS Site and does not include Parcels B, C, D, E, and F. Parcels B, C, D, E, and F will remain on the NPL, and response activities will continue at these parcels.

DATES: Comments concerning this site may be submitted on or before January 14, 1999.

ADDRESSES: Comments may be submitted to Carolyn J. Douglas (SFD–5), NPL Coordinator, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, 415–744–2343, Fax 415–744–1916, email DOUGLAS.CAROLYN@EPAMAIL. EPA. GOV.

Information repositories:
Comprehensive information on this Site is available for viewing at the following locations:

U.S. EPA, Region 9, Superfund Records Center, 4th floor, 95 Hawthorne St., San Francisco, CA 94105, 415–536–2000

Anna E. Waden Branch Library, 5075 Third St., San Francisco, CA 94124, 415–715–4100

San Francisco Main Public Library, Civic Center, San Francisco, CA 94102, 415–557–4400

FOR FURTHER INFORMATION CONTACT: Claire Trombadore (SFD–8–2), RPM, U.S. EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105, 415–744–2409, Fax 415–744–1916, email TROMBADORE.CLAIRE@EPAMAIL.EPA.GOV.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The United States Environmental Protection Agency (EPA), Region 9, announces its intent to delete a portion of the Treasure Island Naval Station—Hunters Point Annex, also known as Hunters Point Naval Shipyard (HPS), Site located in San Francisco, California, from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, and requests public comment on this proposal.

This proposal for partial deletion pertains to Parcel A, which consists of the upland area, as well as a portion of the lowlands, of HPS. Parcel A is bounded by the other portions of HPS and the Bayview-Hunters Point district of San Francisco. Parcel A boundaries extend up to Crisp St. and across Spear Ave. to the south, up to Griffith St. to the west, and up to Fisher Ave. and

across Robinson St. and Galvez Ave. to the east. On the north, the Bayview-Hunters Point district of San Francisco is delineated from HPS by a fence. A figure and the exact coordinates that define the deleted property at the Site are contained in the NPL Partial Deletion Docket.

Section II of this document explains the criteria for partially deleting portions of a site from the NPL. Section III discusses the procedures that EPA is using for this action. Section IV discusses the HPS Site and explains how partial deletion criteria are met for this Site.

II. NPL Partial Deletion Criteria

Section 300.425(e) of the NCP provides that releases may be deleted from, or recategorized on, the NPL where no further response is appropriate. In making a determination to delete a release from the NPL, EPA shall consider, in consultation with the state, whether any of the following criteria have been met:

(i) Responsible parties or other parties have implemented all appropriate response actions required;

(ii) All appropriate Fund-financed response under CERCLA has been implemented, and no further action by responsible parties is appropriate; or

(iii) The remedial investigation has shown that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Site releases may not be deleted from the NPL until the state in which the site is located has concurred with the proposed partial deletion. EPA is required to provide the state with 30 working days for review of the partial deletion notice prior to its publication in the **Federal Register**.

As described in 40 CFR 300.425(e)(3) of the NCP, sites deleted from the NPL are eligible for further remedial action should future conditions warrant such action. If new information becomes available which indicates the need for further action, EPA may initiate remedial actions. Whenever there is a significant release from a site deleted from the NPL, the site may be restored to the NPL without the application of the Hazard Ranking System.

III. Partial Deletion Procedures

The following procedures were used for the intended partial deletion of this site: (1) All appropriate response under CERCLA has been implemented and no further EPA response is appropriate; (2) the State of California has concurred with the partial deletion; (3) a notice has been published in the local newspapers and has been distributed to the appropriate Federal, State and local officials and other interested parties announcing the commencement of the 30-day public comment period on EPA's Notice of Intent to Delete; and (4) all relevant documents have been made available in the local site information repositories.

Deletion from the NPL does not itself create, alter, or revoke any individual's rights or obligations. As mentioned in section II of this document, § 300.425(e)(3) of the NCP states that the deletion of a site from the NPL does not preclude eligibility for future response actions.

EPA's Region 9 office will accept and evaluate public comments on EPA's Notice of Intent to Delete before making a final decision to delete the specified parcel. If necessary, Region 9 will prepare a Responsiveness Summary to address any significant public comments received.

If EPA determines, with the State's concurrence, that the partial deletion is appropriate after consideration of public comment, then EPA will place a final Notice for Partial Deletion in the **Federal Register**, completing the process. Public notices and copies of the Responsiveness Summary, if necessary, will be available in the site repositories.

IV. Basis for Intended Partial Site Deletion

The following summary provides EPA's rationale for the proposed partial deletion of Parcel A of the HPS Site from the NPL.

Site Description

HPS is located on a promontory in southeastern San Francisco. The promontory is bounded on the north, east, and south by San Francisco Bay and on the west by the Bayview-Hunters Point district of the City of San Francisco. The entire HPS covers 936 acres, 493 of which are on land and 443 of which are under water. To facilitate the environmental investigation and remediation and ultimate transfer of the property to the City of San Francisco, HPS was divided into several parcels (Parcels A through F).

Parcel A, consisting of the upland areas of HPS and a fraction of the lowlands, is bounded by the other portions of HPS and the Bayview-Hunters Point district and covers approximately 88 acres. Land to the northwest of Parcel A is used for residential purposes. The other HPS parcels that bound Parcel A are currently undergoing investigation and remediation for future redevelopment. Under the City of San Francisco Redevelopment Agency's current land-use plan, those parcels will ultimately be used primarily for commercial and industrial purposes, whereas Parcel A will be used for residential as well as for light commercial purposes.

No wetlands or surface waters are located at Parcel A. Limited quantities of groundwater are present in localized fractures of the bedrock (which, along with localized areas in which it is covered by fill, underlies all of Parcel A). Parcel A groundwater is not considered suitable as a potential source of drinking water because of low well yield.

No underground storage tanks (UST), aboveground tanks (AST), drums, or hazardous materials storage areas remain on Parcel A. Sewer lines, storm drains, and steam lines located in Parcel A were also included in the early investigations, but no further action was required for these utilities.

Site History

Hunters Point was first developed for dry dock use in 1867. The Navy acquired title to the land in 1940 and began developing the area for various shipyard activities. In 1942, the Navy began using HPS for shipbuilding, repair, and maintenance. From 1945 to 1974, the shipyard was primarily used as a repair facility by the Navy. The Navy discontinued activities at HPS in 1974. From 1976 to 1986, the Navy leased 98 percent of HPS, including all of Parcel A, to the Triple A Machine Shop Company (Triple A), a private ship repair company. In 1986, the Navy reoccupied the property. Currently, portions of Parcel A are subleased for use as artists' studios.

Throughout its history, Parcel A was used by both the Navy and Triple A for primarily residential purposes. In addition, the Navy used one building for the U.S. Naval Radiological Defense Laboratory Program. Most of the other structures were used as offices and warehouses.

Site Investigation Activities

The Navy began environmental studies at HPS in 1984 under the U.S. Department of Defense (DOD) Installation Restoration Program. Between 1984 and 1991, the Navy performed a series of investigations, both installation-wide and specific to Parcel A, to identify potential source areas of contamination and to investigate air quality.

In 1989, EPA added HPS to the NPL due to the presence of hazardous materials from past shipyard operations (proposed in 54 FR 29820, and final in 54 FR 48184). In 1990, the Navy, EPA,

and the State of California entered into a Federal Facilities Agreement (FFA) to coordinate environmental activities at HPS. In 1991, the DOD designated HPS for closure as an active military base under its Base Realignment and Closure (BRAC) program.

The Navy carried out a preliminary assessment/site inspection (PA/SI) of potential source areas on Parcel A that had been identified during the Navy's previous investigations. Soils at some sites contained semivolatile organic compounds (SVOC), pesticides, polychlorinated biphenyls (PCB), total petroleum hydrocarbons (TPH), metals, volatile organic compounds (VOC), and herbicides. In the process of conducting the Remedial Investigation (RI), contaminated soils in these limited areas were excavated, disposed of off-site, and replaced with clean soil. At the completion of the RI, the Navy determined that all necessary response actions had been taken for Parcel A soils.

As part of the Parcel A RI, groundwater was also investigated. The RI concluded that the only contamination concern was from motor oil (a form of TPH). Due to low well yield, lack of historical use of Parcel A groundwater, and the nature of this bedrock aquifer, it was concluded that no complete pathway for exposure to Parcel A groundwater exists. Furthermore, motor oil is not specified as a hazardous substance under CERCLA, and the State does not intend to require further action on this release. As requested by the Regional Water Quality Control Board (RWQCB), however, Parcel A will be subject to a deed notification so that future users will be informed that motor oil was detected in groundwater.

In addition to evaluating human health issues, an Ecological Risk Assessment was conducted. The Ecological Risk Assessment concluded that, due to the limited availability of habitat, the scarcity of potential receptors, and the low level of contaminants detected on Parcel A of HPS, the risks to ecological receptors from Parcel A are minimal.

After the RI, the Navy, EPA, and Cal/EPA concurred that no further action is necessary on Parcel A. The proposed plan for this portion of HPS was released for public comment in August 1995. After reviewing comments and determining that no significant changes to the preferred remedy were required, the Navy, in concurrence with EPA and Cal/EPA, issued a ''no action'' Record of Decision (ROD) in November 1995. Since hazardous substances are not present at Parcel A at concentrations above acceptable risk levels, the five year review requirement of CERCLA section 121(c) is not applicable.

Community Involvement

In the late 1980s, the Navy formed a Technical Review Committee (TRC), consisting of community members and representatives of regulatory agencies, to discuss environmental issues pertaining to HPS. In 1993, pursuant to the Defense Environmental Restoration Program, 10 U.S.C. 2705(d), the TRC was replaced by a Restoration Advisory Board (RAB), at which representatives from the Navy, the local community, and regulatory agencies meet monthly to discuss environmental progress at HPS.

The draft RI report and proposed plan for Parcel A were released to the public in the summer of 1995. The proposed plan was mailed to stakeholders involved with HPS. Notice of availability of the proposed plan was published in local newspapers. The Parcel A ROD summarizes comments received during the subsequent public meeting and 30 day public comment period. These community participation activities fulfill the requirements of section 113(k)(2)(B)(i-v) and section 117(a)(2) of CERCLA. In addition to this, the Navy publishes an HPS-specific quarterly newsletter for the local community entitled Environmental Clean-Up News.

Current Status

One of the three criteria for site deletion specifies that EPA may delete a site from the NPL if ''responsible parties or other parties have implemented all appropriate response actions required.'' EPA, with the concurrence of the State of California, believes that this criterion for this partial deletion has been met. The State of California concurs with the proposed partial deletion of Parcel A of the Treasure Island Naval Station—Hunter's Point Annex Site. Subsequently, EPA is proposing partial deletion of this Site from the NPL.

Laura Yoshi,

Acting Regional Administrator, Region 9.

[FR Doc. 98–32989 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 535 and 572

[Docket No. 98–26]

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Maritime Commission proposes to amend its regulations governing agreements among ocean common carriers and marine terminal operators to reflect changes made to the Shipping Act of 1984 by the recently enacted Ocean Shipping Reform Act of 1998, Pub. L. 105–258. In accordance with that Act, the Commission is proposing to establish new rules for ocean carrier agreements regarding carriers' service contracts with shippers, amend the scope of marine terminal agreements subject to the Act, establish rules for agreements on freight forwarder compensation, reduce the mandatory notice period for carriers' independent action on tariff rates, and make other conforming changes. The Commission is also proposing to delete much of its format requirements for filed agreements, clarify the definition of ''ocean common carrier'', and make other technical amendments to the filing rules for clarity and administrative efficiency.

DATES: Comments due January 14, 1999.

ADDRESS: Send comments (original and fifteen copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW, Room 1046, Washington, DC 20573–0001.

FOR FURTHER INFORMATION CONTACT:

Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001 (202) 523–5740

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (202) 523–5787

SUPPLEMENTARY INFORMATION:

Background

On October 14, 1998, the Ocean Shipping Reform Act, Pub. L. 105–258, 112 Stat. 1902, (''OSRA'') was signed into law. That law makes several changes to the Federal Maritime Commission's (''FMC'' or ''Commission'') authorities and responsibilities under the Shipping Act of 1984, 46 U.S.C. app. 1701 et seq. (''1984 Act''). In particular, in an effort to foster competition and other aims, Congress made a number of changes regarding the treatment of agreements between and among vessel-operating common carriers and marine terminal operators, which are subject to Commission oversight. Section 203 of

OSRA requires that ''[n]ot later than March 1, 1999, the Federal Maritime Commission shall prescribe final regulations to implement the changes made by this Act.''

On November 13, 1998 the President signed the Coast Guard Authorization Act of 1998, 1999 and 2000, Pub. L. 105–383, 112 Stat. 3411 (November 13, 1998). That Act also included amendments to the Shipping Act of 1984. Accordingly, the Commission now proposes to update its agreement-related regulations to conform with these new laws. The Commission is also proposing to amend its rules to eliminate certain unnecessary formal requirements and make other clarifications and changes.

OSRA Changes to FMC Agreement Oversight

The most notable feature made to the 1984 Act by OSRA involves ocean carrier agreements and service contracting. Specifically, OSRA amends section 5 of the 1984 Act to provide that ocean common carrier agreements may not prohibit or restrict members from negotiating service contracts with one or more shippers, and may not require members to disclose the terms and conditions of a service contract or a negotiation on a service contract. In its report on OSRA, the Senate Commerce, Science, and Transportation Committee stated that ''the right of individual and independent service contracts is the most important change made by the bill''; the change was made ''to foster intra-agreement competition, promote efficiencies, modernize ocean shipping arrangements, and encourage individual shippers and carriers to develop economic partnerships that better suit their business needs.'' S. Rep. No. 2, 105th Cong., 1st Sess. 16–17 (1997). Under the new law, ocean common carrier agreements are prohibited from adopting mandatory rules or requirements affecting a member's right to negotiate and enter into service contracts. OSRA does provide, however, that an agreement may issue voluntary guidelines relating to the terms and procedures of members' service contracts, if they state that members are not required to follow the guidelines. Agreement guidelines are required to be submitted confidentially to the FMC.

Other notable changes in OSRA include reducing the notice period for independent action on tariff rates and service items from ten calendar days to five, and establishing that the right of independent action applies to all rates and charges fixed by a conference. In addition, OSRA (while it eliminates many of the Act's prohibitions on discriminatory treatment) adds new sections 10(c) (7) and (8) applying to service contract carriage, barring carrier groups from subjecting shippers' associations or ocean transportation intermediaries to unjust discrimination or unreasonable prejudice or disadvantage based on their status as associations or intermediaries. This section shows Congress's recognition that these ''middlemen'' are an important part of the market's competitive structure and are worthy of special protections.

The standards in section 16 for granting exemptions from requirements of the Act also have been liberalized. Maintaining effective FMC regulation and averting unjust discrimination are no longer part of the analysis. The Commission now must establish only that an exemption will ''not result in substantial reduction in competition or be detrimental to commerce.'' [1]

The new law also rectifies ambiguity that arose in the wake of the 1995 repeal of the Shipping Act, 1916 (which applied to domestic waterborne commerce; see Pub. L. 104–88, 109 Stat. 803) as to the scope of the Commission's authority over marine terminal operations involving domestic commerce. OSRA changes the definition of ''marine terminal operator'' (formerly section 3(15), now 3(14)) to make clear that it applies to the furnishing of terminal facilities not just in connection with ''common carriers'' (i.e., wholly international commerce), but also in connection with ''a common carrier and a water carrier subject to subchapter II of chapter 135 of title 49, United States Code.'' Put another way, the definition of marine terminal operator (and thus, our jurisdiction) now extends to terminal operations involving both international and domestic waterborne commerce, but not to terminal operations involving solely domestic transport.

A corresponding change is made in section 4(b) of the 1984 Act, which specifies the types of agreements subject to the Act. The amended Shipping Act thus will apply to agreements among terminal operators to discuss, fix or regulate rates or services applicable to both international and domestic commerce. However, agreements involving terminal operators to ''engage in exclusive, preferential, or cooperative working arrangements'' will only be subject to the Act ''to the extent such agreements involve ocean transportation in the foreign commerce of the United States.''

While OSRA made no changes to the general economic standard for evaluating agreements in section 6(g) of the Act, the legislative history explains that evolving market conditions require the Commission to take a more vigorous and forward-looking approach to enforcing the general standard. The Committee stated, in part:

> * * * [I]nternational liner shipping is becoming a more concentrated industry. The Committee is concerned that trade-wide agreements established by the potential oligopoly of mega-carriers and global strategic alliances, composed of fewer and more homogeneous members than are today's agreements, may effectively dominate the major U.S. trade lanes in the near future.
>
> The section contemplates the use of reasoned projections and forward-looking analyses by the agency, based on its substantial industry expertise. It appears that the FMC thus far has given the section a restrictive reading, suggesting that an injunction cannot be won without direct evidence of actual commercial harm suffered by shippers as a result of agreement activity. While evidence of shipper harm may indeed be relevant in certain cases, a blanket requirement for such evidence is not consistent with the text of the statute, and would undermine the agency's ability to take necessary preventive action. Indeed, the Committee directs the agency not to allow the disruption of ocean borne commerce while it seeks to quantify such disruption for evidentiary purposes.

S. Rep. No. 2, 105th Cong., 1st Sess. 8–9 (1997).

The Committee also set forth a detailed analytical approach to the section, developed in cooperation with the Commission and other interested parties. While no specific changes on the Commission's rules appear to be warranted to implement these policies, the Commission will be tailoring and refining its agreement analysis to conform with the Committee's admonitions.

The Proposed Rule

The proposed rule redesignates the Commission's agreement rules, formerly 46 CFR part 572, as part 535, and makes changes to its authority citations to reflect ISRA's passage. References in the following discussion will be to the redesignated part number.

The following discussion first covers the three groups of proposed rule amendments that require a degree of detailed explanation: (1) changes regarding service contracts; (2) changes in agreement form; and (3) a revised definition of ocean common carrier.

[1] While the grant of particular exemptions under the new standard is beyond the scope of this proposed rule, the Commission will entertain comments on whether any classes of agreements would be appropriate for full or qualified exemption under the new test. Such comments, if meritorious, may form the basis for future proceedings.

Following those three matters is a discussion of the remainder of the proposed changes, in the order they appear in the rule.

Proposed Amendments Regarding Service Contracts

A new policy statement is added in § 535.103 to reflect the Act's new limits on carrier agreements affecting service contracts. The definitions of ''service contract'' and ''shipper'' in § 535.104 (cc) and (dd) are changed to reflect changes in the Act. Also, to conform with OSRA, the former reference to regulating and prohibiting service contracts in the list of agreements subject to the Act (§ 535.201(7)) is changed to ''discuss and agree to any matter related to service contracts.''

Section 535.802 is entirely new. It reflects the new provisions in section 5(c) (1) and (2) of the Act barring carriers from collectively agreeing to prohibitions or restrictions on service contract negotiations, or requirements for disclosure of contract terms or negotiations. It makes clear that these prohibitions in section 5(c) (1) and (2) apply whether or not the carriers' agreed-upon prohibitions, restrictions, or requirements are legally enforceable or backed by sanctions or penalties.

While OSRA bars carrier groups from establishing binding rules for contracts, it allows them to adopt voluntary guidelines to guide members in their contract dealings with shippers. Section 535.802(c) reflects the Act's new section 5(c)(3) barring carriers from collectively adopting mandatory rules or requirements for contracts. Section 535.802 (d)–(g) addresses the use of voluntary service contract guidelines. The term ''voluntary guidelines'' is defined to clarify that it applies to the terms of service contracts and the procedures carriers follow in their dealing with shipper customers, and not to procedures for carriers' discussions or decision making among themselves, which would effectively restrict independent service contracting. The rule also makes clear that use of such guidelines must be wholly at the option of the individual carrier.

Section 535.802(f) states that voluntary guidelines may not include procedures whereby carriers agree to disclose service contract terms or negotiations, pre-clear proposed service contracts, submit to compliance checks or are subject to sanctions for non-compliance. Such ''guidelines'' would be inconsistent with the voluntariness requirement in the statute, the Act's prohibition on disclosure requirements and agreement restrictions on service contracting, and would undermine Congress' intent to eliminate collective control of service contracting.

A new § 535.802(h) is added in recognition that, inasmuch as the Act allows multi-carrier agreements, carriers must agree among themselves on procedures for entering into and administering such contracts. Such procedures must be reflected in the carriers' filed agreement.

Another new section, § 535.803, is added reflecting the new statutes' mandate that carriers may not agree to limit freight forwarder compensation to less than 1.25 percent of charges, and must be allowed to take independent action on freight forwarder compensation on not more than five days' notice.

Proposed Changes Regarding Form of Agreements

The Commission at this time also is proposing to eliminate many of the form and manner requirements for agreements set forth in Subpart D. While Congress did not address this matter directly in OSRA, both the law and the legislative history make it clear that Congress intended that the industry be afforded more administrative flexibility to respond to the marketplace. For example, OSRA provides carriers substantially more flexibility in structuring tariffs. Also, in its discussion of agreements, the Commerce Committee Report emphasized ''prompt agreement review, minimal government intervention, and continued flexibility in structuring agreements.'' In light of these factors it does not seem appropriate to continue the requirement that carriers structure their agreements to accord with a highly structured, tariff-type form.

Therefore, § 535.402(a) is amended to remove paper size and margin requirements, and clarify that agreements in other languages must include a translation. The title page requirement in § 535.402(b) is modified slightly. In addition, a revised § 535.402(d) clarifies that agreements are signed by each individual contracting party or its designated agent, as opposed to a single official or agent of the group as a whole, ensuring that filed agreements comport with general statute of frauds principles and indicate on their face the assent of each individual party. Another amendment to section 535.402(d), permitting faxed or photocopied signatures, will minimize any administrative delay.

The ordering and pagination requirements in §§ 535.402(e) and 403 are almost entirely removed. Only those requirements necessary to the processing and oversight of the agreement are retained. Thus, agreements must either include or be accompanied by a table of contents, and by information such as contact names, addresses, and specific geographic scope involved. Of course, in deleting the form requirements, the Commission is in no way indicating that particular agreement provisions are no longer required to be filed; indeed, the completeness requirement of § 535.407 is unchanged. Rather, it is the Commission's intent that parties be free to draft their arrangements to best suit their commercial objectives.

Section 535.404 is revised to delete the requirement that conference-specific agreement language be ordered in a particular fashion. However, the content requirements, which track section 5 of the 1984 Act's provisions, are largely retained.

The agreement modification section, § 535.405, is simplified. The Commission wishes the amendment process to be as expedient and practical as possible. Therefore, it is continuing the customary practice of allowing changes to exist language to be made through the submission of ''revised pages,'' with accompanying market-up pages submitted for illustration purposes. Also, the elimination of the form requirements implicitly provides carriers more flexibility to amend their understandings by filing additional agreement pages or sections. Mandatory republication is eliminated, replaced with a new § 535.405(e), providing that the Commission may mandate republication when it is deemed necessary to maintain the clarity of an agreement. In addition, the waiting period exemption for miscellaneous amendments, set forth in § 535.309, is amended to remove specific form requirements.

Proposed Revised Definition of Ocean Common Carrier

An amended definition of ''ocean common carrier'' is proposed to resolve uncertainty generated by the 1984 Act's definition, which is simply ''a vessel-operating common carrier.'' At issue is part of the regulatory dividing line between ocean common carriers and non-vessel-operating common carriers (''NVOCCs''). The distinction, which was first codified in 1984, has significant implications for the regulatory scheme, inasmuch as the 1984 Act afforded ocean carriers, but not NVOCCs, antitrust immunity and other rights and responsibilities under the 1984 Act. The need for clarity in this area is continued by OSRA, which continues to differentiate between vessel-operating and non-vessel

operating lines with regard to service contracting and other areas.

At first glance, it is difficult to see the ambiguity in the phrase ''vessel-operating.'' However, the Commission staff has encountered a number of complex or debatable administrative issues regarding where and when vessels are operated, and what types of vessels are involved. The staff has long taken a position (albeit an uncodified one) in its dealings with the industry that an ''ocean common carrier'' is a common carrier that, in providing a common carrier service, operates a vessel calling at a U.S. port. If a carrier is an ocean common carrier in one trade, it has been reasoned, it is an ocean common carrier for all trades. For example, if a carrier operates vessels from the U.S. East Coast to northern Europe, it has the legal ''status'' of ocean common carrier to enter into space charter agreements for any U.S.-foreign trade.

The proposed definition would codify the staff's approach. It would continue the practice of determining status on a multi-trade basis (i.e., an ocean common carrier in one trade has that status in all trades). Any interpretation of the statute requiring status determinations to be made on a trade-by-trade basis would be administratively impractical and likely would prompt less than efficient redeployment of vessels in the U.S. trades for purely legal purposes.

The proposed definition would also clarify the issue whether companies that operate vessels only outside the U.S.—i.e., if they have no vessel operations to U.S. ports—can be deemed ''ocean common carriers.'' While the staff's view has been negative, the lack of precedent or formal guidance on this issue warrants that the issue now be resolved by the Commission after an opportunity for interested parties to be heard.

It appears that the legislative intent of the 1984 Act was to view vessel operators as those whose vessels call at U.S. ports and to classify all other common carriers in U.S. commerce as non-vessel-operating common carriers. For example, in its report on the 1984 Act, the Senate Commerce, Science, and Transportation Committee observed:

> The Committee strongly believes that it is in our national interest to permit cooperation among carriers serving our foreign trades to permit efficient and reliable service * * *. Our carriers need; a stable, predictable, and profitable trade with a rate of return that warrants reinvestment and a commitment to serve the trade; greater security in investment * * *.

S. Rep. No. 3, 98th Cong., 1st Sess. 9 (1983). Accordingly, we do not believe that Congress intended to provide special privileges or protections to carriers that have not made the financial commitment to providing vessel service to the United States.

A definition of ocean common carrier that encompassed companies that operate vessels only in foreign-to-foreign trades would substantially broaden the scope of antitrust immunity potentially to include a number of small operators whose wholly foreign vessel operations would be difficult for the Commission to monitor or verify. Such a finding would remove such companies from the scope of the Act's NVOCC bonding requirements, even though they have no vessels or assets in the United States that can be attached to satisfy a Commission or U.S. court judgment; it would remove them from OSRA's licensing requirements as well. Such an approach would also seem to contravene the longstanding judicial policy of narrowly construing antitrust exemptions. *See, e.g., Federal Maritime Commission* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 733 (1973). In addition, from the text of the Act it appears likely that when Congress used the unadorned term ''vessel'' in the definition of ocean common carrier, it was referring to the vessels specified in the definition of common carrier, i.e., those that operate on the high seas or Great Lakes between the United States and a foreign country.

The proposed definition would continue the policy that the vessels in question must be used in a common carrier service. If an NVOCC operates tankers, tramps, or cruise ships wholly apart from its common carrier service, it does not secure ocean common carrier status from those vessel operations.

Other Proposed Changes

Redesignated § 535.102 is amended to reflect that marine terminal agreements are no longer limited to solely international commerce.

The definition of ''common carrier'' in § 535.104(f) is amended to reflect changes made in the 1984 Act by section 424(d) of the Coast Guard Authorization Act. That act inserted a qualified exception in the definition for certain vessels carrying perishable agricultural commodities.

The definition of ''conference agreement,'' in redesignated § 535.104(g) is changed to clarify that the term (and the rule sections that apply it, such as the mandatory independent action requirements) extends only to ocean common carrier conferences, and not to marine terminal conferences, which are defined elsewhere in this part. The definition is also changed to eliminate two seemingly superfluous elements that do not appear to correspond with the statutory text: (1) the requirement that, to be a conference, carriers must agree to collective administrative affairs, and (2) the statement that carriers may have a common tariff and must participate in some tariff. The definition is also amended to reflect that an agreement may offer agreement service contracts without being designated a conference.

The definition of ''effective agreement'' in redesignated § 535.104(j) is changed to remove references to the Shipping Act, 1916, and the definition of ''information form'' in paragraph (m) is amended to clarify that it extends to some types of agreement modifications. ''Marine terminal operator'' is redefined in paragraph (q) to accord with the new definition in OSRA, as discussed above, and the definition of NVOCC is removed, as it no longer appears in this part.

OSRA's changes regarding jurisdiction over marine terminal operators are also reflected in redesignated § 535.201, the list of agreements subject to the Act. Also in that section, the reference to cooperative working agreements with non-vessel-operating common carriers, which the Commission has always found to be irreconcilable with the service contract requirements of the Act, is deleted in accordance with OSRA. Also, references to NVOCC and freight forwarder agreements are removed from the non-subject agreements section, redesignated § 535.202 (f) and (g).

The exemption provisions in redesignated § 535.301 are changed to comport with the new law's more liberal standard. The exemption procedures are being moved to a general (i.e., not agreements-specific) exemption section in the Commission's Rules of Practice and Procedure.

In the marine terminal agreements exemption, redesignated § 535.307, the definition of ''marine terminal conference'' in paragraph (b) is amended to reflect that such agreements do not have to involve solely international commerce. Also, the extraneous references to collective administrative affairs and tariff filing are removed (as with the definition of ''conference agreement'' in redesignated § 535.104(g)). In the marine terminal services exemption in redesignated § 535.310, a definition of marine terminal services is incorporated in paragraph (a), and paragraph (a)(2), which excepts previously filed agreements from the exemption, is removed.

Redesignated § 535.501(a) is amended, and a new § 535.503(b) is

added to make clear that agreement modifications that expand the geographic scope or change the class designation of the underlying agreement must be accompanied by an appropriate information form. Also, redesignated § 535.706(c)(1) is amended to accord with OSRA's changed tariff requirements.

The mandatory provisions for independent action for conferences in redesignated § 535.801 are changed to reflect that shortened notice period, from ten to five days. Also, the rules are amended to reflect the statutory change that conferences must allow independent action on all rates and service items, not just those required to be included in tariffs. That is, if a conference fixes a rate on a commodity exempt from tariff publication, for example, waste paper, it must allow members to take independent action on the waste paper rates. If the conference publishes a waste paper rate in its tariff (it does not have to, but it can do so voluntarily), then it must publish the member's IA waste paper rates as well. Section 535.801(i), a transitional provision that applied to the 90-day period immediately after the IA rules were adopted, is deleted.

The Commission is also proposing to add a new reporting requirement to Appendices A, C and D, to effectively implement OSRA's new prohibitions in section 10(c)(7–8), discussed above, barring discrimination against ocean transportation intermediaries and shippers' associations based on status. The amendment would require each member of an agreement to provide summary statistics on its service contract activities, by class of shipper. The report would be required for both the benchmark information form filed with Class A/B agreements, and for the ongoing quarterly monitoring reports filed for Class A and B agreements. It is incumbent upon the Commission to actively monitor these practices, as violations of the new 10(c)(7–8) may well go undiscovered by affected parties, given the new confidentiality of service contracts.

The reporting, recordkeeping and disclosure requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB). This proposed regulation reduces the overall public burden of collection of information by 4.57%. The proposed regulation would reduce the average personhours per response from 43.3 to 41.3. These estimates include, as applicable, 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 respond to a collection of information, search existing data sources, gathering and maintain the data needed, and complete and review the collection of information; and transmit or otherwise disclose the information.

Send comments regarding the burden estimates to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention Desk Officer for the Federal Maritime Commission, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503 within 30 days of publication in the **Federal Register**.

The FMC would also like to solicit comments to: (a) 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; (b) evaluate the accuracy of the Commission's burden estimates for the proposed collection of information; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this proposed rulemaking will be summarized and/or included in the final rule and will become a matter of public record.

The Chairman certifies, pursuant to section 605 of the Regulatory Flexibility Act, 5 U.S.C. 605, that the proposed rules will not, if promulgated, have a significant impact on a substantial number of small entities. The affected universe of parties is limited to ocean common carriers, passenger vessel operators, and marine terminal operators. The Commission has determined that these entities do not come under the programs and policies mandated by the Small Business Regulatory Enforcement Fairness Act as they typically exceed the threshold figures for number of employees and/or annual receipts to qualify as a small entity under Small Business Administration Guidelines.

List of Subjects in 46 CFR Parts 535 and 572

Administrative practice and procedure, Maritime carriers, Reporting and recordkeeping requirements.

Therefore, for the reasons set forth above, Title 46, Code of Federal Regulations, is proposed to be amended as follows:

PART 572—AGREEMENTS BY OCEAN COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT OF 1984

1. The authority citation for part 572 is revised to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1701–1707, 1709–1710, 1712 and 1714–1717; Pub. L. 104–88, 109 Stat. 803, (49 U.S.C. 101 note).

2. Redesignate part 572 as part 535 of subchapter B, chapter IV of 46 CFR.

3. Revise redesignated § 535.101 to read as follows:

§ 535.101 Authority.

The rules in this part are issued pursuant to the authority of section 4 of the Administrative Procedure Act (5 U.S.C. 553), sections 2, 3, 4, 5, 6, 7, 8, 10, 11, 13, 15, 16, 17 and 19 of the Shipping Act of 1984 (''the Act''), and the Ocean Shipping Reform Act of 1998, Pub. L. 104–88, 109 Stat. 803.

4. Amend redesignated section 535.102 to remove the parenthetical phrase ''(to the extent the agreements involve ocean transportation in the foreign commerce of the United States)''.

5. Amend redesignated section 535.103 to add paragraph (h) to read as follows:

§ 535.103 Policies.

* * * * *

(h) In order to promote competitive and efficient transportation and a greater reliance on the marketplace, the Act places limits on carriers' agreements regarding service contracts. Carriers may not enter into an agreement to prohibit or restrict members from engaging in contract negotiations, may not require members to disclose service contract negotiations or terms and conditions (other than those required to be published), and may not adopt mandatory rules or requirements affecting the right of an agreement member or agreement members to negotiate and enter into contracts. However, agreement members may adopt voluntary guidelines covering the terms and procedures of members' contracts.

6. Amend redesignated § 535.104 as follows: paragraphs (f), (g), (j), (m) and (q) are revised, paragraph (u) is removed, paragraph (v) is redesignated (u) and revised, paragraphs (w), (x), (y),(z), (aa), (bb) and (cc) are redesignated (v), (w), (x), (y), (z), (aa) and (bb), paragraph (dd) is redesignated (cc) and revised, paragraph (ee) is

redesignated (dd) and revised, paragraphs (ff), (gg), (hh), (ii), (jj), and (kk) are redesignated (ee), (ff), (gg), (hh), (ii) and (jj), as follows:

§ 535.104 Definitions.

* * * * *

(f) *Common carrier* means a person holding itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(g) *Conference agreement* means an agreement between or among two or more ocean common carriers which provides for the fixing of and adherence to uniform tariff rates, charges, practices and conditions of service relating to the receipt, carriage, handling and/or delivery of passengers or cargo for all members. The term does not include joint service, pooling, sailing, space charter, or transshipment agreements.

* * * * *

(j) *Effective agreement* means an agreement effective under the Act.

* * * * *

(m) *Information form* means the form containing economic information which must accompany the filing of certain kinds of agreements and agreement modifications.

* * * * *

(q) *Marine terminal operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49 U.S.C. This term does not include shippers or consignees who exclusively furnish marine terminal facilities or services in connection with tendering or receiving proprietary cargo from a common carrier or water carrier.

* * * * *

(u) *Ocean common carrier* means a common carrier that operates, for all or part of its common carrier service, a vessel on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel-tanker.

* * * * *

(cc) *Service contract* means a written contract, other than a bill of lading or a receipt, between one or more shippers and an individual ocean common carrier or an agreement between or among ocean common carriers in which the shipper or shippers make a commitment to provide a certain volume or portion of cargo over a fixed time period, and the ocean common carrier or the agreement commits to a certain rate or rate schedule and a defined service level—such as assured space, transit time, port rotation, or similar service features. The contract may also specify provisions in the event of nonperformance on the part of any party.

(dd) *Shipper* means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation is provided;

(3) The person to whom delivery is to be made;

(4) A shippers' association; or

(5) A non-vessel-operating common carrier (i.e., a common carrier that does not operate the vessels by which the ocean transportation is provided and is a shipper in its relationship with an ocean common carrier) that accepts responsibility for payment of all charges applicable under the tariff or service contract.

* * * * *

7. Amend redesignated § 535.201 to revise paragraphs (a)(5), (a)(6), (a)(7) and (b) to read as follows:

§ 535.201 Subject agreements.

(a) * * *

(5) Engage in exclusive, preferential, or cooperative working arrangements among themselves or with one or more marine terminal operators;

(6) Control, regulate, or prevent competition in international ocean transportation; or

(7) Discuss and agree on any matter related to service contracts.

(b) *Marine terminal operator agreements.* This part applies to agreements among marine terminal operators and among one or more marine terminal operators and one or more ocean carriers to:

(1) Discuss, fix, or regulate rates or other conditions of service; or

(2) Engage in exclusive, preferential, or cooperative working arrangements, to the extent that such agreements involve ocean transportation in the foreign commerce of the United States.

8. Amend redesignated § 535.202 to revise paragraphs (d) and (e) and to remove paragraphs (f) and (g) to read as follows:

§ 535.202 Non-subject agreements.

* * * * *

(d) Any agreement among common carriers to establish, operate, or maintain a marine terminal in the United States; and

(e) Any agreement among marine terminal operators which exclusively and solely involves transportation in the interstate commerce of the United States.

9. Amend § 535.301 to revise paragraphs (a) and (c), to remove paragraphs (d) and (e), and to redesignate paragraph (f) as paragraph (d) and revise it to read as follows:

§ 535.301 Exemption procedures.

(a) *Authority.* The Commission, upon application or its own motion, may by order or rule exempt for the future any class of agreements between persons subject to the Act from any requirement of the Act if it finds that the exemption will not result in substantial reduction in competition or be detrimental to commerce.

* * * * *

(c) *Application for exemption.* Applications for exemptions shall conform to the general filing requirements for exemptions set forth at § 502.67 of this title.

(d) *Retention of agreement by parties.* Any agreement which has been exempted by the Commission pursuant to section 16 of the Act shall be retained by the parties and shall be available upon request by the Bureau of Economics and Agreement Analysis for inspection during the term of the agreement and for a period of three years after its termination.

10. Amend redesignated § 535.307 to revise paragraph (b) to read as follows:

§ 535.307 Marine terminal agreements—exemption.

* * * * *

(b) Marine terminal conference agreement means an agreement between or among two or more marine terminal operators and/or ocean common carriers for the conduct or facilitation of marine

terminal operations which provides for the fixing of and adherence to uniform maritime terminal rates, charges, practices and conditions of service relating to the receipt, handling, and/or delivery of passengers or cargo for all members.

* * * * *

11. Amend redesignated § 535.309 to revise paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) to read as follows:

§ 535.309. Miscellaneous modifications to agreements—exemptions.

(a) * * *

(2) Any modification to the following:

(i) Parties to the agreement (limited to conference agreements, voluntary ratemaking agreements having no other anticompetitive authority (e.g., pooling authority or capacity reduction authority), and discussion agreements among passenger vessel operating common carriers which are open to all ocean common carriers operating passenger vessels of a class defined in the agreements and which do not contain ratemaking, pooling, joint service, sailing or space chartering authority.

(ii) Officials of the agreement and delegations of authority.

(iii) Neutral body policing (limited to the description of neutral body authority and procedures related thereto).

* * * * *

12. Amend redesignated § 535.310 by revising paragraph (a) to read as follows:

§ 535.310 Marine terminal services agreements—exemptions.

(a) *Marine terminal services agreement* means an agreement, contract, understanding, arrangement or association, written or oral (including any modification, cancellation or appendix) between a marine terminal operator and an ocean common carrier that applies to marine terminal services, including checking; dockage; free time; handling; heavy lift; loading and unloading; terminal storage; usage; wharfage; and wharf demurrage and including any marine terminal facilities which may be provided incidentally to such marine terminal services) that are provided to and paid for by an ocean common carrier. The term ''marine terminal services agreement'' does not include any agreement which conveys to the involved carrier any rights to operate any marine terminal facility by means of a lease, license, permit, assignment, land rental, or similar other arrangement for the use of marine terminal facilities or property.

* * * * *

13. Amend redesignated § 535.402 to revise paragraphs (a), (b) introductory text, (d) and (e) and remove paragraphs (f) and (g) to read as follows:

§ 535.402 Form of agreements.

* * * * *

(a) Agreements shall be clearly and legibly written. Agreements in a language other than English shall be accompanied by an English translation.

(b) Every agreement shall include or be accompanied by a title page indicating:

* * * * *

(d) Each agreement and/or modification filed will be signed in the original by an official or authorized representative of each of the parties and shall indicate the typewritten full name of the signing party and his or her position, including organizational affiliation. Faxed or photocopied signatures will be accepted if replaced with an original signature as soon as practicable before the effective date.

(e) Every agreement shall include or be accompanied by a Table of Contents providing for the location of all agreement provisions.

14. Revise redesignated § 535.403 to read as follows:

§ 535.403 Agreement provisions.

If the following information (necessary for the expeditious processing of the agreement filing) does not appear fully in the text of the agreement, it shall be indicated in an attachment or appendix to the agreement, or on the title page:

(a) *Details regarding parties*. Indicate the full legal name of each party, including any FMC-assigned agreement number associated with that name; and the address of its principal office (to the exclusion of the address of any agent or representative not an employee of the participating carrier or association).

(b) *Geographic scope of the agreement*. State the ports or port ranges to which the agreement applies and any inland points or areas to which it also applies with respect to the exercise of the collective activities contemplated and authorized in the agreement.

(c) *Officials of the agreement and delegations of authority*. Specify, by organizational title, the administrative and executive officials determined by the parties to the agreement to be responsible for designated affairs of the agreement and the respective duties and authorities delegated to those officials. At a minimum, specify:

(1) The officials with authority to file agreements and agreement modifications and to submit associated supporting materials or with authority to delegate such authority; and

(2) A statement as to any designated U.S. representative of the agreement required by this chapter.

15. Revise redesignated § 535.404 to read as follows:

§ 535.404 Organization of conference and interconference agreements.

(a) Each conference agreement shall include the following:

(1) *Neutral body policing.* State that, at the request of any member, the conference shall engage the services of an independent neutral body to fully police the obligations of the conference and its members. Include a description of any such neutral body authority and procedures related thereto.

(2) *Prohibited acts.* State affirmatively that the conference shall not engage in conduct prohibited by section 10(c)(1) or 10(c)(3) of the Act.

(3) *Consultation: Shippers' requests and complaints.* Specify the procedures for consultation with shippers and for handling shippers' requests and complaints.

(4) *Independent action.* Include provisions for independent action in accordance with § 535.801 of this part.

(b) (1) Each agreement between carriers not members of the same conference must provide the right of independent action for each carrier.

(2) Each interconference agreement must provide the right of independent action for each conference and specify the procedures therefor.

16. Amend redesignated § 535.405 by revising paragraphs (a), (b), (c), (d) and (e), and removing paragraphs (f) and (g) to read as follows:

§ 535.405 Modification of agreements.

* * * * *

(a) Agreement modifications shall be: filed in accordance with the provisions of § 535.401 and in the format specified in § 535.402.

(b) Agreement modifications shall be made by reprinting the entire page on which the matter being changed is published (''revised pages''). Revised pages shall indicate the consecutive denomination of the revision (e.g., ''1st Revised Page 7''). Additional material may be published on a new original page. New pages inserted between existing pages shall be numbered with an appropriate suffix (e.g., a page inserted between page 7 and page 8 shall be numbered 7a, 7.1, or similarly).

(c) If the modification is made by the use of revised pages, the modification shall be accompanied by a page, submitted for illustrative purposes only, indicating the language being modified

in the following manner (unless such marks are apparent on the face of the agreement):

(1) Language being deleted or superseded shall be struck through; and,

(2) New and initial or replacement language shall immediately follow the language being superseded and be underlined.

(d) If a modification requires the relocation of the provisions of the agreement, such modification shall be accompanied by a revised Table of Contents page which shall report the new location of the agreement's provisions.

(e) When deemed necessary to ensure the clarity of an agreement, the Commission may require parties to republish their entire agreement, incorporating such modifications as have been made. No Information Form requirements apply to the filing of a republished agreement.

17. Revise redesignated § 535.501(a) to read as follows:

§ 535.501 General requirements.

(a) Certain agreement filings must be accompanied with an Information Form setting forth information and data on the filing parties' prior cargo carryings, revenue results and port service patterns.

* * * * *

18. Amend redesignated § 535.502 by revising paragraphs (a)(1), (a)(3), (a)(4), (a)(5), (b)(1), and (b)(2) to read as follows:

§ 535.502 Subject agreements.

* * * * *

(a) * * *

(1) A rate agreement as defined in § 535.104(aa);

(2) * * *

(3) A pooling agreement as defined in § 535.104(x);

(4) An agreement authorizing discussion or exchange of data on vessel-operating costs as defined in § 535.104(jj); or

(5) An agreement authorizing regulation or discussion of service contracts as defined in § 535.104(cc).

(b) * * *

(1) A sailing agreement as defined in § 535.104(bb); or

(2) A space charter agreement as defined in § 535.104(gg).

19. Amend redesignated § 535.503 by redesignating the text as one paragraph (a) and by adding new paragraph (b) to read as follows:

§ 535.503 Information form for Class A/B agreements.

(a) * * *

(b) Modifications to Class A/B agreements that expand the geographic scope of the agreement or modifications to Class C agreements that change the class of the agreement from C to A/B must be accompanied by an Information Form for Class A/B agreements.

20. Amend redesignated § 535.706 by revising paragraph (c)(1) to read as follows:

§ 535.706 Filing of minutes—-including shippers' requests and complaints, and consultations.

* * * * *

(c) * * *

(1) Rates that, if adopted, would be required to be published in the pertinent tariff except that this exemption does not apply to discussions limited to general rate policy, general rate changes, the opening or closing of rates, or service or time/volume contracts; or

* * * * *

21. Amend Subpart H—Conference Agreements by revising the title to read as follows:

Subpart H—Mandatory and Prohibited Provisions

22. Amend redesignated § 535.801 by: revising paragraphs (a), (b)(1), (d), (e), the final sentence of paragraph (f)(1), and (f)(2); removing paragraph (i); and redesignating paragraphs (j) as (i) and (k) as (j), to read as follows:

§ 535.801 Independent action.

(a) Each conference agreement shall specify the independent action (''IA'') procedures of the conference, which shall provide that any conference member may take independent action on any rate or service item upon not more than 5 calendar days' notice to the conference and shall otherwise be in conformance with section 5(b)(8) of the Act.

(b)(1) Each conference agreement that provides for a period of notice for independent action shall establish a fixed or maximum period of notice to the conference. A conference agreement shall not require or permit a conference member to give more than 5 calendar days' notice to the conference, except that in the case of a new or increased rate the notice period shall conform to the tariff publication requirements of this chapter.

* * * * *

(d) A conference agreement shall not require a member who proposes independent action to attend a conference meeting, to submit any further information other than that necessary to accomplish the publication of the independent tariff item, or to comply with any other procedure for the purpose of explaining, justifying, or compromising the proposed independent action.

(e) A conference agreement shall specify that any new rate or service item proposed by a member under independent action (except for exempt commodities not published in the conference tariff) shall be included by the conference in its tariff for use by that member effective no later than 5 calendar days after receipt of the notice and by any other member that notifies the conference that it elects to adopt the independent rate or service item on or after its effective date.

(f)(1) * * * Additionally, if a party to an agreement chooses to take on an IA of another party, but alters it, such action is considered a new IA and must be published pursuant to the IA publication and notice provisions of the applicable agreement.

(2) An IA TVR published by a member of a ratemaking agreement may be adopted by another member of the agreement, provided that the adopting member takes on the original IA TVR in its entirety without change to any aspect of the original rate offering (except beginning and ending dates in the time period) (i.e., a separate TVR with a separate volume of cargo but for the same duration). Any subsequent IA TVR offering which results in a change in any aspect of the original IA TVR, other than the name of the offering carrier or the beginning date of the adopting IA TVR, is a new independent action and shall be processed in accordance with the provisions of the applicable agreement. The adoption procedures discussed above do not authorize the participation by an adopting carrier in the cargo volume of the originating carrier's IA TVR. Member lines may publish and participate in joint IA TVRs, if permitted to do so under the terms of their agreement; however, no carrier may participate in an IA TVR already published by another carrier.

* * * * *

23. Revise redesignated § 535.802 to read as follows:

§ 535.802 Service contracts.

(a) Carriers may not agree among themselves (whether on an enforceable basis or otherwise) to prohibit or restrict themselves from engaging in negotiations for service contracts with one or more shippers, and may not adopt any policy, practice, or procedures that have the effect of prohibiting or restricting such negotiations.

(b) Carriers may not agree among themselves (whether on an enforceable basis or otherwise) to require

themselves to disclose a negotiation on a service contract, or the terms and conditions of a service contract, other than those terms or conditions required by the Act to be published, and may not adopt any policy, practice, or procedures that have the effect of requiring such disclosures.

(c) Carriers may not adopt mandatory rules or requirements affecting their rights to negotiate or enter into service contracts.

(d) Carriers may adopt voluntary guidelines for service contracts. Voluntary guidelines are non-binding policies, outlines, directions or models for:

(1) the contract terms a carrier or carriers may include in the texts of their individual contracts; or

(2) the procedures that a carrier or carriers may follow in negotiating, modifying, or terminating contracts with shipper customers.

(e) Carriers may consult voluntary guidelines as guidance for negotiating and considering service contracts. Whether voluntary guidelines are utilized shall be wholly at the option of the negotiating carrier. Voluntary guidelines must state explicitly the right of members of the agreement not to follow these guidelines.

(f) Voluntary guidelines may not include commitments, policies, or procedures for: auditing by or reporting to agreement officials or other carriers regarding compliance with guideline terms or procedures; notification or pre-clearance of negotiations or proposed service contract terms with other carriers or agreement officials; or imposition or acceptance of any liability or sanction whatsoever for non-compliance with guideline terms.

(g) Voluntary guidelines shall be submitted to the Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, Washington, DC 20573. Use of voluntary guidelines prior to their submission is prohibited. Voluntary guidelines shall be kept confidential in accordance with section 535.608 of this part.

(h) Carriers may adopt procedures for discussing, voting on, and administering agreement-wide or multi-carrier service contracts (and negotiations therefor). Such provisions shall be included in the parties' agreement filing with the Commission.

24. Amend Subpart H—Mandatory and Prohibited Provisions by adding new § 535.803 to read as follows:

§ 535.803 Ocean freight forwarder compensation.

No conference or group of two or more ocean common carriers may

(a) deny to any member of such conference or group the right, upon notice of not more than 5 calendar days, to take independent action on any level of compensation paid to an ocean freight forwarder; or

(b) agree to limit the payment of compensation to an ocean freight forwarder to less than 1.25 percent of the aggregate of all rates and charges applicable under the tariff assessed against the cargo on which the forwarding services are provided.

25. Amend Part IX of Appendix A to Part 535—Federal Maritime Commission Information Form for Certain Agreements by or among Ocean Common Carriers, by redesignating it as Part X.

26. Amend Appendix A to Part 535 by adding new Part IX to read as follows:

Part IX

For each agreement member line that served all or any part of the geographic area covered by the entire agreement during all or any part of the most recent 12-month period for which complete data are available, state the total number of service contract requests received, the total number adopted, and the total number denied. Of the total number of service contract requests received, adopted and denied, state how many were for Beneficial Cargo Owners, how many were for Ocean Transportation Intermediaries (formerly NVOCCs), how many were for Shippers' Associations, and how many were for any other shipper designation. The information should be provided in the format below:

TIME PERIOD

[Same as that used in responding to Part V]

	Carrier A		
	Requested	Adopted	Denied
Beneficial Cargo Owner Ocean Transportation Intermediary (formerly NVOCCs) Shippers' Association Other*			
Total			

* Identify type

	Carrier B		
	Requested	Adopted	Denied
Beneficial Cargo Owner Ocean Transportation Intermediary (formerly NVOCCs) Shippers' Association Other*			
Total			

* Identify type

27. Amend Appendix C to Part 535—Monitoring Report for Class A Agreements Between or Among Ocean Common Carriers FORM, by redesignating Part X as Part XI.

28. Amend Appendix C to Part 535—Monitoring Report for Class A Agreements Between or Among Ocean Common Carriers FORM, by adding new Part X to read as follows:

Part X

For each agreement member line, state the total number of service contract requests received, the total number adopted, and the total number denied during the calendar quarter. Of the total number of service contract requests received, adopted and denied during the calendar quarter, state how many were for Beneficial Cargo Owners, how many were for Ocean Transportation Intermediaries (formerly NVOCCs), how many were for Shippers' Associations, and how many were for any other shipper designation. The information should be provided in the format below:

CALENDAR QUARTER

	Carrier A		
	Requested	Adopted	Denied
Beneficial Cargo Owner Ocean Transportation Intermediary (formerly NVOCCs) Shippers' Association Other*			
Total			

*Identify type

	Carrier B		
	Requested	Adopted	Denied
Beneficial Cargo Owner Ocean Transportation Intermediary (formerly NVOCCs) Shippers' Association Other*			
Total			

*Identify type

29. Amend Appendix D to Part 535—Monitoring Report for Class B Agreements Between or Among Ocean Common Carriers [FORM], by redesignating Part VI as Part VII.

30. Amend Appendix D to Part 535—Monitoring Report for Class B Agreements Between or Among Ocean Common Carriers [FORM], by adding new Part VI to read as follows:

Part VI

For each agreement member line, state the total number of service contract requests received, the total number adopted, and the total number denied during the calendar quarter. Of the total number of service contract requests received, adopted and denied during the calendar quarter, state how many were for Beneficial Cargo Owners, how many were for Ocean Transportation Intermediaries (formerly NVOCCs), how many were for Shippers' Associations, and how many were for any other shipper designation. The information should be provided in the format below:

CALENDAR QUARTER

	Carrier A		
	Requested	Adopted	Denied
Beneficial Cargo Owner Ocean Transportation Intermediary (formerly NVOCCs) Shippers' Association Other*			
Total			

*Identify type

	Carrier B		
	Requested	Adopted	Denied
Beneficial Cargo Owner Ocean Transportation Intermediary (formerly NVOCCs) Shippers' Association Other*			
Total			

*Identify type

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–33182 Filed 12–14–98; 8:45 am]

BILLING CODE 6730–01–P

Notices

Federal Register

Vol. 63, No. 240

Tuesday, December 15, 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 COMMERCE

International Trade Administration

[C–580–818]

Cold-Rolled Carbon Steel Flat-Rolled Products and Corrosion-Resistant Carbon Steel Flat-Rolled Products from the Republic of Korea; Termination of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Termination of Countervailing Duty Administrative Review.

SUMMARY: On September 29, 1998 (63 FR 51893), in response to requests from Pohang Iron & Steel Co., Ltd., Pohang Coated Steel Co., Ltd., Pohang Steel Industries Co., Ltd., Union Steel Manufacturing Co., Ltd., and Dongbu Steel Co., Ltd. (respondents), the Department of Commerce (the Department) initiated administrative reviews of the countervailing duty orders on cold-rolled carbon steel flat-rolled products and corrosion-resistant carbon steel flat-rolled products from the Republic of Korea, for the period January 1, 1997 through December 31, 1997. In accordance with 19 CFR 351.213(d)(1), the Department is now terminating these reviews because the respondents have withdrawn their requests for reviews.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Eva Temkin or Christopher Cassel, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations as codified at 19 CFR Part 351 (1998).

Background

On August 31, 1998, the Department received requests for administrative reviews of these countervailing duty orders from the respondents for the period January 1, 1997, through December 31, 1997. No other interested party requested reviews of these countervailing duty orders. On September 29, 1998, the Department published in the **Federal Register** (63 FR 51893) a notice of ''Initiation of Countervailing Duty Administrative Review'' initiating the administrative reviews of respondents for that period. On November 24, 1998, respondents withdrew their requests for reviews.

Section 19 CFR 351.213(d)(1) of the Department's regulations stipulates that the Secretary may permit a party that requests a review to withdraw the request not later than 90 days after the date of publication of the notice of initiation of the requested review. In this case, respondents have withdrawn their requests for reviews within the 90-day period. No other interested party requested a review and we have received no other submissions regarding respondents' withdrawal of their requests for reviews. Therefore, we are terminating these reviews of the countervailing duty orders on cold-rolled carbon steel flat-rolled products and corrosion-resistant carbon steel flat-rolled products from the Republic of Korea.

This notice is published in accordance with section 751 of the Act and section 19 CFR 351.213(d)(1) of the Department's regulations.

Dated: December 7, 1998.

Holly A. Kuga,

Acting Deputy Assistant Secretary for AD/CVD Enforcement Group II.

[FR Doc. 98–33211 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–559–001]

Final Results of Countervailing Duty Administrative Review: Certain Refrigeration Compressors from the Republic of Singapore

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Countervailing Duty Administrative Review.

EFFECTIVE DATE: December 15, 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: On August 11, 1998, the Department of Commerce published the preliminary results of its administrative review of the Agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

In our preliminary results of review, we preliminarily determined that the signatories to the Suspension Agreement complied with the terms of the Agreement during the period of review (POR). We gave interested parties an opportunity to comment on our preliminary results. We received comments from petitioner Tecumseh Products Company (''Tecumseh'') and respondents, the Government of the Republic of Singapore (GOS), Matsushita Refrigeration Industries (Singapore) Pte. Ltd. (MARIS), and Asia Matsushita Electric (Singapore) Pte. Ltd. (AMS).

We have now completed this review, the fourteenth review of this Agreement, and determine that the Government of the Republic of Singapore, MARIS, and AMS, the signatories to the Suspension Agreement, have complied with the terms of the Agreement during the period April 1, 1996 through March 31, 1997. Based on our analysis of the comments received, we have not changed the results from those

presented in the preliminary results of review.

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 CFR part 351 (62 FR 27296, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On August 11, 1998, the Department of Commerce (the Department) published in the **Federal Register** (63 FR 42825) the preliminary results of its administrative review of the Agreement suspending the countervailing duty investigation on certain refrigeration compressors from the Republic of Singapore.

In our preliminary results of review, we preliminarily determined that the signatories to the Suspension Agreement complied with the terms of the Agreement during the period of review (POR). We gave interested parties an opportunity to comment on our preliminary results. We received comments from petitioner and respondents. We have now completed this administrative review in accordance with section 751 of the Act.

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 dispostive.

The review period is April 1, 1996 through March 31, 1997, and includes two 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 by the Department to exist 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 Certain Refrigeration Compressors from the Republic of Singapore: Suspension of the Countervailing Duty Investigation.* (''Suspension Agreement'') 48 FR 51167, 51170 (November 7, 1983).

Analysis of Comments Received

Comment 1: Petitioner claims that Singapore's tax laws permit delays in assessment and collection that can result in erroneous determinations of the proper export charge under the Suspension Agreement. Petitioner notes that under Singapore's tax laws, assessment and collection of taxes can be negotiated up to six years following the year under consideration. Thus, as a result, the Department must complete its final determination for each annual review period based upon the provisional data. For example, petitioner notes that, following the publication of the final results of the most recently completed review, MARIS submitted for the record on the current review another calculation for the export charge for the previous review. Petitioner argues that if the updated tax information had been received prior to the final results of review, the export charge rate would have doubled. Petitioner notes that essentially the same fact pattern was in effect in the two most recent administrative reviews (12th and 13th). Petitioner contends that the Department's determinations in the 12th and 13th reviews may not reflect the total benefits relating to those periods as their respective tax assessments have not been finalized.

Petitioner argues that the Department should require respondents to submit information on all tax liabilities made final during the POR, regardless of when the liability accrued, and then to adjust the current POR's calculations to reflect the benefits not previously accounted for in the earlier POR. Petitioner contends that the Department's use of provisional tax data where final assessments are not available provides an incentive to respondents to delay final determination of tax liabilities until an administrative review has been concluded.

Respondents argue that there is no basis for the Department to reexamine benefits allegedly provided in prior reviews. Respondents assert that the Singapore tax system allows for negotiation of assessments for the purpose of ensuring a fair tax assessment, not, as petitioner contends, for the purpose of delay or forgiveness of the tax liability. Respondents contend that the Singapore tax system functions like those of many other countries in allowing the taxpayer to object to and appeal a tax interpretation with which it disagrees. Respondents argue that the Department should reject petitioner's request to require respondents to submit information on tax liabilities made final during any POR, regardless of when the liability accrued, and then to adjust current year calculations to reflect any benefits recognized after reviews were completed. In support of their position, respondents make the following five arguments.

First, respondents assert that both petitioner and the Department have long been aware of the Singapore tax system and how it operates, and that the Department knowingly used provisional tax computations when final tax computations were not available. Second, respondents note that the Department has made many determinations involving the Singaporean tax system, and has a long-standing practice of calculating benefits received based on the latest income tax information available (citing, *e.g., Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Singapore,* 57 FR 4987 (Feb. 11, 1992); *Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from Singapore,* 56 FR 9681 (March 7, 1991); *Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, from Singapore,* 54 FR 15520 (April 18, 1989)). Additionally, respondents argue that the Department has consistently taken the position that it will not adopt a change in methodology absent some intervening change in either the basic facts or the governing law (citing *Certain Compressors from the Republic of Singapore,* 55 FR 53028, 53029 (Dec. 26, 1990)). Respondents contend that no such change in either the facts of the case or to the governing law has occurred and therefore, the Department has no basis to revise its practice.

Third, respondents argue that there is no support for petitioner's contention that respondents have no incentive to prepare an accurate and timely tax return. Respondents contend that the Department has explicitly relied on the IRAS's oversight function to ensure that taxation figures submitted to the Department are accurate and verified the accuracy of those figures over the last fifteen years during previous reviews (citing, *e.g., Certain Refrigeration Compressors from the Republic of Singapore,* 53 FR 25647, 25648 (July 8, 1988); *Certain Refrigeration Compressors from the Republic of Singapore,* 53 FR 7778, 7779 (March 10, 1988); *Certain Refrigeration Compressors from the Republic of*

Singapore, 50 FR 6025, 6026 (Feb. 13, 1985)).

Fourth, respondents argue that as a matter of law, the Department cannot open prior administrative reviews. Respondents assert that under U.S. law (specifically, 19 U.S.C. § 1675(a)(1)), each administrative review is a separate proceeding, conducted based upon its own record. Additionally, respondents contend that previous entries that were covered in a prior review cannot be assessed an additional export charge once their countervailable status has been determined (citing *FAG Kugelfischer Georg Schafer KGaA* v. *United States,* 932 F.Supp. 315 (CIT 1996)).

Finally, respondents contend that the Suspension Agreement does not allow further adjustments to an export charge once a final export charge has been imposed, and that there is no provision providing for the collection of any other charges after the collection of the annual adjustment. Respondents point out that the Suspension Agreement explicitly requires the GOS to collect the annual adjustment ''within 30 days of notification by the Department of its determination'' in a review. *See* Suspension Agreement at paragraph B.4.c, reprinted in *Certain Refrigeration Compressors from the Republic of Singapore,* 48 FR 51167, 51170 (Nov. 7, 1983) (''Suspension Agreement'').

Department's Position: We disagree with petitioners. At the request of the Department in this and the previous review, respondents have provided updated tax information as it became available. *See, e.g., Certain Refrigeration Compressors from the Republic of Singapore: Fourteenth Administrative Review,* Questionnaire Response, September 10, 1998; *Certain Refrigeration Compressors from the Republic of Singapore: Thirteenth Administrative Review,* Questionnaire Response, April 6, 1998. We first note that the revised calculation submitted by respondent was not finalized during the current review, and indeed respondents reported that no tax assessments for any prior period of review had been finalized during the current period of review. *See Certain Refrigeration Compressors from the Republic of Singapore: Fourteenth Review,* Rebuttal to Petitioner's Comments, May 21, 1998. As such, no benefits relating to a prior review were recognized during the current period of review.

Even if we were to recalculate the margin using the most recent revised tax calculation (submitted in the current review after the corresponding review had been completed), the total countervailing duty rate calculated for respondents for the relevant period of review would still remain de minimis. *See Certain Refrigeration Compressors from the Republic of Singapore: Fourteenth Review;* Petitioner's Brief, September 10, 1998, Exhibit 1. Similarly, the Department reviewed petitioner's same assertion during the previous review, and determined that an export charge calculation based on the revised information would have remained de minimis. *See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailing Duty Administrative Review,* 63 FR at 32851 (June 16, 1998).

Nevertheless, we disagree with respondents' assertion that they are only required to provide the Department with updated tax computations when the updates occur prior to the completion of the administrative review to which they pertain. Under paragraph C.1. of the Suspension Agreement, the signatories to the Agreement ''agree to supply to the Department any information and documentation the Department deems necessary to demonstrate that they are in full compliance with the Agreement.'' *See* Suspension Agreement at 51170. Despite respondents' argument presented in its rebuttal brief, we note that, in response to the Department's request, respondents appeared to acknowledge this authority. That is, respondents did in fact provide tax statements for the previous period of review, even though that review had been completed. *See* Supplemental Questionnaire Response of September 3, 1998, Exhibit A. While the Department does not reopen prior administrative reviews, this procedural restriction does not equate with a lack of authority to review overall compliance with the Suspension Agreement, particularly when the Suspension Agreement itself allows for such review. Indeed, under section 751(a)(1)(C) of the Act, the Department can ''review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy * * * involved in the agreement * * *''. Therefore, the Department has full authority to require respondents to provide tax assessment information, not only for the present period of review, but for all prior reviews where tax assessments were revised or finalized during the instant POR.

Comment 2: Petitioner claims that respondents have refused to provide the information required by the Suspension Agreement and requested by the Department. Petitioner claims that respondent has not met its obligations to provide complete and updated information, specifically with regard to respondent's income tax liabilities (as argued in Comment 1 by petitioner). Petitioner notes that respondents made several commitments: to advise the Department if MARIS's tax liability increased; to provide final tax calculations; and to provide this information regardless of the period currently under review. Petitioner claims that MARIS failed to notify the Department of its modified tax assessment for the 12th and 13th reviews during the course of the 13th administrative review period.

Petitioner argues that the Department should require respondents to provide more regular reporting of information relating to taxes owed. Petitioner suggests that, as the Government of Singapore is required by the Suspension Agreement under paragraph C.2.2 (*See* Suspension Agreement at 51170) to provide a quarterly certification that it continues to be in compliance with the Agreement, the Department should require that tax liability information (updated quarterly) be included in the quarterly report. Petitioner also suggests that the Department should advise respondents that failure to adhere to promises to supply information will result in the application of adverse information available.

Respondents argue that there is no basis in the Suspension Agreement to require the GOS to provide financial or tax information on a quarterly basis. Respondents assert that, contrary to petitioner's contention, they have consistently indicated in their responses that the tax calculations submitted were provisional and that respondents would supplement their response if assessments were finalized prior to the completion of the review. Additionally, respondents point out that each of the alleged failures to provide information relate to prior reviews, and that petitioner has no basis for complaint in the current review.

Department's Position: We disagree with petitioner. Petitioner contends that respondents failed to provide information during the course of the previous review. This argument was considered by the Department in the previous review, where we found that respondents had not failed to provide information in response to requests from the Department. *See Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailable Duty Administrative Review,* 63 FR at 32852 (June 16, 1998). Petitioner has not made any contention regarding a failure to submit

information during the current POR, and therefore, there is no basis to further consider petitioner's claims within the context of this administrative review. While we do not agree with respondent's assertion that the Suspension Agreement provides no basis to require the GOS to provide financial or tax information on a quarterly basis (*see* Suspension Agreement, paragraph C, 48 FR at 51170), at this time, we do not find it necessary to require such information from the GOS.

Comment 3: Petitioner claims that respondents have submitted false information to the Department. Petitioner claims that respondents submitted false information on three separate occasions: (1) statements made during the previous review regarding the availability and filing date of tax assessments; (2) statements made in the previous review regarding the volume and value of sales of subject merchandise; and (3) statements relating to the testing and rating of compressors made during the hearing for the previous review. Petitioner suggests that the Department instruct respondents that any subsequent submissions of false information will result in the immediate imposition of adverse facts available.

Respondents argue that petitioner's reference to any alleged failure to adhere to obligations to provide information relate solely to the previous review. Respondents cite to the final results of the previous administrative review (*see Certain Refrigeration Compressors from the Republic of Singapore: Final Results of Countervailable Duty Administrative Review,* 63 FR at 32855 (June 16, 1998)), and assert that the Department considered petitioner's contention in the previous administrative review and found that respondents had not failed to cooperate with the Department, and had acted to the best of their ability in complying with all requests for information. Respondents contend, therefore, that the Department should reject petitioner's suggestion to advise respondents that failure to comply with requests to provide information will result in the application of adverse facts available.

Department's Position: We agree with respondents. All of petitioner's allegations of false information relate to the previous review, where they were fully considered by the Department and found to be without merit. *See Certain Compressors from the Republic of Singapore: Final Results of Countervailable Duty Administrative Review,* 63 FR at 32855 (June 16, 1998). Petitioner has made no allegation of false information submitted in the current review, and the Department has no reason to believe that the information respondent provided for the record is inaccurate.

Comment 4: Petitioner claims that the problems cited in comments 1 and 2 require the Department to review the effectiveness of the current Suspension Agreement. Petitioner notes that the Suspension Agreement requires that benefits received by MARIS and AMS are to be offset completely by payments to the Government of Singapore. Petitioner asserts that the value of these benefits is sometimes not established at the time the Department makes its final determination in a particular administrative review. Petitioner suggests that, in order to ensure that the Suspension Agreement is fully and fairly implemented, the Department adopt the following measures: (1) require the GOS to submit quarterly reports that include disclosure of any actions taken by IRAS with regard to taxation of MARIS or AMS; (2) develop questionnaires that require respondents to disclose any changes in their tax liabilities for any prior review period; and (3) include within any benefit analysis for the current POR any increased benefit received by respondents that was unrecognized in a previous POR due to a delay in ascertaining final tax obligations.

Respondent did not comment on this issue.

Department's Position: We disagree with petitioner in part. We do not agree, at this time, that the Department should require the GOS to submit tax information on a quarterly basis, nor should we include within our current benefit analysis any increased benefit received by the respondents in the current POR that relates to a previous review period. However, the Department has asked, and will continue to ask, that respondents provide information relating to tax assessments finalized during a current POR, whether or not the assessment relates to that POR.

Petitioner claims that respondents realize benefits which have accrued after an administrative review has been closed, based on the Singaporean tax system, which allows finalization of tax assessments up to six years after the year of consideration. Because of the mechanics of the Department's administrative review process, it is possible that respondents can accrue benefits greater or less than those considered in calculating the export charge rate for that period of review. Thus, it is possible that respondents may be found to have been in compliance with the Agreement within the context of the Department's administrative review procedures, even though an offset calculation based on finalized taxes may yield a different figure. However, in the current review, respondents report that no tax assessments had been finalized during the period of review, and therefore, no additional benefits relating to a prior review have been recognized in current POR. Therefore, petitioner's argument that respondents have accrued benefits that were previously unrecognized is moot for this period of review.

Under section 751(a)(1)(C) of the Act, the Department has the authority to review the status of a suspension agreement within the context of the administrative review. Given the possibility that respondents may accrue benefits unrecognized during the period of review to which they pertain, the Department intends to continue to ask respondents for information relating to finalized tax assessments for any prior period of review as a normal part of its administrative review procedure.

Final Results of Review

We determine that the signatories to the Suspension Agreement have complied with the terms of the Agreement, including the payment of the provisional export charge, for the review period. From April 1, 1996 to August 27, 1996, a provisional export charge of 3.00 percent was in effect. From August 28, 1996 to March 31, 1997, a provisional export charge of 2.22 percent was in effect.

We determine the net subsidy 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 paragraph B.4 of the Suspension Agreement, the Department determines that, for the period of review, 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. For this period, the GOS may refund or credit to the companies, in accordance with paragraph B.4.c of the Suspension Agreement, the difference between the two provisional rates noted above and the 0.56 percent, plus interest, calculated in accordance with section 778(b) of the Tariff Act.

Notification of Interested Parties

This notice 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 355.306. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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: December 8, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–33212 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology (NIST)

Board of Overseers of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Request for nominations of members to serve on the Board of Overseers of the Malcolm Baldrige National Quality Award.

SUMMARY: NIST invites and requests nomination of individuals for appointment to Board of Overseers of the Malcolm Baldrige National Quality Award (Board). The terms of some of the members of the Board will soon expire. NIST will consider nominations received in response to this notice for appointment to the Committee, in addition to nominations already received.

DATES: Please submit nominations on or before January 11, 1999.

ADDRESSES: Please submit nominations to Harry Hertz, Director, National Quality Program, NIST, Building 101, Room A605, Gaithersburg, MD 20899. Nominations may also be submitted via FAX to 301–948–3716. Additional information regarding the Committee, including its charter, current membership list, and executive summary may be found on its electronic home page at: <http://www.quality.nit.gov/tos.htm>.

FOR FURTHER INFORMATION CONTACT: Harry Hertz, Director, National Quality Program and Designated Federal Official, NIST, Building 101, Room A531, Gaithersburg, MD 20899; telephone 301–975–2163; FAX—301–948–3716; or via e-mail at harry.hertznist.gov.

SUPPLEMENTARY INFORMATION:

I. Board of Overseers of the Malcolm Baldrige National Quality Award Information

The Board was established in accordance with 15 U.S.C. 3711a(d)(2)(B), pursuant to the Federal Advisory Committee Act (5 U.S.C. app. 2).

Objectives and Duties

1. The Board shall review the work of the private sector contractor(s), which assists the Director of the National Institute of Standards and Technology (NIST) in administering the Award. The Board will made such suggestions for the improvement of the Award process as it deems necessary.

2. The Board shall provide a written annual report on the results of Award activities to the Director of NIST, along with its recommendations for the improvement of the Award process.

3. The Board will function solely as an advisory committee under the Federal Advisory Committee Act.

4. The Board will report to the Director of NIST.

Membership

1. The Board will consist of approximately eleven members selected on a clear, standardized basis, in accordance with applicable Department of Commerce guidance, and for their preeminence in the field of quality management. There will be a balanced representation from U.S. service and manufacturing industries, education and health care. The Board will include members familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. No employee of the Federal Government shall serve as a member of the Board of Overseers.

2. The Board will be appointed by the Secretary of Commerce and will serve at the discretion of the Secretary. The term of office of each Board member shall be three years. All terms will commence on January 1 and end on December 31 of the appropriate year.

Miscellaneous

1. Members of the Board shall serve without compensation, but may, upon request, be reimbursed travel expenses, including per diem, as authorized by U.S.C. 5701 et seq.

2. The Board will meet annually, except that additional meetings may be called as deemed necessary by the NIST Director or by the Chairperson. Meetings are one to two days in duration.

3. Board meetings are open to the public. Board members do not have access to classified or proprietary information in connection with their Board duties.

II. Nomination Information

1. Nominations are sought from the private sector as described above.

2. Nominees should have established records of distinguished service and shall be familiar with the quality improvement operations of manufacturing companies, service companies, small businesses, education, and health care. The category (field of eminence) for which the candidate is qualified should be specified in the nomination letter. Nominations for a particular category should come from organizations or individuals within that category. A summary of the candidate's qualifications should be included with the nomination, including (where applicable) current or former service on federal advisory boards and federal employment. In addition, each nomination letter should state that the person agrees to the nomination, acknowledge the responsibilities of serving on the Board, and will actively participate in good faith in the tasks of the Board. Besides participation at meetings, it is desired that members be able to devote the equivalent of seven days between meetings to either developing or researching topics of potential interest, and so forth, in furtherance of their Board duties.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks a broad-based and diverse Board membership.

Dated: December 9, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–33166 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 981028268–8268–01]

Announcing Approval of Federal Information Processing Standard 186–1, Digital Signature Standard, and Request for Comments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; Request for comments.

SUMMARY: The Secretary of Commerce approved an interim final standard,

which will be known as Federal Information Processing Standard (FIPS) 186–1, Digital Signature Standard (DSS). This interim final standard allows for both the use of the Digital Signature Algorithm (DSA) and the American National Standards Institute X9.31 standard by federal organizations. The X9.31 standard describes the Rivest-Shamir-Adleman (RSA) digital signature technique.

This notice advises the public of the Secretary's decision and solicits comments from the public, academic and research communities, manufacturers, voluntary standards organizations, and Federal, state, and local government organizations. These comments will assist NIST in making a recommendation to the Secretary regarding a final decision.

DATES: *Effective date:* December 15, 1998. *Comment Date:* Comments are due on or before March 15, 1999.

ADDRESSES: Comments should be sent to Information Technology Laboratory, Attn: DSS/X9.31 Comments, National Institute of Standards and Technology, 100 Bureau Drive Stop 8970, Gaithersburg, MD 20899–8970.

Comments may also be sent electronically to: ''FIPS186RSA@nist.gov''.

Specifications of the FIPS 186 are available electronically at: <http://csrc.nit.gov/fips/>

Ordering information for the ANSI X9.31 standard is available from American Bankers Assoc./DC, X9 Customer Service Dept., P.O. Box 79064, Baltimore, MD 21279–0064, telephone 1–800–338–0626.

FOR FURTHER INFORMATION CONTACT: Edward Roback, National Institute of Standards and Technology, 100 Bureau Drive Stop 8930, Gaithersburg, MD 20899–8930; telephone 301–975–3696 or via fax at 301–948–1233.

SUPPLEMENTARY INFORMATION: Under Section 5131 of the Information Technology Management Reform Act of 1996 and the Computer Security Act of 1987, the Secretary of Commerce is authorized to approve standards and guidelines for the cost effective security and privacy of sensitive information processed by federal computer systems. On May 10, 1994, the Secretary of Commerce approved FIPS 186, ''Digital Signature Standard,'' which specifies a single technique for the generation and verification of digital signatures. Recently, another technique, known as RSA, was approved as the X9.31 standard [*X9.31–1998 Digital Signatures Using Reversible Public Key Cryptography for the Financial Services Industry (rDSA)]* by ANSI. A second standard, based upon a technique known as elliptic curve, is expected to be completed and approved by ANSI in the near future. Agencies have expressed considerable interest to NIST in using these technologies.

On May 13, 1997, NIST published a **Federal Register** notice soliciting comments on amending FIPS 186 to allow for the use of other techniques, specifically mentioning RSA and elliptic curve (but not with detailed specifications as now exist for RSA in the ANSI X9.31 standard). The public comments overwhelmingly supported revising FIPS 186 to include these additional algorithms. RSA, which has withstood widespread scrutiny by the cryptographic research community, is available in many commercial products. NIST believes it to be robust and sufficiently strong for use by federal agencies.

Following ANSI's recent approval of the ANSI X9.31 standard, the Secretary of Commerce approved an interim modification to FIPS 186 (FIPS 186–1) to approve use of the digital signature technique specified in X9.31 in addition to the algorithm currently specified in FIPS 186. The Secretary's decision revise the old FIPS 186 by adding the following statements into the new FIPS 186–1.

Add the following as the last sentences of the ''Applications'' paragraph: The technique specified in ANSI X9.31 may be used in addition to the Digital Signature Algorithm (DSA) specified herein.

Add the following as the last two sentences of the ''Implementations'' paragraph: Agencies are advised that separate keys should be used for signature and confidentiality purposes when using the X9.31 standard. This is because the RSA algorithm can be used for both data encryption and digital signature purposes.

To minimize any potential for spoofing digital signatures, keys used for signature purposes should not be recoverable. Using separate keys will allow agencies to recover confidentiality keys but not signature keys.

The standard has also been modified to reflect the availability of conformity testing for DSA implementations. (ANSI's conformity testing program for X9.31 implementations is not yet in place.) Minor language modifications (e.g., indicating that two algorithms are now approved) and other administrative updates have also been made to the standard.

Since ANSI's conformance testing program for the X9.31 standard is not yet in place, federal agencies are advised, in the interim, to acquire products that vendors hold out as in conformance with ANSI X9.31. Agencies will be advised by NIST when a conformance testing program is in effect.

Comments are sought by NIST so as to make a recommendation to the Secretary regarding a final FIPS.

Federal Information Processing Standards Publication 186–1

<Approval Dates> 1998

Announcing the Digital Signature Standard (DSS)

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 5131 of the Information Technology Management Reform Act of 1996 (Public Law 104–106), and the Computer Security Act of 1987 (Public Law 100–235).

Name of Standard: Digital Signature Standard (DSS).

Category of Standard: Computer Security, Cryptography.

Explanation: This Standard specifies algorithms appropriate for applications requiring a digital, rather than written, signature. A digital signature is represented in a computer as a string of binary digits. A digital signature is computed using a set of rules and a set of parameters such that the identity of the signatory and integrity of the data can be verified. An algorithm provides the capability to generate and verify signatures. Signature generation makes use of a private key to generate a digital signature. Signature verification makes use of a public key which corresponds to, but is not the same as, the private key. Each user possesses a private and public pair. Public keys are assumed to be known to the public in general. Private keys are never shared. Anyone can verify the signature of a user by employing that user's public key. Signature generation can be performed only by the possessor of the user's private key.

A hash function is used in the signature generation process to obtain a condensed version of data, called a message digest (see Figure 1). The message digest is then input to the digital signature (ds) algorithm to generate the digital signature. The digital signature is set to the intended verifier along with the signed data (often called the message). The verifier of the message and signature verifies the signature by using the sender's public key. The same hash function must also be used in the verification process. The hash function is specified in a separate

standard, the Secure Hash Standard (SHS), FIPS 180–1. FIPS approved ds algorithms must be implemented with the SHS. Similar procedures may be used to generate and verify signatures for stored as well as transmitted data.

[Figure 1 not reproduced in this **Federal Register** notice.]

Approving Authority: Secretary of Commerce.

Maintenance Agency: U.S. Department of Commerce, National Institute of Standards and Technology (NIST), Information Technology Laboratory (ITL).

Applicability: This standards is applicable to all Federal departments and agencies for the protection of sensitive unclassified information that is not subject to section 2315 of Title 10, United States Code, or section 3502(2) of Title 44, United States Code. This standard shall be used in designing and implementing public-key based signature systems which Federal departments and agencies operate or which are operated for them under contract. Adoption and use of this standard is available to private and commercial organizations.

Applications: A digital signature (ds) algorithm authenticates the integrity of the signed data and the identity of the signatory. A ds algorithm may also be used in proving to a third party that data was actually signed by the generator of the signature. A ds algorithm is intended for use in electronic mail, electronic funds transfer, electronic data interchange, software distribution, data storage, and other applications which require data integrity assurance and data origin authentication. The technique specified in ANSI X9.31 may be used in addition to the Digital Signature Algorithm (DSA) specified herein.

Implementations: A ds algorithm may be implemented in software, firmware, hardware, or any combination thereof. NIST is developing a validation program to test implementations for conformance to this standard. Currently, conformance tests for ANSI X9.31 have not been developed. These tests will be developed and made available in the future. Information about the planned validation program can be obtained from the National Institute of Standards and Technology, Information Technology Laboratory, Attn: DSS Validation, 100 Bureau Drive Stop 8930, Gaithersburg, MD 20899–8930.

Agencies are advised that separate keys should be used for signature and confidentiality purposes when using the X9.31 standard. This is because the RSA algorithm can be used for both data encryption and digital signature purposes.

Export Control: Implementations of this standard are subject to Federal Government export controls as specified in Title 15, Code of Federal Regulations, Parts 768 through 799. Exporters are advised to contact the Department of Commerce, Bureau of Export Administration for more information.

Patents: The algorithms in this standard may be covered by U.S. or foreign patents.

Implementation Schedule: This standard becomes effective <insert>.

Specifications: Federal Information Processing Standard (FIPS) 186–1 Digital Signature Standard (affixed).

Cross Index:

a. FIPS PUB 46–2, Data Encryption Standard.

b. FIPS PUB 73, Guidelines for Security of Computer Applications.

c. FIPS PUB 140–1, Security Requirements for Cryptographic Modules.

d. FIPS PUB 171, Key Management Using ANSI X9.17.

e. FIPS PUB 180–1, Secure Hash Standard.

Qualifications: The security of a digital signature system is dependent on maintaining the secrecy of users' private keys. Users must therefore guard against the unauthorized acquisition of their private keys. While it is the intent of this standard to specify general security requirements for generating digital signatures, conformance to this standard does not assure that a particular implementation is secure. The responsible authority in each agency or department shall assure that an overall implementation provides an acceptable level of security. This standard will be reviewed every five years in order to assess its adequacy.

Waiver Procedure: Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, United States Code. Waiver shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or

b. Cause a major adverse financial impact on the operator which is not offset by Government wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made with required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, 100 Bureau Drive Stop 8970, Gaithersburg, MD 20899–8970.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the **Federal Register**.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Sec. 552(b), shall be part of the procurement documentation and retained by the agency.

Where to Obtain Copies of the Standard: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 186–1 (FIPSPUB186–1), and identify the title. When microfiche is desired, this should be specified. Prices are published by NTIS in current catalogs and other issuances. Payment may be made by check, money order, deposit account or charged to a credit card accepted by NTIS.

Dated: December 9, 1998.

Robert E. Hebner,

Acting Deputy Director.

[FR Doc. 98–33167 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 112398D]

Fisheries of the Exclusive Economic Zone Off Alaska; Recordkeeping and Reporting Requirements; Public Workshops

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

ACTION: Notice of workshops.

SUMMARY: NMFS announces three workshops to explain provisions of the 1999 recordkeeping and reporting requirements for the Alaska groundfish fisheries, to update information on the proposed electronic reporting system, to provide detailed instructions on completion and submittal of the required forms and logsheets, and to answer questions on recordkeeping and reporting from members of the fishing industry and from other interested parties.

DATES: The workshop dates are:

1. December 15, 1998, 8:00 a.m. to 5:00 p.m., Alaska local time, Anchorage, Alaska.

2. January 5, 1999, 8:00 a.m. to 5:00 p.m., Pacific standard time, Seattle, Washington.

3. January 19, 1999, 8:00 a.m. to 5:00 p.m., Alaska local time, Juneau, Alaska.

ADDRESSES: The workshop locations are:

1. Anchorage—Holiday Inn Hotel, 239 West 4th Avenue, Anchorage, Alaska.

2. Seattle—NMFS Alaska Fisheries Science Center (Building 9, Rooms A and B), 7600 Sand Point Way, NE., Seattle, Washington.

3. Juneau—Juneau Federal Building (NMFS Administrative Conference Room, 4th floor, room 445), 709 West 9th Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Patsy A. Bearden, 907-586-7228.

SUPPLEMENTARY INFORMATION: NMFS has scheduled these workshops in response to requests by the affected fishing industry for a training workshop on the groundfish recordkeeping and reporting system.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Patsy A. Bearden (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the workshop dates.

Dated: December 9, 1998.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 98–33185 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

December 10, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 17, 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 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 67827, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 10, 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 China and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on December 17, 1998, you are directed to adjust the 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 the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Group I	
200, 218, 219, 226, 237, 239, 300/301, 313–315, 317/326, 331, 333–336, 338/339, 340–342, 345, 347/348, 350–352, 359–C [2], 359–V [3], 360–363, 369–D [4], 369–H [5], 369–L [6], 410, 433-436, 438, 440, 442–444, 445/446, 447, 448, 607, 611, 613–615, 617, 631, 633–636, 638/639, 640–643, 644/844, 645/646, 647–652, 659–C [7], 659–H [8], 659–S [9], 666, 669–P [10], 670–L [11], 831, 833, 835, 836, 840, 842 and 845–847, as a group.	1,484,637,198 square meters equivalent.
Sublevels in Group I	
239	3,259,546 kilograms.
314	52,328,828 square meters.
315	135,736,125 square meters.
334	346,664 dozen.
336	183,253 dozen.
341	736,877 dozen of which not more than 411,687 dozen shall be in Category 341–Y [12].
345	139,076 dozen.
347/348	2,529,199 dozen.
350	176,859 dozen.
352	1,768,283 dozen.
359–C	641,257 kilograms.
360	7,765,552 numbers of which not more than 5,608,436 numbers shall be in Category 360–P [13].
363	23,003,174 numbers.
369–L	3,518,480 kilograms.

Category	Adjusted twelve-month limit [1]
410	1,068,289 square meters of which not more than 808,774 square meters shall be in Category 410–A [14] and not more than 856,349 square meters shall be in Category 410–B [15].
435	26,314 dozen.
444	221,256 numbers.
448	23,940 dozen.
611	5,716,362 square meters.
615	26,461,427 square meters.
634	665,883 dozen.
635	703,604 dozen.
645/646	889,307 dozen.
648	1,200,121 dozen.
650	123,811 dozen.
652	2,937,012 dozen.
659–S	658,440 kilograms.
669–P	2,129,269 kilograms.
831	589,147 dozen pairs.
835	131,821 dozen.
845	2,528,217 dozen.
846	191,521 dozen.
847	1,346,963 dozen.
Group II	
330, 332, 349, 353, 354, 359–O [16], 431, 432, 439, 459, 630, 632, 653, 654 and 659–O [17], as a group.	132,216,491 square meters equivalent.
Group III	
201, 220, 222, 223, 224–V [18], 224–O [19], 225, 227, 229, 369–O [20], 400, 414, 464, 465, 469, 600, 603, 604–O [21], 606, 618–622, 624–629, 665, 669–O [22] and 670–O [23], as a group.	274,262,852 square meters equivalent.
Group IV	
832, 834, 838, 839, 843, 850–852, 858 and 859, as a group.	12,286,301 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[4] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[5] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[6] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905.

[7] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[8] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[9] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[10] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[11] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[12] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[13] Category 360–P: only HTS numbers 6302.21.3010, 6302.21.5010, 6302.21.7010, 6302.21.9010, 6302.31.3010, 6302.31.5010, 6302.31.7010 and 6302.31.9010.

[14] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[15] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[16] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[17] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[18] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[19] Category 224–O: all HTS numbers except 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020 (Category 224–V).

[20] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S)

[21] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[22] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P).

[23] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–33171 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit and Sublimit for Certain Cotton Textile Products Produced or Manufactured in the People's Republic of China

December 9, 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: December 16, 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 Categories 338/339 and sublimit for Categories 338–S/339–S are being increased for carryforward. As a result, the sublimit for 338–S/339–S, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Also

see 62 FR 67827, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 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 China and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective onDecember 16, 1998, you are directed to increase the limit and sublimit for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Sublevel in Group I	
338/339	2,508,121 dozen of which not more than 1,851,314 dozen shall be in Categories 338–S/339–S [2].

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 338–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018 and 6109.10.0023; Category 339–S: all HTS numbers except 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–33172 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in India

December 9, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: December 14, 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 Group II is being increased for swing, reducing the limit for Category 317 to account for the swing 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 67831, published on December 30, 1997.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 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, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1998 and extends through December 31, 1998.

Effective on December 14, 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]
Level in Group I	
317	33,250,997 square meters.
Group II	
200, 201, 220–227, 237, 239pt. [2], 300, 301, 331–333, 350, 352, 359pt. [3], 360–362, 600–604, 606 [4], 607, 611–629, 631, 633, 638, 639, 643–646, 649, 650, 652, 659pt. [5], 666, 669pt. [6], 670, 831, 833–838, 840–858 and 859pt. [7], as a group.	116,923,992 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1997.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 359pt.: all HTS numbers except 6406.99.1550.

[4] Category 606: all HTS numbers except 5403.31.0040 (for administrative purposes Category 606 is designated as 606(1)).

[5] Category 659pt.: all HTS numbers except 6406.99.1510 and 6406.99.1540.

[6] Category 669pt.: all HTS numbers except 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[7] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–33129 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

December 8, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Indonesia and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC) and a Memorandum of Understanding (MOU) dated November 1, 1996 between the Governments of the United States and Indonesia.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

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). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to 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 Uruguay Round Agreement on Textiles and Clothing (ATC); and a Memorandum of Understanding dated November 1, 1996 between the Governments of the United States and Indonesia, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Indonesia and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
200	913,205 kilograms.
219	10,144,251 square meters.
225	7,103,607 square meters.
300/301	4,341,094 kilograms.
313–O [1]	18,406,636 square meters.
314–O [2]	64,271,369 square meters.
315–O [3]	29,203,714 square meters.
317–O [4]/326–O [5]/617	28,206,577 square meters of which not more than 4,167,829 square meters shall be in Category 326–O.
331/631	2,590,232 dozen pairs.
334/335	237,361 dozen.
336/636	663,006 dozen.
338/339	1,281,807 dozen.
340/640	1,578,578 dozen.
341	949,439 dozen.
342/642	394,645 dozen.
345	459,044 dozen.
347/348	1,736,437 dozen.
350/650	182,328 dozen.
351/651	513,038 dozen.
359–C/659–C [6]	1,499,650 kilograms.
359–S/659–S [7]	1,578,578 kilograms.
360	1,404,929 numbers.
361	1,404,929 numbers.
369–S [8]	969,001 kilograms.
433	11,662 dozen.
443	86,519 numbers.
445/446	57,976 dozen.
447	17,305 dozen.
448	21,309 dozen.
604–A [9]	753,662 kilograms.
611–O [10]	4,726,276 square meters.
613/614/615	26,756,916 square meters.
618–O [11]	6,314,317 square meters.
619/620	9,787,191 square meters.
625/626/627/628/629–O [12].	29,862,956 square meters.
634/635	315,716 dozen.
638/639	1,641,724 dozen.
641	2,406,864 dozen.
643	351,234 numbers.
644	491,725 numbers.
645/646	830,760 dozen.
647/648	3,441,722 dozen.
847	434,853 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [13], 332, 333, 352, 359–O [14], 362, 363, 369–O [15], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [16], 464, 469pt. [17], 603, 604–O [18], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [19], 666, 669–O [20], 670–O [21], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [22], as a group.	103,520,194 square meters equivalent.
Subgroup in Group II	
400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt., 464 and 469pt., as a group.	3,053,943 square meters equivalent.
In Group II subgroup	
435	47,944 dozen.

[1] Category 313–O: all HTS numbers except 5208.52.3035, 5208.52.4035 and 5209.51.6032.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 359–S: only HTS numbers 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020; Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[8] Category 369–S: only HTS number 6307.10.2005.

[9] Category 604–A: only HTS number 5509.32.0000.

[10] Category 611–O: all HTS numbers except 5516.14.0005, 5516.14.0025 and 5516.14.0085.

[11] Category 618–O: all HTS numbers except 5408.24.9010 and 5408.24.9040.

[12] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[13] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[14] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010 and 6211.12.8020 (Category 359–S) and 6406.99.1550 (Category 359pt.).

[15] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[16] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[17] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[18] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[19] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010, 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[20] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040 (Category 669pt.).

[21] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[22] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–33127 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Singapore

December 8, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Singapore and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see 63 FR 53881, published on October 7, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

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). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories,

produced or manufactured in Singapore and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
222	547,607 kilograms.
237	296,473 dozen.
239pt. [1]	194,227 kilograms.
331	526,564 dozen pairs.
334	78,176 dozen.
335	235,157 dozen.
338/339	1,486,795 dozen of which not more than 868,897 dozen shall be in Category 338 and not more than 966,105 dozen shall be in Category 339.
340	1,040,536 dozen.
341	261,644 dozen.
342	161,010 dozen.
347/348	1,100,486 dozen of which not more than 687,803 dozen shall be in Category 347 and not more than 534,959 dozen shall be in Category 348.
435	7,012 dozen.
604	984,478 kilograms.
631	603,793 dozen pairs.
634	298,465 dozen.
635	305,431 dozen
638	1,096,213 dozen.
639	3,657,363 dozen.
640	221,833 dozen.
641	361,833 dozen.
642	360,087 dozen.
645/646	168,131 dozen.
647	665,347 dozen.
648	1,574,480 dozen.

[1] Category 239pt.: only HTS number 6209.20.5040 (diapers).

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 19, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Effective on January 1, 1999, a visa will no longer be required for products integrated in the second stage of the integration of textiles and clothing into GATT 1994 from WTO member countries (see directive dated September 30, 1998). A visa will continue to be required for non-integrated products. For quota purposes only, products remaining in categories partially integrated will continue to be designated by the designator ''pt.''

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–33126 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Taiwan

December 8, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

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, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997 and May 2, 1997, as amended and extended, concerning textiles and textile products, produced or manufactured in Taiwan, establishes limits for the period January 1, 1999 through December 31, 1999.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1999 period.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

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). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 8, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement, effected by exchange of letters dated January 10, 1997 and May 2, 1997, as amended and extended, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Taiwan and exported during the twelve-month period which begins on January 1, 1999 and extends through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
Group I	
200–224, 225/317/326, 226, 227, 229, 300/301/607, 313–315, 360–363, 369–L/670–L/870 [1], 369–S [2], 369–O [3], 400–414, 464–469, 600–606, 611, 613/614/615/617, 618, 619/620, 621–624, 625/626/627/628/629, 665, 666, 669–P [4], 669–T [5], 669–O [6], 670–H [7] and 670–O [8], as a group.	578,780,670 square meters equivalent.
Sublevels in Group I	
218	21,660,717 square meters.
225/317/326	38,447,714 square meters.
226	6,977,033 square meters.

Category	Twelve-month limit
300/301/607	1,715,086 kilograms of which not more than 1,429,238 kilograms shall be in Category 300; not more than 1,429,238 kilograms shall be in Category 301; and not more than 1,429,238 kilograms shall be in Category 607.
363	12,146,131 numbers.
369–L/670–L/870	48,998,795 kilograms.
611	3,122,158 square meters.
613/614/615/617	19,363,313 square meters.
619/620	14,232,335 square meters.
625/626/627/628/629	18,519,629 square meters.
669–P	336,680 kilograms.
669–T	1,094,283 kilograms.
670–H	18,762,953 kilograms.
Group I subgroup	
200, 219, 313, 314, 315, 361, 369–S and 604, as a group.	144,401,603 square meters equivalent.
Within Group I subgroup	
200	699,899 kilograms.
219	15,929,004 square meters.
313	66,651,530 square meters.
314	28,373,780 square meters.
315	21,741,546 square meters.
361	1,405,943 numbers.
369–S	485,173 kilograms.
604	228,870 kilograms.
Group II	
237, 239, 330–332, 333/334/335, 336, 338/339, 340–345, 347/348, 349, 350/650, 351, 352/652, 353, 354, 359–C/659–C[9], 359–H/659–H[10], 359–O[11], 431–444, 445/446, 447/448, 459, 630–632, 633/634/635, 636, 638/639, 640, 641–644, 645/646, 647/648, 649, 651, 653, 654, 659–S[12], 659–O[13], 831–844 and 846–859, as a group.	755,000,000 square meters equivalent.
Sublevels in Group II	
237	683,810 dozen.
239	5,716,949 kilograms.
331	509,751 dozen pairs.
336	116,502 dozen.
338/339	794,971 dozen.
340	1,120,030 dozen.
345	121,731 dozen.
347/348	1,064,931 dozen of which not more than 1,064,931 dozen shall be in Categories 347–W/348–W[14].
352/652	3,090,913 dozen.
359–C/659–C	1,447,633 kilograms.
359–H/659–H	4,819,400 kilograms.
433	15,240 dozen.
434	10,583 dozen.
435	25,128 dozen.
436	5,003 dozen.
438	28,240 dozen.
440	5,470 dozen.
442	43,739 dozen.
443	42,668 numbers.
444	60,769 numbers.
445/446	136,098 dozen.
631	4,965,167 dozen pairs.
633/634/635	1,634,440 dozen of which not more than 959,317 dozen shall be in Categories 633/634 and not more than 850,077 dozen shall be in Category 635.
638/639	6,565,058 dozen.
640	1,058,909 dozen of which not more than 281,710 dozen shall be in Category 640–Y[15].
642	777,133 dozen.
643	507,779 numbers.
644	741,830 numbers.
645/646	4,107,691 dozen.
647/648	5,248,544 dozen of which not more than 5,248,544 dozen shall be in Categories 647–W/648–W[16].
659–S	1,601,702 kilograms.
835	19,496 dozen.
Group II Subgroup	
333/334/335, 341, 342, 350/650, 351, 447/448, 636, 641 and 651, as a group.	76,748,231 square meters equivalent.
Within Group II Subgroup	
333/334/335	299,726 dozen of which not more than 162,352 dozen shall be in Category 335.
341	339,920 dozen.
342	212,349 dozen.
350/650	136,712 dozen.
351	353,280 dozen.
447/448	20,824 dozen.
636	383,515 dozen.
641	731,080 dozen of which not more than 255,878 dozen shall be in Category 641–Y[17].
651	443,037 dozen.
Group III	
Sublevel in Group III	
845	852,064 dozen.

[1] Category 870; Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091 and 6307.90.9905; Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907.

[2] Category 369–S: only HTS number 6307.10.2005.

[3] Category 369–O: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905 (Category 369–L); and 6307.10.2005 (Category 369–S).

[4] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[5] Category 669–T: only HTS numbers 6306.12.0000, 6306.19.0010 and 6306.22.9030.

[6] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 6306.12.0000, 6306.19.0010 and 6306.22.9030 (Category 669–T).

[7] Category 670–H: only HTS numbers 4202.22.4030 and 4202.22.8050.

[8] Category 670–O: all HTS numbers except 4202.22.4030, 4202.22.8050 (Category 670–H); 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[9] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 359–H: only HTS numbers 6505.90.1540 and 6505.90.2060; Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[11] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 (Category 359–C); 6505.90.1540 and 6505.90.2060 (Category 359–H).

[12] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[13] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[14] 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.

[15] Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[16] Category 647–W: only HTS numbers 6203.23.0060, 6203.23.0070, 6203.29.2030, 6203.29.2035, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.43.4030, 6203.43.4040, 6203.49.1500, 6203.49.2015, 6203.49.2030, 6203.49.2045, 6203.49.2060, 6203.49.8030, 6210.40.5030, 6211.20.1525, 6211.20.3820 and 6211.33.0030; Category 648–W: only HTS numbers 6204.23.0040, 6204.23.0045, 6204.29.2020, 6204.29.2025, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.63.3532, 6204.63.3540, 6204.69.2510, 6204.69.2530, 6204.69.2540, 6204.69.2560, 6204.69.6030, 6204.69.9030, 6210.50.5035, 6211.20.1555, 6211.20.6820, 6211.43.0040 and 6217.90.9060.

[17] Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement concerning imports of textile and apparel products from Taiwan.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if Taiwan becomes a member of the World Trade Organization (WTO) and the WTO agreement is applied to Taiwan.

The conversion factors are as follows:

Category	Conversion factors (square meters equivalent/category unit)
300/301/607	8.5
333/334/335	33.75
352/652	11.3
359–C/659–C	10.1
359–H/659–H	11.5
369–L/670–L/870	3.8
633/634/635	34.1
638/639	12.5

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

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,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–33128 Filed 12–14–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of Information Collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3038–0048, Exemptions from Speculative Limits to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96–511. The information collected pursuant to this rule is in the public interest and is necessary for market surveillance.

ADDRESSES: Persons wishing to comment on this information collection should contact Desk Officer, CFTC, Office of Management and Budget, Room 3228, NEOB, Washington, D.C. 20502, (202) 395–7340. Copies of the submission are available from the CFTC Clearance Officer, (202) 418–5160.

Title: Off-Exchange Agricultural Trade Options.

Control Number: 3038–0048.

Action: Extension.

Respondents: Businesses (excluding small business).

Estimated Annual Burden: 32,060 total hours.

Respondents	Regulation (17 CFR)	Estimated # of respondents	Annual responses	Est. avg. hours per response
Businesses	Part 3 and Part 32	3,610	5,915	80.15

Issued in Washington, DC on December 9, 1998.

Jean A. Webb,

Secretary to the Commission.

[FR Doc. 98–33174 Filed 12–14–98; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Wednesday, December 30, 1998.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33264 Filed 12–11–98; 11:27 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, January 4, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33265 Filed 12–11–98; 11:27 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 8, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33266 Filed 12–11–98; 11:27 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, January 11, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33267 Filed 12–11–98; 11:27am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 15, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33268 Filed 12–11–98; 11:27am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Tuesday, January 19, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33269 Filed 12–11–98; 11:41 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 22, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33270 Filed 12–11–98; 11:21 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, January 25, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33271 Filed 12–11–98; 11:41 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, January 29, 1999.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 98–33272 Filed 12–11–98; 11:41 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed establishment of DD Form X376, ''Report of Medical History,'' a public information collection, and seeks public comment for the provisions thereof. Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions to the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d)

ways to minimize the burden of the information collection on respondents, including use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by February 16, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy) (Military Personnel Policy) /Accession Policy, ATTN: LTC Michael Ostroski, Room 2B271, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 695–5529.

Title, Associated Form, and OMB Number: ''Report of Medical History,'' DD Form X376, OMB Control Number 0704–[To be Determined].

Needs and Uses: Title 10, USC Chapter 31: Section 504 and 505, and Chapter 33: Section 532, requires applicants to meet accession medical standards prior to enlistment into the Armed Forces (including the Coast Guard). If applicants' medical history reveals a medical condition that does not meet the accession medical standards, they are medically disqualified for military entrance. This form also will be used by all Service members not only in their initial medical examination but also for required periodic medical examinations.

Affected Public: Individuals or households

Annual Burden Hours: 256,659

Number of Respondents: 330,000

Responses Per Respondent: 1

Average Burden Per Response: .66 hours per respondent.

Frequency: One time.

SUPPLEMENTAL INFORMATION:

Summary of Information Collection

The new form associated with this information collection will replace the form currently used by the Department, ''SF 93—Report of Medical History.'' This new form is needed in order to obtain the medical information which affects entrance physical examinations, routine in-service physical examinations, separation physical examinations, and other medical examinations, as required.

The respondents are all applicants for enlistment, induction or commissioning. The applicant(s) completes the medical history information recorded on the form. This information collected provides the Armed Services with the medical history of applicants. The DD Form X376 is the method of collecting and verifying medical data on applicants applying for entrance. This DD Form X376 will be the official DoD medical document used by the Services through which historical medical information is collected, reviewed, and maintained.

Dated: December 9, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–33131 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on January 5, 1999, January 12, 1999, January 19, 1999, and January 26, 1999, at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Public Law 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

Dated: December 9, 1998.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 98–33130 Filed 12–14–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.250H]

Vocational Rehabilitation Service Projects for American Indians With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1999

Purpose of Program: To provide vocational rehabilitation services to American Indians with disabilities who reside on or near Federal or State reservations, consistent with their individual strengths, resources, priorities, concerns, abilities, capabilities, and informed choice, so that they may prepare for and engage in gainful employment, including self-employment, telecommuting, or business ownership.

Eligible Applicants: Applications may be submitted only by the governing bodies of Indian tribes and consortia of those governing bodies located on Federal or State reservations.

Deadline for Transmittal of Applications: June 1, 1999.

Applications Available: December 15, 1998.

Available Funds: $3,800,000.

Estimated Range of Awards: $250,000—$350,000.

Estimated Average Size of Awards: $300,000.

Estimated Number of Awards: 12.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 80, 81, and 82; and (b) The regulations for this program in 34 CFR parts 369 and 371.

Priority

Under section 121(b)(4) of the Rehabilitation Act of 1973, as amended, the Secretary gives preference to applications that meet the following competitive priority. Under 34 CFR 75.105(c)(2)(i) the Secretary awards 10 points to an application that meets this competitive priority. These points are in addition to any points the application earns under the selection criteria for the program:

Competitive Preference Priority—Continuation of Previously Funded Tribal Programs

Section 121(b)(4) of the Rehabilitation Act of 1973, as amended, provides that in making new awards under this program the Secretary gives priority consideration to applications for the continuation of tribal programs that

have been funded under this program. For this competition in fiscal year 1999, the Secretary implements this priority by giving a competitive preference of 10 bonus points, in accordance with 34 CFR 75.105(c)(2)(i), to applications that meet this priority.

Selection Criteria: In evaluating an application for a new grant under this competition, the Secretary uses selection criteria chosen from the general selection criteria in 34 CFR 75.210 of EDGAR. The selection criteria to be used for this competition will be provided in the application package for this competition. For Applications Contact: The Grants and Contracts Service Team (GCST), U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3317, Switzer Building, Washington, D.C. 20202–2550. Telephone: (202) 205–8351. 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. The preferred method for requesting applications is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Pamela Martin, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3314, Switzer Building, Washington, D.C., 20202–2650. Telephone: (202) 205–8494. Individuals who use a telecommunication 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 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 a document is the document published in the **Federal Register**.

Program Authority: 29 U.S.C. 711(c) and 750.

Dated: December 9, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 98–33181 Filed 12–14–98; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Great Lakes Regional Biomass Energy Program Management Project; Notice of Solicitation for Financial Assistance Applications

AGENCY: Department of Energy.

ACTION: Notice of Solicitation for financial assistance applications number DE–PS45–99R530403.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for the Great Lakes Regional Biomass EnergyProgram (GLRBEP) Management Project. The selected applicant will receive financial assistance to manage GLRBEP under a financial assistance agreement with DOE.

DATES: The solicitation will be issued on or about December 7, 1998.

AVAILABILITY: To obtain a copy of the Solicitation once it is issued, interested parties must access the Golden Field Office Application, Award and Solicitation page at http://www.eren.doe.gov/golden/solicit.htm, click on ''solicitations'' and then locate the solicitation number identified above. DOE does not intend to issue written copies of the solicitation.

SUPPLEMENTARY INFORMATION: The major goals of the DOE GLRBEP are: to promote biomass energy by creating awareness, a positive image, and confidence in biomass energy technologies within the region; to develop a climate supportive of biomass energy among the general public and relevant government agencies; to assist both the public and private sectors in the responsible development, commercialization, and utilization of biomass energy technologies so that the region achieves full realization of associated energy, economic, and environmental benefits; and to select and perform activities that provide for responsible development of biomass energy within the region. The Great Lakes Region includes the following states: Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio and Wisconsin.

Applications must address each of the following activities in order to be considered for award. The activities are (1) management and planning, (2) information and outreach, and (3) project oversight and evaluation.

1. Management and Planning includes a plan for the overall management of the project at the state level, including coordination with the DOE Chicago Regional Support Office (CRSO) and GLRBEP ad hoc steering committees. The responsibility also includes development of resource plans and the provision of technical input to DOE for development of annual operating plans for the GLRBEP.

The GLRBEP Annual Operating Plan (AOP) is a document which will be prepared each year by the CRSO, with appropriate committee input, which provides guidance and direction to the program for the following Fiscal Year.

The draft FY '99 AOP will be made an attachment to the solicitation. It will be the responsibility of the recipient to guide the Program in meeting AOP objectives, recommend and implement changes to the AOP as necessary, and assist the CRSO in the preparation and completion of future AOP's.

2. Information and Outreach includes responding to inquiries about the program from interested parties, developing biotech briefs, collecting and contributing articles to support biomass publications, and preparing regional biomass energy program reports. The recipient also will coordinate and publish a regional newsletter at least quarterly and will establish and maintain a GLRBEP Internet site which provides relevant biomass program information and project summaries.

3. Project Oversight and Evaluation includes the award and administration of subgrants to organizations in the region. The recipient will solicit applications for projects in support of program objectives through a competitive solicitation. Administration of the individual subgrants, including financial commitments, performance tracking, and the provision of periodic reports to DOE, will be the

responsibility of the recipient with appropriate oversight from the CRSO.

In response to this solicitation, DOE expects to make a single award. Solicitation number DE–PS45–99R530403 will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. No pre-application conference is planned. Issuance of the solicitation is planned on or about December 7, 1998, with responses due on January 27, 1999.

Dated: December 3, 1998.

John W. Meeker,

Chief, Procurement, GO.

[FR Doc. 98–33197 Filed 12–14–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge Reservation.

DATES: Saturday, January 6, 1999, 6:00 p.m.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The meeting will focus on the ''1997 Environmental Management Annual Report, and a representative from DOE/Oak Ridge Operations Environmental Management Safety and Health Division will give a presentation.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Marianne Heiskell at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments near the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 8:30 am and 5:00 pm on Monday, Wednesday, and Friday; 8:30 am and 7:00 pm on Tuesday and Thursday; and 9:00 am and 1:00 pm on Saturday, or by writing to Marianne Heiskell, Department of Energy Oak Ridge Operations Office, 105 Broadway, Oak Ridge, TN 37830, or by calling her at (423) 576–0314.

Issued at Washington, DC on December 9, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–33195 Filed 12–14–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Geothermal Technology Innovation

AGENCY: Golden Field Office, DOE.

ACTION: Notice. Supplemental Announcement (01) to the broad based solicitation for submission of financial assistance applications involving research, development, and demonstration for renewable energy and energy efficiency technologies, DE–PS36–99GO10383.

SUMMARY: The Geothermal Energy Program of the Department of Energy's (DOE) Office of Energy Efficiency and Renewable Energy (EERE) is issuing a Supplemental Announcement to EERE's Broad Based Solicitation for Submission of Financial Assistance Applications Involving Research, Development and Demonstration, DE-PS36–99GO10383, dated November 9, 1998. Under the Supplemental Announcement, the Geothermal Energy Program is soliciting applications to identify, examine, and evaluate innovative ideas with a significant potential to reduce the cost of geothermal technology or increase economic geothermal resources through cost-shared research and development activities. The DOE Geothermal Energy Program consists primarily of research, development, and field validation to reduce the cost of using geothermal energy in all its forms. Its mission is to work in partnership with U.S. industry to establish geothermal energy as a sustainable, environmentally sound, economically competitive contributor to the U.S. and world energy supply. Research proposals are sought for evaluation of the scientific feasibility, technical merit and commercial potential of ideas in the following topical areas: drilling; energy conversion; fracture detection and analysis; heat recovery systems; and by-product recovery and waste management. Awards under this Supplemental Announcement will be Cooperative Agreements for Phase I research with a term of up to 12 months. Subject to funding availability, the total DOE funding available under this Supplemental Announcement will be $300,000, with individual awards not to exceed $75,000 of DOE funding.

All information regarding the Supplemental Announcement will be posted on the DOE Golden Field Office Home page at the address identified below.

DATES: DOE expects to issue the Supplemental Announcement the week of December 7, 1998. The closing date of the Supplemental Announcement is February 1, 1999.

ADDRESSES: The Supplemental Announcement will be posted on the DOE Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicit.htm. It is DOE's intention not to issue hard copies of the Supplemental Announcement.

FOR FURTHER INFORMATION CONTACT: John Motz, Contract Specialist, at 303–275–4737, e-mail john__motz@nrel.gov, or Doug Hooker, Project Officer, at 303–275–4780, e-mail doug__hooker@nrel.gov.

Issued in Golden, Colorado, on December 8, 1998.

Dated: December 8, 1998.

John W. Meeker,

Chief, Procurement, Golden Field Office.

John K. Lewis,

Procurement Analyst.

[FR Doc. 98–33196 Filed 12–14–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–3–000]

Bay Gas Storage Company, Ltd.; Notice of Petition for Rate Approval

December 9, 1998.

Take notice that on November 5, 1998, Bay Gas Storage Company, Ltd., (Bay Gas) filed a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $2.1645 per MMBtu for firm transportation service and $0.0712 per MMBtu for interruptible transportation service performed under Section 311 of the Natural Gas Policy Act of 1978. The filing was made to comply with the Commission's April 30, 1998, Order Issuing Certificate and Authorizing Transportation in Docket No. CP98–249–000 (Florida Gas Transmission Company (Florida Gas) at 83 FERC ¶ 61,101).

Bay Gas states that its primary function is gas storage service, and that its storage facilities have about 3.2 Bcf of capacity (2.1 Bcf of working gas) with maximum daily withdrawal and injection rates of about 260,000 Mcf/day and about 40,000 Mcf/day, respectively. Bay Gas states that it also operates a 20-inch-diameter pipeline that runs south from its McIntosh storage site, and interconnects with two interstate pipelines—Florida Gas (between McIntosh and Axis, Alabama) and Koch Gateway Pipeline Company (at Axis). According to Bay Gas, the pipeline also interconnects with its local distribution company affiliate, Mobile Gas Service Corporation (at Axis).

Pursuant to Section 284.123(b)((2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate for transportation service will be deemed fair and equitable. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 384.214 of the Commission's Rules of Practices and Procedures. All motions must be filed with the Secretary of the Commission on or before December 24, 1998. The petition for rate approval is on file with the Commission and is available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33142 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–7–000]

Charlotte Hill Gas Company; Notice of Petition for Adjustment

December 9, 1998.

Take notice that on November 20, 1998, Charlotte Hill Gas Company (CHG), filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for relief from paying approximately $48,418.29 in Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company, under the Commission's September 10, 1997 order in Docket No. RP97–369–000, *et al.* [80 FERC ¶ 61,264 (1997); rehearing denied, 82 FERC ¶ 61,058 (1998)]. The September 10 order directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period form 1983 to 1988. CHG's petition is on file with the Commission and open to public inspection.

CHG's attorney states that CHG was a corporation, that CHG no longer exists, and that CHG's assets were distributed to the corporation's former shareholders. CHG's attorney further states that these former shareholders are elderly, in ill health, and have no assets to pay the sums required under the Commission's September 10 order. CHG's attorney also asserts that the payment of the refunds would leave the former shareholders destitute. CHG's attorney contends that refund relief should be granted to CHG (i.e., CHG's former shareholders) on the grounds: (1) that the former shareholder would suffer a special hardship if required to make the subject refunds; and (2) that it would be inequitable to require the former shareholders to make the subject refunds.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33145 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–96–000]

CNG Transmission Corporation; Notice of Application

December 9, 1998.

Take notice that on December 2, 1998, CNG Transmission Corporation (CNG), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP99–96–000, an application pursuant to Section 7(c) of the Natural Gas Act (NGA) and Part 157 of the Commission's Regulations, for a certificate of public convenience and necessity authorizing CNG to construct, abandon, and operate certain facilities at CNG's North Summit Storage Complex facility in Fayette County, Pennsylvania in order to facilitate the recovery of injected gas that has migrated to an undeveloped portion in the southern end of the North Summit Storage Pool, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, CNG proposes to: (1) Convert existing observation well, UW–204, to a storage well; (2) convert existing observation well, UW–207, to a storage well; (3) abandon 1,959 feet of 6-inch diameter pipeline and construct 1,959 feet of 8-inch diameter pipeline, Line No. UP–1; (4) install Line No. UP–24 consisting of 12,552 feet of 8-inch diameter pipeline with appurtenant facilities and; (5) install Line No. UP–25 consisting of 3,554 feet of 8-inch diameter pipeline with appurtenant facilities. CNG estimates that the proposed facilities will cost $2,000,000.

CNG states that the proposed facilities will allow CNG to operate the North Summit Storage Complex more effectively and efficiently. More specifically, CNG states that the operation of UW–204 and UW–207 as

storage wells will allow for more turn of inventory each winter season, allowing for more effective pool operation.

Any person desiring to be heard or making any protest with reference to said application should on or before December 30, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (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. The Commission's rules require that protestors provide copies of their protests to the party or person to whom the protests are directed. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must serve copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as filing an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of such comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents, and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission, and will not have the right to seek rehearing or appeal the Commission's final order to a Federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for CNG to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33151 Filed 12–11–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR99–4–000]

Consumers Energy Company; Notice of Petition for Rate Approval

December 9, 1998.

Take notice that on November 23, 1998, Consumers Energy Company (CECo) filed a petition for rate approval pursuant to Section 284.123(b)(2)(i) of the Commission's regulations in compliance with a settlement approved by the Commission in its previous rate case in Docket Nos. PR96–4–000 and PR96–4–001. 76 FERC ¶ 61,161 (1996). CECo requests that the Commission approve as fair and equitable a rate change from 12 cents to 10.72 cents per Dth for interruptible transportation service it provides under a blanket certificate and revised terms and conditions for interstate gas transportation service.

CECo, formerly Consumers Power Company, is a Hinshaw pipeline organized under the laws of the State of Michigan and subject to the jurisdiction of the Michigan Public Service Commission.

Pursuant to Section 284.123(b)(2)(ii) of the Commission's regulations, if the Commission does not act within 150 days of the filing date, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150-day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or 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 of Practice and Procedure. All such motions or protests must be filed with the Secretary of the Commission on or before December 24, 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 proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–33143 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–07–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–8–000]

E.W. Dahlgren Trust; Notice of Petition for Adjustment

December 9, 1998.

Take notice that on November 20, 1998, E.W. Dahlgren Trust (Dahlgren), filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for relief from paying approximately $21,182.91 in Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company, under the Commission's September 10, 1997 order in Docket No. RP97–369–000, *et seq.* [80 FERC ¶61,264 (1997); rehearing denied, 82 FERC ¶61,058 (1998)]. The September 10 order directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Dahlgren's petition is on file with the Commission and open to public inspection.

Dahlgren's attorney states that the subject Trust no longer exists, and that the Trust's assets were distributed to the beneficiaries of the Trust. Dahlgren's attorney further states that these beneficiaries are elderly, in ill health, and have no assets to pay the sums

required under the Commission's September 10 order. Dahlgren's attorney also asserts that the payment of the refunds would leave the beneficiaries destitute. Dahlgren's attorney contends that refund relief should be granted to Dahlgren (i.e., to the beneficiaries of the Trust) on the grounds: (1) That the beneficiaries would suffer a special hardship if required to make the subject refunds; and (2) that it would be inequitable to require the beneficiaries to make the subject refunds.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33146 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–94–000]

Florida Gas Transmission Company; Notice of Application

December 9, 1998.

Take notice that on December 1, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in the above docket an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity for authorization to: (I) construct, own, and operate certain pipeline facilities and additional compression on FGT's system (Phase IV Expansion), (II) allow FGT to roll-in the costs associated with the proposed Phase IV Expansion with FGT's Phase III System in any NGA Section 4 rate proceeding which becomes effective following the in-service date of the Phase IV Expansion, and (iii) authorize certain accounting treatment related to certain of the proposed facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

FGT proposes to construct, own, and operate approximately 205 miles of various diameter pipelines, additional compression totaling 48,570 horsepower, four new delivery points including three new measurement stations, and various other miscellaneous facilities in the States of Mississippi, Alabama, and Florida as listed below:

Pipeline Additions

(1) West Leg Extension: Approximately 113.6 miles of 30-inch and 26-inch lines, starting at the intersection of the existing West Leg and the existing St. Petersburg/Sarasota Connector in Hillsborough County, Florida, traversing through Polk, Hardee, DeSoto, and Charlotte Counties, Florida, and ending at the proposed Florida Power and Light Company (FPL) Ft. Myers Measurement Station in Lee County, Florida. The first segment will consist of 75.6 miles of 30-inch line and the second segment will consist of 38.0 miles of 26-inch line.

(2) Mainline Looping: Approximately 9.3 miles of 36-inch line, starting near mile post 152.7 in George County, Mississippi and ending near mile post 162.0 in Greene County, Mississippi. Approximately 5.5 miles of 30-inch line, starting near mile post 515.3 in Suwannee County, Florida and ending near mile post 520.8 in Columbia County, Florida.

Approximately 14.0 miles of 30-inch line, starting near mile post 548.1 and ending near mile post 562.1, all in Bradford County, Florida. Approximately 6.0 miles of 30-inch line, starting near mile post 607.9 and ending near mile post 613.9, all in Marion County, Florida.

(3) Tampa South Lateral Extension: Extension of the existing 6-inch Tampa South Lateral by constructing approximately 5.62 miles of 4-inch line, starting at mile post 16.0 and ending at the proposed National Gypsum Measurement Station, all in Hillsborough County, Florida.

(4) Sarasota Lateral Loop Extension: Extension of the existing 8-inch Sarasota Lateral Loop by constructing approximately 4.09 miles of 12-inch line, starting near mile post 69.5 and ending near mile post 73.6, all in Manatee County, Florida.

(5) Lake Wales Lateral Loop Extension: Extension of the existing 6-inch Lake Wales Lateral Loop by constructing approximately 0.9 miles of 6-inch line in Polk County, Florida, which will loop a portion of the existing 3-inch Lake Wales Lateral, starting at milepost 2.5 and ending near milepost 3.4, at the inlet side of the existing Citrus World Plant delivery point.

(6) New Lateral Construction: The New Smyrna Beach Lateral which will consist of approximately 45.8 miles of 16-inch line, starting near mile post 646.8 on FGT's existing 24-inch and 26-inch mainlines, traversing Lake and Seminole, Counties and ending at the proposed Duke Energy Measurement Station in Volusia County, Florida.

(7) Compressor Station Additions: A new 10,350 horsepower compressor unit (to be referred to as Compressor Station No. 12A) at its existing Compressor Station No. 12 in Santa Rosa County, Florida. A new 10,350 horsepower compressor unit (to be referred to as Compressor Station No. 13A) at its existing Compressor Station No. 13 in Washington County, Florida. A new 10,350 horsepower compressor unit (to be referred to as Compressor Station No. 14A) at its existing Compressor Station No. 14 in Gadsden County, Florida. A new Compressor station (to be referred to as Compressor Station No. 24), consisting of one 10,350 horsepower unit, on the existing 30-inch mainline in Gilchrist County, Florida. A new 7,170 horsepower compressor unit at its existing Compressor Station No. 26 in Citrus County, Florida.

(8) Delivery Points/Measurement Stations: A new measurement station near Ft. Myers, to be used as FGT's delivery point to FPL, located at the terminus of the proposed West Leg Extension in Lee County, Florida. A new measurement station which will be used as FGT's delivery point to National Gypsum and located at the terminus of the proposed Tampa South Lateral in Hillsborough County, Florida. A new measurement station which will be used as FGT's delivery point to Duke Energy New Smyrna Beach Power Company. Ltd., L.L.P., located at the terminus of the proposed New Smyrna Beach Lateral in Volusia County, Florida. A new tap, electronic flow measurement and approximately 100 feet of 4-inch tie-in line on the proposed West Leg Extension near mile post 111.7 in Lee County, Florida to connect to PGS at PGS' Ft. Myers Measurement Station which will be built by PGS. The costs to construct the meter stations, taps and tie-in will be reimbursed by the respective customers.

(9) Other Miscellaneous Facilities: A crossover from the proposed West Leg Extension, near mile post 28.3, to the existing 20-inch Agricola Lateral, near

mile post 0.0 where the two lines will cross in Polk County, Florida. Install a regulator at the interconnection of the existing Agricola and Sarasota Laterals. Re-stage its two existing 12,600 horsepower gas turbine-driven compressors and add a gas cooler and scrubber at Compressor Station No. 11A in Mobile County, Alabama. Re-stage its existing 12,600 horsepower gas turbine driven compressor at Compressor Station No. 15A in Taylor County, Florida. Construct other appurtenant facilities, including but not limited to regulation and separation facilities.

The proposed Phase IV Expansion will add incremental mainline capacity to FGT's existing pipeline system of approximately 272,000 MMBtu per day at an estimated construction cost of $350.8 million. The projected in-service date is May 1, 2001.

FGT states that it conducted an open season to solicit interest and receive requests for transportation capacity in its proposed mainline expansion. As a result, eight (8) shippers have committed to firm transportation service for an annual average of approximately 327,000 MMBtu per day (including turnback capacity). Such service will be rendered pursuant to FGT's blanket certificate under Subpart G of Part 284 of the Commission's Regulations and Rate Schedule FTS–2 of FGT's Third Revised FERC Gas Tariff, Volume No. 1, subject to the receipt of all necessary regulatory approvals, including rolled-in rate treatment with Rate Schedule FTS–2 and the construction of the proposed Phase IV Expansion facilities. FGT states that it will conduct a supply area capacity allocation process in order to allocate mainline capacity and receipt point turnback capacity prior to the in-service date of the Phase IV Expansion.

FGT requests that the Commission grant FGT rolled-in rate treatment of the costs associated with the Phase IV Expansion since the rate impact on existing FTS–2 customers of rolling in the costs is below the five percent (5%) threshold specified in the Commission's Statement of Policy, 71 FERC 61,241 (1995), for establishing a presumption in favor of rolled-in rates.

FGT submitted *pro forma* tariff sheets for its FTS–2 service proposing to change defined levels of seasonal Maximum Daily Transportation Quantities from the current two seasonal periods of November through April and May through October to (1) October, (2) November through March, (3) April, and (4) May through September.

FGT requests that the Commission issue a preliminary determination on the non-environmental aspects of its proposal by June 1, 1999, and a final order granting the authorizations requested herein by January 1, 2000.

FGT further requests it be allowed to phase-in gas deliveries to FPL at its Fort Myers Plant. FPL states that it needs this service to prepare each new generating turbine including purging of lines, test firing, full power testing and environmental and acceptance testing. FGT states that certain of the Phase IV facilities will have to be placed in service prior to the entire expansion, and at the time these certain facilities are place in service, FGT requests authorization to cease calculating AFUDC on those specific facilities and capture and defer, as a regulatory asset, depreciation and a calculated amount for pretax return, from the time these certain facilities are placed in service until the entire Phase IV Expansion is placed in service.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 31, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 358.211) 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 proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties, However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believe that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for FGT to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33149 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–6–000]

Harken Energy Corporation; Notice of Petition for Dispute Resolution or, Alternatively, for Adjustment

December 9, 1998.

Take notice that on November 17, 1998, Harken Energy Corporation (Harken) filed a petition pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), requesting that the Commission resolve the dispute between Harken's wholly-owned subsidiary—Kennedy & Mitchell, Inc. (KMI)—and Northern Natural Gas Company (Northern) over whether KMI owes Northern any Kansas ad valorem tax refunds or, in the alternative, for

relief from paying Kansas ad valorem tax refunds to Northern, under the Commission's September 10, 1997 order in Docket No. RP97–369–000, *et al.* [80 FERC ¶ 61,264 (1977); rehearing denied, 82 FERC ¶ 61,058 (1998)]. The September 10 order directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. Harken's petition is on file with the Commission and open to public inspection.

Harken contends that KMI has no Kansas ad valorem refund liability to Northern for the period from 1983–1988, due to a 1990 Settlement between KMI and Northern, the provisions of which release KMI and Northern from any future claims against one another, including refund claims.

Should the Commission hold that the 1990 Settlement does not relieve KMI/Harken from making Kansas ad valorem tax refunds to Northern, Harken requests that the Commission grant refund relief to KMI/Harken on equity grounds, due to KMI and Harken's good faith reliance upon the provisions of the 1990 Settlement. Harken asserts that to deny such relief would cause KMI/Harken an undue hardship, inequity, and an unfair distribution of burdens.

Harken asserts that it would be inequitable and an unfair distribution of burdens to require KMI/Harken to make these refunds, when KMI/Harken negotiated the 1990 Settlement with Northern, in good faith, and because there was no exclusion in the provisions of the 1990 Settlement for Kansas ad valorem refunds. Harken further argues that it would be inequitable and an unfair distribution of burdens to leave Northern whole, while requiring KMI/Harken to make the subject refunds.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33144 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–95–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

December 9, 1998.

Take notice that on December 1, 1998, NorAm Gas Transmission Company (NGT), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–95–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate facilities in Oklahoma under NGT's blanket certificate issued in Docket No. CP82–384–000 and CP82–384–001 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.

NGT proposes to construct and operate one 2-inch delivery tap and first-cut regulator to serve ARKLA, a division of NorAm Energy Corp. (ARKLA). ARKLA will construct, own and operate at its costs, a 1-inch domestic meter. NGT will own and operate the delivery tap and first-cut regulator. The 2-inch tap will be located on NGT's Line O in Section 17, Township 5 North, Range 19 East, Latimer County, Oklahoma. The estimated volumes to be delivered to this tap are approximately 400 Dth annually and 6 Dth on a peak day. The tap and first-cut regulator will be constructed at an estimated cost of $2,667 and ARKLA will reimburse NGT the construction costs.

NGT states that this proposal is not prohibited by its existing tariff, that there is sufficient capacity to accomplish deliveries without detriment or disadvantage to other customers, that its peak day and annual deliveries will not be effected and that the total volumes delivered will not exceed the total volumes authorized prior to this request.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33150 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–9–000]

W.A.R. Gas Company; Notice of Petition For Adjustment

December 9, 1998.

Take notice that on November 20, 1998, W.A.R. Gas Company (WAR), filed a petition for adjustment, pursuant to section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), for relief from paying approximately $15,130.70 in Kansas ad valorem tax refunds to Panhandle Eastern Pipe Line Company, under the Commission's September 10, 1997 order in Docket No. RP97–369–000, *et al.* [80 FERC ¶ 61,264 (1997); rehearing denied, 82 FERC ¶ 61,058 (1998)]. The Commission's September 10 order directed First Sellers under the NGPA to make Kansas ad valorem tax refunds, with interest, for the period from 1983 to 1988. WAR's petition is on file with the Commission and open to public inspection.

WAR's attorney states that it is a corporation with no assets, such that any attempt to collect the subject refunds from WAR would be fruitless. WAR's attorney contends that refund relief should be granted to WAR on the following grounds: (1) that WAR would suffer a special hardship if required to make the subject refunds; and (2) that it would be inequitable to require WAR to make the subject refunds.

Any person desiring to be heard or to make any protest with reference to said petition should on or before 15 days after the date of publication in the **Federal Register** of this notice, file with the Federal Energy Regulatory Commission, 888 First Street, N.E.,

Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211, 385.1105, and 385.1106). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33147 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–93–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

December 9, 1998.

Take notice that on November 30, 1998, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed in Docket No. CP99–93–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations (18 CFR 157.205, 157.216) under the Natural Gas Act (NGA) for authorization to abandon two farm taps in Carbon County, Montana, under Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin proposes to abandon by removal the facilities, located on its Lovell-Billings transmission line in Carbon County, because they are no loner being used. Williston Basin does not foresee any use for these taps in the future. It is stated that Williston Basin was authorized to acquire and operate the taps in 1985 for deliveries to Montana-Dakota Utilities Co. (Montana-Dakota), a local distribution company, which in turn served end-use customers. It is asserted that Montana-Dakota now serves the customers through its distribution system and consent to the proposed abandonment.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33148 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2004–073 and 11607–000]

Holyoke Water Power Company, Holyoke Gas & Electric Department, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company; Notice Denying Extension of Time, in Part, to File Comments, Recommendations, Terms and Conditions, and Prescriptions Pursuant to Our Ready for Environmental Analysis Notice

December 9, 1998.

The Federal Energy Regulatory Commission issued its Notice of Application Ready for Environmental Analysis (REA) for both relicense applications in the Holyoke proceeding on November 3, 1998. The REA notices established a deadline of January 2, 1999, for filing comments, recommendations, terms and conditions, and prescriptions in the aforementioned proceeding.

On November 9, 1998, subsequent to issuing the REA notices, the staff issued a request to both competing applicants, seeking clarification of previously filed additional information. The Commission staff's letter established deadlines of November 30 and December 24, 1998, for responding to different elements of the request. On or about November 19, 1998, the competing applicants jointly requested extensions of these deadlines. The Commission staff denied the applicants' requests by letters dated November 25, 1998.

On December 4, November 30, and November 27, 1998, the U.S. Fish and Wildlife Service, the Connecticut River Watershed Council, and the Town of South Hadley, respectively, filed requests for extension of the January 2, 1999, deadline for filing comments, recommendations, terms and conditions, and prescriptions. These parties assert that the current juxtaposition of the deadlines for responses by the competing applicants to the requests for clarification of information already filed (December 24, 1998), and the due date for comments, recommendations, terms and conditions, and prescriptions (January 2, 1999), does not allow for an adequate review of the material filed with the Commission and subsequent preparation and filing of comments, recommendations, terms and conditions, and prescriptions based on that material.

A substantial amount of information has been on file with the Commission (with copies to the parties of the proceeding) as far back as September 28, 1998. Our letter dated November 9, 1998, merely sought clarification of information that had been previously filed with the Commission, or for responses to comments made by resources agencies and non-governmental organizations on that information. We believe that federal and state agencies, non-governmental organizations, and other interested parties should be able to respond to the remaining material to be filed by the applicants within a short period of time.

Also, as far back as October 27, 1997, in our Notice Granting Extension of Time to File comments and Requests for Additional Studies, we established a very tight schedule so as to resolve these contested applications for relicensing prior to the expiration of the original license term. Again, in Scoping Documents I and II (issued January 8 and June 9, 1998, respectively), we reiterated our schedule to complete these proceedings in the Summer/Fall of 1999. We take this schedule very seriously, and will continue to make every effort to resolve this relicensing prior to September 1, 1999.

We can not justify granting an extension of time to the dates requested. However, in order to address the concerns iterated above, we will extend the deadline to provide final comments, recommendations, terms and conditions, and prescriptions to January 15, 1999, with the caveat that preliminary comments, recommendations, terms and conditions, and prescriptions must be

filed with the Commission by January 2, 1999.

After comments, recommendations, terms and conditions, and prescriptions are filed, applicants are given 45 days to file response comments. Given our schedule for completing relicensing of the Holyoke Project, we will not favorably view and requests for extensions of time to file reply comments. Despite the additional time provided above, reply comments are still due on or before February 18, 1999.

The Commission staff expects to issue a draft environmental impact statement (EIS) in March 1999, with a final EIS being issued in July 1999. Parties will be given 45 days to comment on the draft EIS, and, should there be a need, consultation pursuant Section 10(j) of the Federal Power Act will be completed within 75 days from the issuance of the draft EIS. Moreover, consultation under Section 7 of the Endangered Species Act will be completed during this same period of time.

In light of our goal to act on the applications by September 1, 1999, we provided the above schedule. We do this so that participants in the process are able to anticipate and prepare for necessary actions, such as review of the draft EIS and 10(j) negotiations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33152 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions to Intervene and Protests

December 9, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: P–2661–012.

c. Date filed: September 24, 1998.

d. Application: Pacific Gas and Electric Company.

e. Name of Project: Hat Creek Hydroelectric Project.

f. Location: On Hat Creek in Shasta County, California. About 6.57 acres of the project occupy lands of the U.S. Forest Service, Shasta National Forest.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)—825(r).

h. Applicant Contact: Mr. Terry Morford, Manager, Hydro Generation, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, California 94177, (415) 973–4603.

i. FERC Contact: Any questions on this notice should be addressed to David Turner, E-mail address, David.Turner@FERC.FED.US, or telephone (202) 219–2844.

j. Deadline for filing interventions and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time.

l. Description of Project: The run-of river project consists of two developments: that Creek No. 1 and Hat Creek No. 2.

Hat Creek No. 1 consists of: (1) A 12-foot-high, 231-foot-long concrete buttress overflow diversion dam impounding a 13-acre reservoir at a water surface evaluation of 3,188 feed (referred to as Cassel Pond); (2) a 2,270-foot-long, 9-foot-deep, 30-foot-wide canal with a hydraulic capacity of about 600 cfs; (3) a 14-foot-high, 750-foot-long shotcreted earthfill forebay with an overflow spillway, having a surface area of about 2 acres; (4) a 1,600-foot-long, riveted steel penstock that varies in inside diameter from 12 feet at the intake to 7 feet-six inches at the powerhouse; (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kilowatt (kW).

Hat Creek No. 2 consists of: (1) Crystal Lake, a natural lake with a surface area of 115 acres at a water surface elevation of 2,980 feet: (2) a 29-foot-high, 120-foot-long concrete gravity overflow diversion dam impounding an 89-acre reservoir at a water surface elevation of 2,975 feet (referred to as Baum Lake); (3) a 4,520 foot-long, 7-foot-deep, 18-foot-wide reinforced concrete flume, with a hydraulic capacity of 600 cfs; (4) a 414-foot-long riveted steel penstock with an inside diameter varying from 14 feet at the intake to 7 feet-six inches at the powerhouse; and (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kW.

m. Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application maybe viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection an reproduction at the address in item h above.

n. This notice also consists of the following standard paragraphs: B1 and E1.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE,'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional

copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 98–33140 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests and Comments

December 9, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11634–000.

c. Date Filed: November 10, 1998.

d. Applicant: Continental Lands, Inc.

e. Name of Project: Boundary Creek Water Power.

f. Location: In Boundary County, Idaho. Would Utilize U.S. Forest Service lands in the Kaniksu National Forest.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C., § 791(a)–825(r).

h. Applicant Contact: Mr. Chuck Roady, Continental Lands, Inc., HCR–85, Box 17, Bonners Ferry, ID 83805, (208) 267–5397.

i. FERC Contact: Any questions on this notice should be addressed to Robert Bell, E-mail address, robert.bell@ferc.fed.us, or telephone 202–219–2806.

j. Deadline for filing motions to intervene, protests and comments: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would consist of: (1) A proposed 8-foot-high, 75-foot-long diversion dam; (2) an impoundment having negligible surface area and storage, with a normal water surface elevation of 3,080 feet msl; (3) a proposed intake structure; (4) a proposed 26,900-foot-long, 60-inch-diameter steel penstock, which trifurcates into three arteries; (5) a proposed powerhouse containing three generating units having a total installed capacity of 25 megawatts; (6) a proposed 2.7-mile-long, 13.8-kV transmission line; and (7) appurtenant facilities.

The project would have an annual generation of 61,200 MWh and would be sold to a local utility.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. A copy is also available for inspection and reproduction at the address in item h above.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

A9. Preliminary Permit—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Preliminary Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions or Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'', ''NOTICE OF INTENT TO FILE COMPETING APPLICATION'', ''COMPETING APPLICATION'', ''PROTEST'', ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the

Applicant specified in the particular application.

D2. Agency Comments—Federal, State, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33141 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission

December 9, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New License of Hydroelectric Facility.

b. Project No.: P–2055–000.

c. Date Filed: November 24, 1998.

d. Applicant: Idaho Power Company, Idaho.

e. Name of Project: C.J. Strike Hydroelectric Project.

f. Location: On the Snake River in Owyhee County, Idaho between the towns of Grandview and Bruneau.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: L. Lewis Wardle, Relicensing Project Manager, Idaho Power Company, P.O. Box 70, Boise, Idaho 83707, (208) 388–2964.

i. FERC Contact: John Blair (202) 219–2845.

j. Comment Date: 60 days from the filing date in paragraph c.

k. Description of Project: The project consists of: (1) the existing reservoir impounding 32 miles of the Snake River and 7 miles of the Bruneau River; (2) the existing 3,220-foot-long dam with a height of 115 feet; (3) a powerhouse containing three generating units having an installed capacity of 82.8 megawatts; (4) 3,019 acres of Bureau of Land Management land; (5) two 138-kv transmission lines spanning a total of 90 miles.

l. With this notice, we are initiating consultation with the *Idaho State Historic Preservation Officer (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

m. Under Section 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that he applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33153 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Jurisdiction Determination

December 9, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Jurisdiction Review.

b. Docket No: JR98–1–000.

c. Date Filed: August 31, 1998.

d. Applicant: CHI Energy, Inc.

e. Name of Project: Lower Pelzer Hydroelectric Project, FERC Project No. 10253.

f. Location: On the Saluda River, in Anderson and Greenville Counties, approximately 2 miles south of Pelzer, SC.

g. Filed Pursuant to: Federal Power Act, 16 USC Section 791(a)–825(r).

h. Applicant Contact: Beth E. Harris, P.E., CHI Energy, Inc., 1311A Miller Road, Greenville, SC 29604, (864) 281–9630, (864) 281–9634 (FAX).

i. FERC Contact: Diane M. Murray, (202) 219–2682, (202) 219–2732 (FAX).

j. Comment Date: January 22, 1999.

k. Description of Project: The existing project consists of: (1) a reservoir with a surface area of 80 acres; (2) a granite masonry dam with a 32-foot-high, 310-foot-long overflow spillway and topped by four-foot-high flashboards; (3) a powerhouse containing five generators with a total capacity of 3.3 MW; and (4) appurtenant facilities.

When a request for a Jurisdiction Review is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may be increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title ''COMMENTS'' ''RECOMMENDATIONS FOR TERMS AND CONDITIONS'', ''PROTESTS'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also

be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 98–33173 Filed 12–14–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6201–7]

Agency Information Collection Activities: Proposed Collection; Comment Request; Personal Exposure of High-Risk Subpopulations to Particles

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB).

Title: Exposure of High-Risk Subpopulations to Particles.

EPA ICR Number: 1887.1

Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before February 16, 1999.

ADDRESSES: Interested persons may obtain a copy of this ICR without charge by contacting Ms. Shari Pricer, US EPA (MD–78A), Research Triangle Park, NC 27711.

FOR FURTHER INFORMATION CONTACT: Ms. Shari Pricer, 919–541–2198. Fax: 919–541–1111. E-mail: pricer.shari@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: For technical information on the proposed study, contact the Project Officer, Dr. Lance Wallace, 703–648–4287. FAX: 703–648–4290. E-mail: wallace.lance@epamail.epa.gov.

Affected entities: Entities potentially affected by this action are patients who may be asked to take part in the study by participating physicians.

Title: Personal Exposure of High-Risk Subpopulations to Particles (EPA ICR No. 1887.1).

Abstract: The National Exposure Research Laboratory of the Office of Research and Development (ORD) at EPA is funding four studies of personal exposure of high-risk subpopulations to particles and associated gases. These studies have been recommended by the National Academy of Sciences (NAS).

Three of the studies are three year cooperative agreements with the following institutions: the Harvard School of Public Health, the New York University School of Medicine, and the University of Washington. The fourth study is an EPA conducted study with contractual support. All four studies will employ the same questionnaire to supplement the collection of information on personal, indoor, and outdoor concentrations of the target pollutants. Subjects will be drawn from high-risk subpopulations with respiratory or cardiovascular disease. Participation will be entirely voluntary.

The information will be used by scientists within ORD and external to the Agency to evaluate the relationships between personal exposure, indoor concentrations, and concentrations measured at a central monitoring site for one or more high-risk subpopulations, including particularly persons with chronic obstructive pulmonary disease and persons with cardiovascular disease. The data will also be used by the Office of Air Quality Planning and Standards in their review of the basis for the proposed $PM_{2.5}$ regulation. The information will appear in the form of final EPA reports, journal articles, and will also be made publicly available in an electronic data base.

The cost of the four studies is expected to be $6M over a period of three years. Approximately 240 respondents will be included. The cost to the respondent will be negligible. An incentive payment will be offered to defray burden.

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 EPA would like to solicit comments to:

(i) 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;

(ii) 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;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) 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.

Burden Statement: The average time to review instructions and answer the questionnaire is estimated to be 26 minutes. The questionnaire is administered once each day for periods of 7, 14, 24, or 56 visits per year, depending on the individual study. The total time spent answering the questionnaire is estimated to be 1,217.2 hours for 104 respondents per year, or about 12 hours per year per respondent on average.

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.

T.A. Clark,

Acting Director, National Exposure Research Laboratory (MD–75).

[FR Doc. 98–33220 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6202–7]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 (''CERCLA''), 42 U.S.C. 9601–9675,

notice is hereby given that a proposed purchaser agreement (''Purchaser Agreement'') associated with the Avtex Fibers Superfund Site (''Site'') in Front Royal, Virginia, was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement will resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Century Enterprise, L.L.C. (''Purchaser''). The property subject to the Purchaser Agreement is a certain portion of the Site which encompasses approximately 5.2733 acres, bounded on the west by Kerfoot Avenue, on the north by West Main Street, and on the South by Salem Avenue, in Front Royal, Virginia. The property is separated from the manufacturing portion of the Site by a soccer field and a paved road. Because the property was not utilized for any purpose related to the manufacturing process at the Site, EPA conducted limited sampling at the property. Sampling results indicated no threat to human health, welfare or the environment.

For thirty (30) days following the date of publication of this document receive written comments relating to the proposed Purchaser Agreement to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before January 14, 1999.

AVAILABILITY: The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the ''Avtex Fibers Superfund Site Prospective Purchaser Agreement'' and ''EPA Docket No. III–98–081–DC,'' and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Louis F. Ramalho (3RC21), Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2681.

Dated: December 8, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 98–33219 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6202–9]

Proposed Settlement Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation, and Liability Act, Regarding the Anchor Chemical Superfund Site, Hicksville, Nassau County, New York

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed administrative settlement agreement and opportunity for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9622(i), the U.S. Environmental Protection Agency (''EPA''), Region II, announces a proposed administrative cost recovery settlement pursuant to section 122(h) of CERCLA, 42 U.S.C. 9622(h), relating to the Anchor Chemical Superfund Site (''Site''). The Site is located at 500 West John Street in Hicksville, Nassau County, New York. This document is being published pursuant to section 122(i) of CERCLA to inform the public of the proposed settlement and provide an opportunity to comment. EPA will consider any comments received during the thirty day comment period and may withdraw or withhold consent to the proposed settlement if comments disclose facts or considerations which indicate that the proposed settlement is inappropriate, improper, or inadequate.

The proposed settlement between EPA and the five settling parties, Chessco Industries, Inc., K.B. Co., Kobar Construction Corp., Spiegel Associates, and Jerry Spiegel (''Respondents''), has been memorialized in an Administrative Cost Recovery Agreement (Index Number II–CERCLA–98–0214). This Agreement will become effective after the close of the public comment period, unless comments received disclose facts or considerations which indicate the Agreement is inappropriate, improper, or inadequate, and EPA, in accordance with section 122(i)(3) of CERCLA, modifies or withdraws its consent to the Agreement. Under this Agreement, the Respondents will be obligated to make payment in the amount of $575,000 to the Hazardous Substance Superfund in reimbursement of EPA's past response costs relating to the Site. The Agreement includes a covenant not to sue the settling parties pursuant to section 107(a) of CERCLA, 42 U.S.C. 9607(a). Pursuant to CERCLA section 122(h)(1), the Agreement has been approved by the Attorney General or her designee.

DATES: Comments must be submitted on or before January 14, 1999.

ADDRESSES: Comments should be addressed to the U.S. Environmental Protection Agency, Office of Regional Counsel, New York/Caribbean Superfund Branch, 17th Floor, 290 Broadway, New York, New York 10007–1866, and should refer to: ''Anchor Chemical Superfund Site, U.S. EPA Index No. II–CERCLA–98–0214.'' For a copy of the settlement document, contact the individual listed below.

FOR FURTHER INFORMATION CONTACT: James Doyle, Assistant Regional Counsel, New York/Caribbean Superfund Branch, Office of Regional Counsel, U.S. Environmental Protection Agency, 17th Floor, 290 Broadway, New York, New York 10007. Telephone: (212) 637–3165.

Dated: November 30, 1998.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 98–33218 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

December 10, 1998.

Open Commission Meeting Thursday, December 17, 1998

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, December 17, 1998, which is scheduled to commence at 9:30 a.m. in Room 856, at 1919 M Street, N.W., Washington, D.C.

Item No., Bureau and Subject

1. Common Carrier—*Title:* Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers Long Distance Carriers (CC Docket No. 94–129). *Summary:* The Commission will consider action to implement Section 258 of the Act, which prohibits a carrier from submitting

or executing changes in a subscriber's telephone service except in accordance with the Commission's verification procedures.

2. Cable Services—*Title:* Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming (CS Docket No. 98–102). *Summary:* The Commission will consider the status of competition in markets for the delivery of video programming.
3. International—*Title:* Allocation and Designation of Spectrum for Fixed-Satellite Services in the 37.5–38.5 GHz, 40.5–41.5 GHz, and 48.2–50.2 GHz Frequency Bands; Allocation of Spectrum to Upgrade Fixed and Mobile Allocations in the 40.5–42.5 GHz Frequency Band; Allocation of Spectrum in the 46.9–47.0 GHz Frequency Band for Wireless Services; and Allocation of Spectrum in the 37.0–38.0 GHz and 40.0–40.5 GHz for Government Operations (IB Docket No. 97–95, RM–8811). *Summary:* The Commission will consider a plan for the 36.0–51.4 GHz band and revision of the U.S. Table of Frequency Allocations to accommodate the band plan and proposed Government operations.
4. Office of Engineering and Technology-*Title:* Amendment of the Commission's Rules with Regard to the 3650–3700 MHz Government Transfer Band. *Summary:* The Commission will consider a proposal to reallocate the 3650–3700 MHz band for fixed services, including Fixed Wireless Access that would promote competition in the delivery of broadband communications services.

Office of Engineering and Technology—*Title:* 1998 Biennial Regulatory Review—Amendment of Parts 2, 25 and 68 of the Commission's Rules to Further Streamline the Equipment Authorization Process for Radio Frequency Equipment, Modify the Equipment Authorization Process for Telephone Terminal Equipment, Implement Mutual Recognition Agreements and Begin Implementation of the Global Mobile Personal Communications by Satellite (GMPCS) Arrangements (GEN Docket No. 98–68). *Summary:* The Commission will consider action to: (1) further streamline the equipment authorization process; (2) implement MRAs that would allow the designation of parties in foreign countries to approve equipment as conforming to United States technical requirements; and 3) provide for the interim approval of GMPCS transmitters.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 98–33350 Filed 12–11–98; 3:40 pm]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Fee for Services to Support FEMA's Offsite Radiological Emergency Preparedness Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: In accordance with FEMA Interim Final Rule, ''Fee for Services to Support FEMA's Offsite Radiological Emergency Preparedness (REP) Program,'' 44 CFR Part 354, published elsewhere in this issue of the **Federal Register**, FEMA has established a fiscal year (FY) 1999 hourly rate of $33.01 for assessing and collecting fees from Nuclear Regulatory Commission (NRC) licensees for services provided by FEMA personnel for FEMA's REP Program.

DATES: This user fee hourly rate is effective for FY 1999 (October 1, 1998 to September 30, 1999).

FOR FURTHER INFORMATION CONTACT: D. Anne Martin, Acting Division Director, Exercises Division, Preparedness, Training and Exercises Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–2738 or (email) anne.martin@fema.gov.

SUPPLEMENTARY INFORMATION: As authorized by Pub. L. 105–276 (112 Stat. 2461), an hourly user fee rate of $33.01 will be charged to NRC licensees of commercial nuclear power plants for all site-specific biennial exercise related services provided by FEMA personnel for FEMA's REP Program under 44 CFR part 354, published in the **Federal Register** on December 11, 1998, (60 FR 15628). All funds collected under this rule will be deposited in the REP Program Fund offset the actual costs by FEMA for its REP Program.

The hourly rate is established on the basis of the methodology set forth in 44 CFR 354.4(b), ''Determination of site-specific biennial exercise related component for FEMA personnel,'' and will be used to assess and collect fees for site-specific biennial exercise related services rendered by FEMA personnel.

The establishment of this hourly rate is intended only to address charges to NRC licensees for services provided by FEMA personnel, not charges for services provided by FEMA personnel under the flat fee component referenced at 44 CFR 354.4(d) nor for services provided by FEMA contractors. Services provided by FEMA contractors will be charged in accordance with 44 CFR 354.4(c) and (d) for the recovery of appropriated funds obligated for the Emergency Management Planning and Assistance (EMPA) portion of FEMA's REP Program budget.

Dated: December 10, 1998.

Kay C. Goss,

Associate Director.

[FR Doc. 98–33199 Filed 12–14–98; 8:45 am]

BILLING CODE 6718–06–P

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 December 29, 1998.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104

Marietta Street N.W., Atlanta, Georgia 30303–2713):

1. *The Smith Family Limited Partnership*, Fort Pierce, Florida; to acquire voting shares of Riverside Banking Company, and thereby indirectly acquire Riverside National Bank of Florida, Fort Pierce, Florida.

Board of Governors of the Federal Reserve System, December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33155 Filed 12–14–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 8, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. *Intervest Bancshares Corporation*, New York, New York; to acquire 100 percent of the voting shares of Intervest National Bank, New York, New York (in organization).

Board of Governors of the Federal Reserve System, December 9, 1998.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 98–33154 Filed 12–14–98; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, December 21, 1998.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 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.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: December 11, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–33351 Filed 12–11–98; 3:41 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[Announcement Number 99020]

Grants for Radiation Studies and Research Notice of Availability of Funds

Announcement 99020 supersedes Announcement 98068 which was published in the **Federal Register** on June 19, 1998, [Vol. 63, FR No. 118] [Page 33677–33680]

A. Purpose

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1999 funds for the Grants for Radiation Studies and Research program. The purpose of the program will result in models and procedures that will improve systems to track environmental exposures and diseases. These grants are: (1) To support radiation research on priority issues in the following categories: (a) A broad-based need for participation in International Validation Studies for Environmental Transport Models. (b) Development of methodologies for using current sampling data as an indicator of past contaminant releases to the environment. (c) Development of Usage Factors for Environmental Dose Calculations. (d) Uncertainty Analysis of Dose Conversion Factors for Radionuclides. (e) Risk Factors for Thyroid Disease. (f) Development of Ultra sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry. (2) to encourage professionals from a wide spectrum of disciplines such as engineering, medicine, health care, public health, physical sciences, and others, to undertake radiation research programs. (3) to evaluate current and new scientific methodologies and strategies in the areas of radiation research. This program addresses the ''Healthy People 2000'' priority area of Preventive Services.

B. Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus State and local health departments and other State and local governmental agencies, universities, colleges, research institutions, laboratories, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $350,000 is expected to be available in Fiscal Year 1999 to fund approximately two to four awards. It is expected that the average award will be $100,000–$150,000, the range being $60,000 to $200,000 (including both direct and indirect costs). It is

expected that the awards will begin on or about May 1, 1999, and are made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Use of Funds: Grant funds may not be used to support direct care services.

D. Programmatic Interest

International Validation Studies for Environmental Transport Models

The best way to determine the accuracy of any environmental transport model is to compare predictions made by the model with measurements of the same quantity in the environment, a process known as model validation. The environmental transport models potentially useful in dose reconstruction projects must be validated to the extent possible if the results produced by the models are to be scientifically and publicly defensible. A series of recent international projects coordinated by the International Atomic Energy Agency have been attempting to address this issue using environmental radionuclide data gathered from around the world, especially from nations formerly part of the Soviet Union.

Environmental Indicators of Past Releases

All environmental dose reconstructions will require the extensive use of mathematical models of source term development and environmental transport and dosimetry. These models will be validated against past and present environmental monitoring results. Early environmental monitoring was not as comprehensive or sensitive as today's methods. Therefore, the use of monitoring data for model validation for early years of site operations potentially will be less certain than later years. A number of methods are available for defining long-term trends of environmental contamination. For example, tree ring analyses have been performed to reconstruct historical concentrations of tritium and mercury. Methods developed must provide information on the temporal and geographic patterns of contamination in the environment.

Usage Factors for Environmental Dose Calculations

There are four major factors that determine the dose and risk to people from the inhalation and ingestion of radionuclides and chemicals released to the environment:

A. The source term (the type and amount of contaminant released to the environment);

B. Environmental transport to people (via the atmosphere, hydrosphere, and/or food chains);

C. Usage factors (time spent outdoors, rate of inhalation, amount of a particular food product consumed, etc.); and,

D. Metabolism or the particular radionuclide or chemical in the body resulting in a particular dose or risk.

What is required for modern dose and risk estimation is a probability distribution for each usage factor.

Uncertainty Analysis of Dose Conversion Factors for Radionuclides

All environmental dose reconstructions require the extensive use of Dose Conversion Factors (DCF) that relate intake or exposure to radioactive materials to the endpoint dose. The DCFs in use today have been developed mainly for radiation protection purposes. In as much, these DCFs were derived by the use of conservative values and assumptions, and non-stochastic values of DCFs are listed singularly (i.e., with no estimates of uncertainty). Modern dose and risk estimates require that (1) probability distributions be defined for each of the parameters used to derive the DCF's; (2) each of these distributed parameters be propagated through the model which defines the specific DCF; and (3) the final DCF be presented as a distribution with uncertainties.

Risk Factors for Thyroid Disease

Historical releases of iodine from activities at DOE facilities and during weapons testing have raised questions concerning the risk of thyroid disease associated with radiation exposure. Not only have questions been raised about the risk of thyroid neoplasia, but also about other thyroid diseases that may or may not be related to radiation exposure. Medical monitoring for all thyroid diseases has been proposed for the population around the Hanford nuclear weapons facility potentially exposed to historical releases of radio iodine. A large number of studies have been completed in the last ten years that shed light on the risk factors for thyroid disease and on the association between thyroid disease and radiation.

Development of Ultra Sensitive Measurement Techniques for Individual Environmental Radiation Dosimetry

Much work on environmental dose reconstruction deals with computer modeling using limited environmental monitoring data to ascertain radiation doses to individuals for the purpose of risk assessment and epidemiologic study. This is often due to the fact that the radionuclides of concern have short effective half lives with respect to the elapsed time from exposure to assessment. In many cases, the environmental levels of contamination are significantly below conventional levels of detection for in vivo radiation detection. There is a need for development of ultra sensitive techniques that could be used for assessing environmental exposures to people who are now alive and who may have been exposed to historical releases from DOE weapons facilities. Development of novel techniques or significant improvements on current techniques will be considered.

E. Application Content

Use the information below to develop the applicant content. The application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan. The narrative addressing the scored criteria should be no more that 40 single-spaced pages, printed on one side, with one inch margin, and unreduced font. Applications for radiation research should include:

1. The project's focus that justifies the research need and describes the scientific basis for the research, the expected outcome, and the relevance of the findings. The focus should be based on one or more of the priority topic issues.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

5. A description of the grant's principal investigator's role and responsibilities.

6. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project.

7. A description of those activities related to, but not supported by the grant.

8. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

9. A detailed first year budget for the grant with future annual projections, if relevant.

10. Human Subjects—If human subjects will be involved, how will they be protected, i.e., describe the review process which will govern their participation. The applicant must demonstrate that they have met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

F. Application Submission and Deadlines

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies, on or before February 16, 1999 to: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, N.E., Room 300, Atlanta, GA 30305. Please list the Announcement number 99020 on the covering address label. If your application does not arrive in time for submission to the independent Special Emphasis Panel, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable.

G. Evaluation Criteria

Applications which are complete and responsive will be reviewed and evaluated by an independent Special Emphasis Panel in accordance with the following criteria:

1. The specific aims of the research project, i.e., the broad long term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested; (15 points)

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the knowledge gaps which the proposal is intended to fill; (10 points)

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research; (20 points)

4. The progress of preliminary studies pertinent to the application; (5 points)

5. (a) The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and a statistical analysis plan;

(b) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (15 points)

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives; (15 points)

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities; (10 points)

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement); (5 points)

9. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds. An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown and the applicant must complete an additional copy of page four of Form PHS–398, completed in full, with the deleted amounts shown. This budget page will be reserved for internal staff use only. (Not scored) and

10. Adequacy of existing and proposed facilities and resources. (5 points)

11. Human Subjects—Not Scored

This includes the extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects. If the project involves research on human participants, assurance and evidence must be provided to demonstrate that the project will be subject to initial and continuing reviews by an appropriate institutional review board. Does the project adequately address the requirements of 45 CFR 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Annual progress reports; due no more than 30 days after the end of each budget period;

2. Financial status report, due no more than 90 days after the end of each budget period; and

3. Final financial and performance reports, due no more than 90 days after the end of the project period.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application kit.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Section 301(a) of the Public Health Services Act, as amended [42 U.S.C. Section 241(a)] and under the Occupational Safety and Health Act [29 U.S.C. Section 669(a)] Sections 301 and 391 of the Public Health Service Act [42 U.S.C. 241 and 280(b)]. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Also, the CDC Home Page on the Internet: http://www.cdc.gov is available for copies of this Announcement, application forms, and funding information.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99020 Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE, Mailstop E–13, Atlanta, GA, 30305–2209, telephone (404) 842–6804. E-mail address: vxw1@cdc.gov.

Programmatic technical assistance may be obtained from Steven Adams, Project Officer, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Hwy, N.E., Mailstop F–35, Atlanta, GA 30341–3724, telephone (770) 488–7040. E-mail address: saa1@cdc.gov.

Dated: December 9, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–33162 Filed 12–14–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–228]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Managed Care Adjusted Community Rate (ACR) Proposal and Supporting Regulations in 42 CFR 422.300—422.312; *Form No.:* HCFA–R–0228 (OMB# 0938–0742); *Use:* This collection effort will be used to price the M+C plan offered to Medicare beneficiaries by an M+C organization. Organizations submitting the Adjusted Community Rate form would include all M+C organizations plus any organization intending to contract with HCFA as a M+C organization. These current M+C organization contractors will be required to submit this form no later than May 1, 1999 for the calendar year 2000.; *Frequency:* Annually; *Affected Public:* Businesses or other for profit, Not-for-profit institutions.; *Number of Respondents:* 500; *Total Annual Responses:* 500; *Total Annual Hours Requested:* 50,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Date: December 7, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–33156 Filed 12–14–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Technology Transfer Act of 1986

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Chicago Map Corporation. The purpose of the CRADA is to conduct market research, product design and development, and product distribution for the National Atlas of the United States of America.™ Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Acting Chief of Research, U.S. Geological Survey, National Mapping Division, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4643, facsimile (703) 648–4706; Internet ''ebrunson@usgs.gov''.

FOR FURTHER INFORMATION CONTACT: Ernest B. Brunson, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: November 12, 1998.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 98–33157 Filed 12–14–98; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–932–1430–01; F–92193]

Public Land Order No. 7372; Withdrawal of Public Land for the Lake Todatonten Special Management Area; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws approximately 37,579 acres of public land from location, entry, and patent under the mining laws, in order to create the Lake Todatonten Special Management Area, for the protection of fish, wildlife, and habitat. The land is adjacent to the west boundary of the Kanuti National Wildlife Refuge, and is to be managed by the Department of the Interior, Bureau of Land Management. The land will continue to be subject to the terms and conditions of existing withdrawals or segregations of record. Once established, this withdrawal order may only be amended or revoked by Act of Congress.

EFFECTIVE DATE: December 15, 1998.

FOR FURTHER INFORMATION CONTACT: Shirley J. Macke, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513–7599, 907–271–5049, or Paul J. Salvatore, BLM Northern District Office, 1150 University Avenue, Fairbanks, Alaska 99709, 907–474–2200.

By virtue of the direction and authority vested in the Secretary of the Interior by Section 311 of Public Law 104–333, the Omnibus Parks and Public Lands Management Act of 1996 (also cited as the Kenai Natives Association Equity Act Amendments of 1996), 110 Stat. 4139–4145, it is ordered as follows:

1. Subject to valid existing rights, as well as the subsistence preferences provided under Title VIII of the Alaska National Interest Lands Conservation Act of 1980, 16 U.S.C. 3120 (1994), the following described public land is hereby withdrawn from location, entry, and patent under the United States mining laws (30 U.S.C. Ch. 2 (1994)), in order to create a special management

unit known as the Lake Todatonten Special Management Area, for the protection of fish, wildlife, and habitat:

Fairbanks Meridian

T. 15 N., R. 25 W., (Unsurveyed)
Secs. 4 to 9, inclusive;
Sec. 10, SW¼;
Sec. 15, NW¼;
Secs. 16, 17, and 18;
Sec. 19, N½;
Sec. 20, N½;
Sec. 21, N½.
T. 16 N., R. 25 W., (Unsurveyed)
Sec. 3, W½;
Secs. 4 to 9, inclusive;
Sec. 10, W½;
Sec. 15, W½;
Secs. 16, 17, and 18;
Sec. 19, excluding U.S. Survey No. 6234;
Secs. 20, 21, and 22;
Secs. 27 to 33, inclusive;
Sec. 34, NW¼.
T. 17 N., R. 25 W., (Unsurveyed)
Sec. 20, S½;
Sec. 21, S½;
Sec. 22, S½;
Sec. 23, S½;
Sec. 25, SW¼;
Secs. 26 to 29, inclusive;
Secs. 32 to 35, inclusive;
Sec. 36, W½.
T 15 N., R. 26 W., (Unsurveyed)
Secs. 1 and 2;
Secs. 11 to 14, inclusive;
Sec. 24, N½.
T. 16 N., R. 26 W., (Unsurveyed)
Secs. 1, 12, 13, 24, 25, 26, 35, and 36.

Kateel River Meridian

T. 9 N., R. 27 E., (Unsurveyed)
Secs. 13, 24, 25, and 36.

The area described contains approximately 37,579 acres.

2. Pursuant to Section 311(f)(2)(A) of Public Law 104–333, the Omnibus Parks and Public Lands Management Act of 1996, 110 Stat. 4144, any land affected by this order that is conveyed to the State of Alaska shall be removed from the Lake Todatonten Special Management Area.

3. In accordance with Section 311(f)(2)(B) of Public Law 104–333, the Omnibus Parks and Public Lands Management Act of 1996, 110 Stat. 4144, additional uses of the area, or grant easements, may be permitted only to the extent that such use, including leasing under the mineral leasing laws, is determined to not detract from nor materially interfere with the purposes for which the Lake Todatonten Special Management Area has been established.

4. Pursuant to Section 311(f)(4) of Public Law 104–333, the Omnibus Parks and Public Lands Management Act of 1996, 110 Stat. 4145, this withdrawal order may only be amended or revoked by Act of Congress.

Dated: November 30, 1998.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 98–33165 Filed 12–14–98; 8:45 am]

BILLING CODE 4310–JA–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 December 5, 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 December 30, 1998.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

San Diego County

Bishop, Ellis, House, 4802 El Arco Iris, Rancho Santa Fe, 98001552

San Francisco County

Pier One, Pier One, The Embarcadero (at Washington St.), San Francisco, 98001551

Tulare County

First Congregational Church, 165 E. Mill St., Porterville, 98001553

COLORADO

Boulder County

Hoverhome and Hover Farmstead, 1303–1309 Hover Rd., Longmont, 98001555

Park County

Jefferson Denver South Park and Pacific Railroad Depot, Jct. of US 285 and Cty. Rd. 35, Jefferson, 98001554

CONNECTICUT

Windham County

Broad Street—Davis Park Historic District, Roughly along Broad St, from Dorrane St. to Winter St., Killingly, 98001556

DISTRICT OF COLUMBIA

District of Columbia State Equivalent

Greater U Street Historic District, Roughly bounded by New Hamphire Ave., Florida Ave, 6th St., R St., and 16th St., Washington, 98001557

GEORGIA

Elbert County

Rock Gym, 45 Forest Ave., Elberton, 98001559

Gwinnett County

Superb, The, 3595 S. Old Peachtree Rd., Duluth, 98001560

Harris County

Mountain Hill District Consolidated School, 47 Mountian Hill Rd., jct. with GA 219, Hamilton vicinity, 98001558

KANSAS

Dickinson County

Perring Building, 115 NW 3rd and 118 NW 2nd Sts., Abilene, 98001561

MISSOURI

St. Louis Independent City

J.C. Penney Co. Warehouse Building, 400 S. 14th St., St. Louis, 98001563

Majestic Manufacturing Company Buildings, 2014 Delmar Blvd. and 2011–2017 Lucas Ave., St. Louis, 98001562

NEBRASKA

Clay County

Glenville School, 401 S. Fifth St., Glenville, 98001566

Douglas County

Weber Mill, 9102 S. 30th St., Omaha, 98001568

Greeley County

Spalding Power Plant and Dam, 10 County Rd., Spalding, 98001569

Loup County

Williams, Thomas and Mary, Homestead, Approx. 0.5 mi. E of Taylor, off a gravel road., Taylor vicinity, 98001565

Madison County

Norfolk Carnegie Library (Carnegie Libraries in Nebraska MPS) 803 W. Norfolk Ave., Norfolk, 98001567

Merrick County

Riverside Park Dance Pavillion, Riverside Rd., Riverside Park, Central City vicinity, 98001564

NEW JERSEY

Essex County

St. Lucy's Church, 19–26 Ruggiero Plaza, Newark, 98001570

Mercer County

Washington Road Elm Allee, Washington Rd., bet. the Penns Neck Circle and The D&R Canal, West Windsor, 98001571
Somerset County

Somerset County

Smith, J. Harper, Mansion, 228 Altamont Place, Somerville Borough, 98001572

NORTH CAROLINA

Durham County

North Durham County Prison Camp (Former), 2410 Broad St., Durham, 98001573

Halifax County

Roanoke Rapids Historic District, Roughly bounded by Roanoke R.; Charlotte, Marshall, and Jefferson Sts.; CSX RR; and

W. Thirteenth, Rapids, and Henry Sts, Roanoke, 98001574

Jackson County

Zachary, Mordecai, House, NC 107, 0.2 mi. S of NC 1107, Cashiers vicinity, 98001575

UTAH

Summit County

McMichael, William and Elizabeth, House, Address Restricted, Hoytsville, 98001576

[FR Doc. 98–33164 Filed 12–14–98; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of Information Collection Under Review; New Collection; OVC Preliminary Questionnaire to Determine Hate/Bias Crime Record-keeping Practices.

The Department of Justice, Office of Justice Programs, Office for Victims of Crime, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 15, 1998, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until January 14, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Written comments and/or suggstions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information:

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* OVC Preliminary Questionnaire to Determine Hate/Bias Crime Record-Keeping Practices.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form Number: None. Officer for Victims of Crime, Office of Justice Programs, US Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State and Local.

Other: Non-profit agencies that receive federal VOCA funds to serve crimes. The information requested is necessary to identify the number of VOCA-funded programs serving victims of hate/bias crime, identify the services available and unavailable, and the type of outreach activities to hate/bias crime victims. This information will be aggregated and submitted as a report to the Attorney General, which will also serve as supporting documentation for the Attorney General's report to the President.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 2,925 respondents to complete a 15 minutes to 2 hour mail survey.

(6) *An estimate of the total public burden (in hours) associated with the collection:* A minimum of 731 hours (15 minutes x 2,925 respondents), or a maximum of 5,850 hours (2 hours x 2,925 respondents).

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, Washington, DC 20530.

Dated: December 9, 1998.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–33192 Filed 12–14–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Office for Victims of Crime;

AGENCY INFORMATION COLLECTION ACTIVITIES: Proposed Collection; Comment Request.

ACTION: Notice of information collection under review; reinstatement with no change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program Performance Report.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until February 16, 1999. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address the following points:

(1) Does the proposed information collection instrument include all relevant program performance measures?

(2) Does the proposed information to be collected have practical utility?

(3) Does the proposed information to be collected 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.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact the Office of Management and Budget, Office of Regulatory Affairs, *Attention:* Department of Justice Desk Officer, Washington, D.C. 20530. Additionally, comments may be submitted to OMB via

facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, N.W., Washington, D.C. 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1534.

The proposed collected is listed below.

(1) *Type of information collection.* Reinstatement, with no change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection.* Victims of Crime Act, Victim Assistance Grant Program, Performance Report.

(3) *The agency form number if any, and the applicable component of the Department sponsoring the collection.*

Form: OJP Admin. Form 7330 (Rev. 11/95)

Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice

(4) *Affected public who will be asked or required to respond, as well as a brief abstract. Primary:* State government *Other:* None

(5) *An estimated total of the number of respondents and the amount of time estimated for an average respondent to respond.* The information to compile these reports will be drawn from victim assistance program data to the 57 respondents (grantees). The number of victim assistance vary widely from state to state. A state could be responsible for compiling subgrant data for as many as 186 programs (Texas) to as few as four programs (Guam). Therefore, the estimated clerical hours can range from 1 to 70 hours.

(6) *An estimate of the total burden (in hours) associated with the collection:* The current estimated burden is 1,197 (20 hours per respondent (estimated median) + 1 hour per respondent for recordkeeping x 57 respondents = 1,197 hours). There is no increase in the annual recordkeeping and reporting burden.

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, D.C. 20530.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–33132 Filed 12–14–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Puerto Rico

This notice announces a change in benefit period eligibility under the EB Program for Puerto Rico.

Summary

The following change has occurred since the publication of the last notice regarding the State's EB status:

- November 1, 1998: Puerto Rico triggered ''on'' EB. Puerto Rico's 13-week insured unemployment rate rose above the 6.0 percent threshold necessary to be triggered ''on'' to EB for the week ending October 17, 1998.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC, on December 7, 1998.

Raymond Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 98–33188 Filed 12–14–98; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Dislocated Worker Manufacturing Technology Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the ability of the workforce development system to partner with employers, training providers and others to train dislocated workers in the skills necessary to obtain work requiring technology skills in occupations in manufacturing industry settings with long-term growth potential. The program will be funded with Secretary's National Reserve funds appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR part 95 and 97 as applicable.

This notice provides information on the process that eligible entities must use to apply for these demonstration funds and how grantees will be selected. It is anticipated that up to $10 million will be available for funding demonstration projects covered by this solicitation, with no award being more than $1 million.

DATES: The closing date for receipt of proposals is February 16, 1999 at 4 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Acquisition and Assistance; Attention: Yvonne Harrell, Reference: SGA/DAA 99–001; 200 Constitution Avenue, NW., Room S–4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Fax questions to Yvonne Harrell, Division of Acquisition and Assistance at (202) 219–8739 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV describes the selection process, including the criteria that will be used in reviewing and evaluating applications. Part V discusses the demonstration program's monitoring, reporting and evaluation.

Part I. Background

A. Authorities

Section 323(a)(6) of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees must comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

It is now well understood that the economy has transitioned from the industrial age to the information age. In this age, the most valued commodities are the skills and knowledge possessed by the individual. Global competition has reached an unprecedented level. Technology plays an increasingly important role in this global scenario as nations strive to build things or provide services that are faster, better or cheaper than their competitors.

In this era of global competition and rapid technological advances, technology is the most critical driver of economic growth. The U.S. Department of Commerce, Office of Technology Policy, has reported advances in technology to be the single most important determining factor in sustaining economic growth, estimated to account for as much as half of the Nation's long-term economic growth over the past 50 years. Technology as a method for achieving a practical result encompasses the techniques, machines and equipment, controls, processes, and organization of work, as well as the ideas, skills, and knowledge underlying the work process. Traditional work environments have altered, as have the requisite skills needed by workers to succeed in today's workplace. Technology provides the tools for creating a wide array of new and improved products and new services that reach well beyond the narrow confines of traditional labor markets. A product can now be provided from almost any community, each with the potential to reach global markets. The ability of a company to innovate, incorporate technology, improve products or services, increase market share and thus expand capacity and employment is the engine of economic growth.

Information technologies affect almost every sector and every industry in the United States, in terms of digitally based products, services, and production and work processes. The very nature of advanced technology lies in the ability of a business or industry to identify, assess, adopt and incorporate information based technologies into everyday business and production processes. The information/knowledge-based workplace of today's leading companies requires workers to possess conceptual, analytical, communication, interpersonal, and self-management skills beyond the basic academic and technical skills of the traditional workplace. There is often a skills deficit experienced by employers who continuously push the envelope to innovate, and adopt new technology in order to stay ahead of competitors, both domestic and international.

With accelerated changes in technology, America's workers often discover their skill base has become out of date. New approaches are needed to help American workers stay competitive. Workers need to know and understand what skill standards employers are looking for, and they need to have the means to raise their skills to match that demand.

Our Nation's workforce development system is working to meet this need, but skill shortages in technology are currently very high in some industry sectors and geographic areas. Severe shortages of workers who can apply and use advanced technologies could undermine U.S. innovation, productivity, and competitiveness in world markets. A steady supply of skill workers will help our Nation's industries remain competitive. More importantly, these workers need to possess the appropriate skills demanded in the workplace. Ideally, a system of ''just in time'' training would be able to supply skilled workers that meet industry driven standards and certifications.

The purpose of this demonstration is to test the ability of the Nation's workforce development system to partner with employers, training providers and others to train dislocated workers in the skills necessary to obtain work requiring technology skills in manufacturing occupations and industries experiencing shortages of such workers.

Industries such as aerospace, computers and electronics manufacturing, machinery and motor vehicles, chemicals and petroleum, and specialized instruments and devices as well as bio-technical/biomedical could be among the manufacturing industries experiencing technology skill shortages among those workers they seek to employ.

Manufacturing technologies have gone through several metamorphoses. The impact of these technological trends is often felt as a loss in the number of unskilled jobs with an increase in more technology-savvy jobs required to control automated, computer-operated machinery. As the tools and equipment become more automated, the skills needed for entry level technicians and operators multiply. Increasing use of robotics requires employees who once performed manual labor to become technicians who control automatic processes remotely by computer. Assemblers frequently are now required to possess computer skills for controlling automatic processes remotely. The shift towards automating the production line has resulted in a need for workers who are able to work with computers, robotics, and Computer Numerically Controlled (CNC) machines. Instead of interacting with the products, line workers may now manage machines which perform the processes.

A large number of the layoffs that occur within a manufacturing company are associated with elimination or reduction of a product and changes in technology. They generally have the largest impact on those with lower or outdated skills. Amid massive and continual restructuring within manufacturing, it is imperative for manufacturing employees to commit to lifelong learning. The technology and the push to produce a particular product that created their present position is often soon to be replaced by another generation of product and production process.

As a part of the Nation's Workforce Development System, programs presently funded under Title III of the Job Training Partnership Act, and soon to be funded under the Workforce Investment Act of 1998, annually provide adjustment and training assistance to over 500,000 individuals who have lost their jobs through no fault of their own. These employment and training funds targeted to serve dislocated workers are managed through State and local workforce development organizations who design and operate a national system for training and reemployment programs based on: (1) The needs and characteristics of the local dislocated worker population; (2) the needs of local employers for skilled workers; and (3) the capabilities and capacities of training institutions and other local service providers. The emerging infrastructure of One-Stop/Career Center systems provides comprehensive and integrated workforce development services to both participants and employers.

Under this demonstration, the Department will fund projects that

specifically document the existence of and respond to the reported shortages in their geographical area of workers in manufacturing jobs requiring technology skills. For purposes of this solicitation, the term ''technology'' may be viewed broadly as the link between people and technology in the workplace.

Successful applications may be based on the use of new or innovative service strategies such as the involvement of under represented groups of dislocated workers for existing training programs; the development and use of curricula geared specifically to eligible groups of dislocated workers and the needs of employers with openings in technology-related jobs; or the development of concentrated training models for workers with a residue of skill knowledge from previous related employment, or use of curriculum and skills training interventions designed to impart knowledge, skills and abilities of industry skill standards (where available or under development).

Each successful application will document where there are strong linkages with specific employers' demand for workers with technology-related skills. The demonstration program goals of placement of the project participants in jobs using technology in manufacturing industries which are targeted in the proposal must be clearly addressed and sufficient assurance must be demonstrated that this goal can be accomplished.

Participant satisfaction with project services and with their jobs, as well as their employer's satisfaction with project services and with the participants' skill level and work, should be measured not only at the end of the project but also at critical points identified by the applicant during the progress of the demonstration's implementation.

C. Demonstration Policy

1. Grant Awards

DOL anticipates awarding ten (10) to fifteen (15) grants, not to exceed $1 million per grant. It is anticipated that awards will be made by April 30, 1999. Award decisions will be published on the Internet at ETA's Home Page at http://www.doleta.gov.

2. Eligible Applicants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. Applicants who are not Substate grantees under JTPA Title III, or One-Stop Career Center Operators or Workforce Investment Boards under WIA must submit a letter from the authorized signatory of one or more of such organizations continuing comments on the applicant's proposal. Under Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award grant or loan. This is a risk free Federal program: Therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant.

3. Eligible Participants

All participants in projects funded under this demonstration program must be either:

(a) Eligible dislocated workers as defined at JTPA section 301(a)(1), and 314(h)(1) of the Job Training Partnership Act. These sections of the law may be viewed at http://doleta.gov/regs/statutes/jtpalaw.htm. Proposed projects may target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, nature of dislocation, and reason for unemployment. Note: Individuals whose eligibility is based upon their status as long-term unemployed (section 301(a)(1)(C) JTPA) must have a demonstrated attachment to the labor force.

(b) Incumbent workers. These are currently-employed workers whose employers have determined that the workers require training in order to help keep their firms competitive and the subject workers employed, avert layoffs, upgrade workers' skills, increase wages earned by employees and/or keep workers skills competitive. Such technology training would support further job retention and career development for improved economic self-sufficiency for employed workers, especially those most vulnerable to job loss, and increase the capability of the employing firm(s) to access and retain skilled workers.

4. Applicable Technology

Applicant's proposal must describe the technology skills to be demonstrated in the grant in the context of the skills presently in use in the industry or plants—e.g., how this demonstration is related to the introduction of new equipment, upgrading incumbent workers, development of a new product. If this technology application will enable improvements in the manufacturing process, a description of such benefits should be provided. If this technology is linked to a specific employer or group of employers, discuss the impact on present skill levels caused by the demonstration activities including changes caused by equipment, materials or work organization. Where applicable, relate changes to factors affecting workers such as increased or decreased decision-making responsibility, changes in advancement opportunities or transferability of new skills, changes in the pace of work, and wage increases related to increased skill attainment. Indicate whether this technology could be considered ''leading edge'' by the industry.

5. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the type described at section 314(c) and (d) of JTPA. Supportive services may be provided when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. These services are defined in section 4(24) of JTPA. (Use ETA's web site reference above to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with the provisions of 20 CFR 627.240. In addition to the limitations and requirements provided in JTPA, particularly at Part C of Title I, prospective applicants should be aware that grant funds may not be used for the following purposes: (a) For training that an employer is in a position to provide and would have provided in the absence of the requested grant; (b) to pay salaries for program participants; and (c) for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award, however, the level of detail in the project plan may affect the amount of funding provided.

Grant activities may include: (a) Development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand information or advanced technology employment as quickly as possible;

(b) Working with employers in develop and apply worksite-based learning strategies that utilize cutting-edge technology and equipment;

(c) Development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers with new technology skills;

(d) Development and initial application of contextual learning opportunities for participants to learn

technology theory in a classroom setting while applying that learning in an on-the-job setting;

(e) Use of curriculum and skills training programs that are designed to impart learning to meet employer-specified or industry specific skill standards or certification requirements;

(f) Convening of an Employer Advisory Board to identify skills gaps of job applicants and present workers affecting the ability of the employer to offer a competitive product and develop a strategy for retraining;

(g) Innovative linkage and collaboration between employers and the local Substate Grantee and/or One-Stop/Career Center system to ensure a steady supply of high demand, high skill information or advanced technology workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation. However, successful applicants must demonstrate the direct involvement by employers experiencing skill shortages in the design and operation of the project as well as provide substantive documentation about the existence of skill shortages for the industry or occupations to be targeted by the proposed project. Documentation should include a description of the employer involvement anticipated in the project. An employer advisory committee may be one means of accomplishing employer involvement.

6. Coordination

In order to maximize the use of public resources and avoid duplication of effort, applicants will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within a project area fulfill this requirement. The use of Pell Grants for eligible workers or the use of State training or education funds provided for dislocated workers or certain types of employers should also be addressed in the application.

7. Period of Performance

The period of performance shall be 27 months from the date of execution by the Government. Delivery of services to participants shall commence within 90 days of execution of a grant unless a significant portion of the grant implementation addresses the development of new curriculum or planning strategies. If enrollments are not anticipated to occur within 90 days, the circumstances should be specifically addressed in the application with the reasons provided and an alternative time frame provided.

8. Option to Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of demonstration funding under the Workforce Investment Act, successful program operation, and the determination that a grantee's initial program findings could further inform the workforce development system through refinement of the present demonstration.

Part II. Application Process and Guidelines

A. Contents

An original and three (3) copies of the application shall be submitted. The application shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Application

Part I, the Financial Proposal, shall contain the SF–424, ''Application for Federal Assistance''. (Appendix A) and the ''Budget Information Sheet'' (Appendix B). The Federal Domestic Assistance Catalog number is 17.246. The budget shall include on separate pages a detailed breakout of each proposed budget line item found on the Budget Information Sheet, including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services, supportive services, and retraining services. The Salaries line item shall be used to document the project staffing plan by providing a detailed listing of each staff position providing more than .05 FTE support to the project, by annual salary, number of months assigned to demonstration responsibilities, and FTE percentage to be charged to the grant. In addition, for the Contractual line item, list each of the planned contracts and the amount of the contract. Where a contract amount exceeds $75,000, a detailed backup budget to how the amount of the contract was derived must be included. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

Costs associated with the development of curriculum and other one-time costs should be noted separately in order for reviewers to identify costs associated with development and start-up as well as on-going participant costs.

2. Technical Proposal

Part II, the technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part III of this solicitation. A grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 12 point or larger. Applications that do not meet these requirements will not be considered. Each application shall include the Checklist provided as Appendix C, a Time line outlining project activities provided as Appendix D, and an Executive Summary not to exceed two (2) pages. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

B. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

C. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term

''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by ''Express Mail Next-Day Service—Post Office to Addressee'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

D. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part III. Statement of Work

Each grant application must follow the format outlined in this Part. For sections A through G below, each application should include:

(1) Information that indicates adherence to the provisions described in Part I, Background (Authorities, Purpose, and Demonstration Policy) and Part II, Application Process and Guidelines, of this announcement; and (2) other information that the applicant believes will address the selection criteria identified in Part IV of this solicitation.

Information required under A and B below shall be provided separately for each labor market area where dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

A. Target Population

Describe the characteristics of the proposed target population for the project, e.g.,educational level, previous occupation, age range, likely transferable skills, length of unemployment, and language limitations. If that population is limited to one or more subgroups of the dislocated worker population, explain the basis for such limitation. Describe the size and needs of the target population in the local area as they relate to the services available to the grant. Provide documentation showing there is a significant number of dislocated workers with the target population's characteristics in the project area(s). If the project seeks to serve under represented subgroups such as minority groups, women, older workers (50 years of age and older), disabled individuals, within a particular occupation and the selected subgroup has unique characteristics or needs such characteristics or needs should be identified. Substantive and timely documentation of the subgroup's under representation must be included. Note: Up to 5 points of extra credit will be awarded when the targeted population includes at least 40 percent planned enrollment of an under represented subgroup for the occupation in which training will take place.

Indicate how the number of workers to be enrolled was determined. Sufficient documentation should be provided to show that workers with appropriate characteristics to meet the purposes of this grant are available in sufficient numbers to meet the recruitment goals of the grant recognizing that not all workers with appropriate characteristics will chose to participate.

No more than 20 percent of the total demonstration funding allocated by the Department pursuant to this Solicitation for Grant Applications shall be for incumbent workers.

B. Available Jobs

Jobs targeted for this demonstration must be related to the manufacturing industry covered by the Standard Industrial Classification(SIC) Codes 21–39 and must involve the use of technology skills in a manufacturing setting. Describe the jobs that will be available and targeted for placement to project participants upon completion of training and placement services including the strategy(ies) for identifying job openings that appear appropriate to the training planned and meet the target wage at placement goals established in the proposal. Include information about the number and type of jobs, wage information and the specific set of skills, knowledge or duties (industry-sponsored standards of certifications). Provide documentation (Footnote sources) that a shortage of qualified workers exists in the local area to fill positions in the targeted occupations in the absence of the proposed project. Anecdotal data should not be used. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee local job training plan may also be considered. Other sources from the private sector such as Chamber of Commerce or local Technology Council surveys as well as university studies are also acceptable. Data must relate to local employment shortages.

Substantive linkages with specific employers who are experiencing skill shortages among their present workforce and/or the demand for additional employees with technology skills in documented occupational shortages must be provided. Letters from employers who have made a commitment to the demonstration project are the most appropriate form of documentation.

If some placements will be made with employers who have not been identified at the time of application, describe the job development and placement strategy to be used to assure placement of demonstration participants.

C. Project Design

(1) Purpose. Describe the specific purpose or purposes of the proposed project.

(2) Service Plan. Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and

ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include recruitment, eligibility determination, assessment, retraining, job placement, and supportive services.

(a) Outreach and recruitment. Describe how eligible dislocated workers will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching dislocated workers, especially the targeted population. It is highly recommended that non-JTPA applicants partner with the appropriate JTPA Title III Substate Grantee(s) or local One-Stop Career Center system to plan and implement effective outreach and recruitment strategies.

(b) Eligibility determination. Describe the process to be used in determining the JTPA Title III eligibility of potential participants in the project. It is highly recommended that non-JTPA applicants partner with the appropriate JTPA Title III substate grantee(s) or local One-Stop Career Center system to carry out eligibility determination.

(c) Selection criteria. Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project. Identify any assessment tools that will be used as part of selection process.

(d) Training services. Describe the training to be provided—classroom, experiential, on-the-job, internships, etc. Include the length (days and hours) and schedule, any perquisite courses, and customization to account for transferable skills, previous education (note: whether the training requires new and higher educational levels than previous skill training in the same industry), and particular circumstances of the target population and the skill needs of the hiring employer(s). Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services including courses provided by both public and private providers in the local area. If the training is to be customized to account for individual differences in skills levels of participants or employer hiring needs, describe how these considerations will be taken into account in the delivery of the training.

The training provided must support the information provided regarding skill shortages and demand for jobs using technology skills.

(e) Job Placement. Describe the role of the employer linkages previously addressed in assuring the availability of jobs for participants completing training. If an Employer Advisory Committee is the primary employer linkage, the members of the committee should be listed and the type of expertise they bring to the committee noted. Provide a discussion of the role(s) of the advisory committee and its projected meeting frequency. Describe any additional job seeking skills training or assistance provided to participants completing training.

(f) Post placement services. Describe any post placement services to be provided and explain their value to the achievement of the project's purpose and planned outcomes.

(g) Supportive services. Describe those supportive services determined to be appropriate to the target population's needs. Describe policies and procedures to ensure that supportive services are provided only when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. Indicate how the participants' financial needs during the period of training will be addressed.

(h) Relocation. Describe the limitations and eligibility criteria for relocation assistance, if such assistance is included in the proposal.

(3) Participant flow. Provide a flowchart noting length of time for various activities (such as one day for assessment, etc.) to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Show the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note where service choice options will be available to participants. Indicate the average length of participation from eligibility determination and enrollment in the demonstration project to placement in an unsubsidized job.

(4) Relationship to prior experience. Discuss how the applicant's prior experience in working with dislocated individuals affects or influences the design of the proposed project. Note especially lessons learned or positive experiences that will be replicated.

D. Planned Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures must include, but are not limited to:

(1) The number of participants projected: To be enrolled in services, to successfully complete services through the project, and to be placed into new jobs; a minimum of 80 percent entered employment rate is required;

(2) Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

(3) Wages of participants prior to, at placement and 90 days after placement: (a) For dislocated worker participants: a minimum of 90 percent wage replacement rate is required for at least 75 percent of the participants and an average 90 percent wage replacement for the overall demonstration project is required; (b) for incumbent worker participants: a minimum of 100 percent wage retention is required for all participants successfully completing training and meeting the competencies/skills levels specified by the employer prior to the training.

(4) For projects serving dislocated workers, as part of the targeted outcome for wage at placement, each project should benchmark at least two key wage averages for the labor market in which each project will operate. Suggested benchmarks might include:

(a) The average weekly wage in the manufacturing sector, if the project is focused on manufacturing technology; the average weekly wage for technical and skilled trade jobs; or the average weekly wage for computer programmers and (b) the average wage at placement for the JTPA Title III, dislocated worker program operated by the local Substate Grantee. Provide an explanation of the particular benchmarks chosen for the project. For incumbent workers, indicate the present wage level of the workers to be trained and discuss how this wage level compares with the appropriate benchmark wage for the local labor market area.

(5) For each project serving dislocated workers, at least 80 percent of the individuals placed shall be placed at a wage that meets or exceeds (a) the average benchmarked wage in the labor market area, or (b) the average wage at placement for the last program year

completed (currently 1997) for the JTPA Title III dislocated worker program operated by the local Substate Grantee in the targeted labor market, whichever is greater. The manufacturing wage for any labor market may be obtained from the Covered Wages and Employment Program administered by each State's Employment Service.

(6) Customer satisfaction with the project services including participant at critical points in the service delivery process as well as upon placement and employer satisfaction with the skills and preparation of the participants placed with their organization;

(7) Planned average cost per placement (amount of the grant request divided by the number of program-related placements, and the cost per placement for continued placements (the amount of the grant request minus development/start-up costs divided by the number of program-related placements); and

(8) Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of services, comparison with other available service strategies. Where possible, it would also be useful to look at production improvement and other measures the employer uses regarding efficiency, product quality and output.

Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.

E. Collaboration

Describe the nature and extent of collaboration and working relationships between the applicant and other workforce development partners in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Provide documentation that the collaboration described can reasonably be expected to occur (signed letters of agreement and/or the charter of a formally established advisory council are considered the strongest evidence, while letters of support are considered weaker evidence. Because a core purpose of this demonstration program involves the publicly funded workforce system, the applicant shall describe working relationships with local Substate Grantee(s), including One-Stop/Career Center partners where present.

Describe the number and types of employers to be directly involved in implementation of the demonstration through activities as participation on an advisory council, provision of input to curriculum development and design, training provider, internship supervision, participation in establishment of local skill standards, etc. Describe activities, presently in place or to be undertaken to link activities to program interventions under this grant to employers, industry, or curriculum/learning centers currently designing and developing occupational/job skill standards and certifications. Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications. Employer linkages must be specifically addressed in the application and documentation provided of the specific role(s) the employer(s) will play in implementation of the grant provided.

Skill standards play an important role in ensuring participants are meeting the accepted standards of the industry. Grant applicants may show how skills standards and O*NET are used to help dislocated/incumbent workers acquire training and new jobs. Skill standards can mean National Skill Standards (NSS) developed under the auspices of the National Skill Standards Board or other skill standards recognized by employers as valid requirements for jobs. O*NET refers to the Occupational Information Network that replaces the Dictionary of Occupational Titles and defines all jobs in terms of worker requirements, occupational requirements, experience requirements, worker characteristics, occupational characteristics and occupation-specific requirements. The applicant may request a brochure explaining O*NET at the following e-mail address: rannr@doleta.gov.

Skill standards and O*NET are useful for structuring training curriculum, assessing dislocated/incumbent workers' skills and interests, and defining career paths from one occupation to another. Their application in the proposed project's training design would indicate close links to employers and an understanding of the demands faced by workers in high performance workplaces.

Applicants are encouraged to commit matching funds to the implementation and management of their proposed programs. Matches may be in the form of cash or in-kind contributions. These may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; and provision of staff time at no cost to the project.

Sources of matching funds may include but are not limited to employers, employer associations, labor organizations, and training institutions. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions.

Note: National Reserve Account grants for specific plant closures and layoffs may not be used to match demonstration grant funds, these grants provide sufficient funds to meet the needs of any worker in the targeted dislocation event. However, NRA grant funds may be used to purchase 50 percent or less of the total training slots in a training developed with demonstration grant funds.

Documentation of consultation on the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs where a labor organization represents a substantial number of workers engaged in similar work. Where the union has been involved in bargaining relative to the introduction of either the technology or the addition of new skilled workers at the workplace, provide information as to any role the union played in the design and delivery of the training as well as any impact on the workers with respect to the growth or shrinkage in the number of jobs, the selection of workers for retraining,

F. Innovation

Describe key innovations in the proposed project, including (but not limited to) innovations in concept to be tested, type of participant to be served, services provided, delivery of services, training methods, job development, or job retention strategies. These innovations should be unique to the ongoing knowledge base of service delivery and training presently available to the workforce system. Explain the impact of such innovation on project costs to substantiate the budget items designated as development and start-up costs.

G. Previous Experience

If the applicant has had a demonstration grant with the Department of Labor, Education or HHS within the last three years, list the title of the grant, the amount of the grant, the funding agency, a Federal contact phone number and a brief summary of purpose of the grant. For those grants, funded by

the Department of Labor explain how this grant application differs from grant activity. Explain how the proposed project is similar to and differs from the applicant's prior and current operations.

H. Project Management

(1) Structure. Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project and assures that sufficient staff are available to implement the project in a timely and effective manner. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project, in the overall structure of the applicant's organization. Note: It is highly recommended for applicants requesting $500,000 or more that a full-time project director be available to ensure timely implementation of the project.

(2) Program Integrity. Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components.

Describe how information will be collected to determine the achievement of project outcomes as indicated in section D of this part; and report on participants, outcomes, and expenditures.

(3) Monitoring and Reporting. Describe how the project will keep records of its activities, as required in 29 CFR parts 95 and 97 and 20 CFR 631.63 as appropriate, which will include information such as the following:

(a) Benchmarks. Provide a Time Line of implementation and projected performance benchmarks covering the period of performance of the project (Appendix E). Include a monthly schedule of planned implementation activities and start-up events (such as curriculum development, selection of advisory council, advisory council meetings, hiring of staff, and completion of lease arrangement for space, development of an internal program progress reporting system, design of customer satisfaction measures, initiation of customer satisfaction activities for participants/for employers); quarterly projections of planned participant activity, showing cumulative numbers of enrollments, participation in training and other services, placements, and terminations; and quarterly cumulative expenditure projections. The quarterly performance projection data may be shown in the same implementation benchmark timeline or separately.

(b) Participant progress. Describe how a participant's continuing participation in the project will be monitored, including determination of successful progress in training activities.

(c) Project performance. Identify the information on project performance that will be collected on a short-term basis (e.g., weekly or monthly) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary.

Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

(d) Impact of Collaboration and Innovation. Describe the process for assessing and reporting on the impact of collaboration and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

(4) Grievance Procedure. If the applicant is a JTPA administrative entity or service provider, assure that a grievance procedure is presently in place. Otherwise, describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at Section 144 of JTPA and 20 CFR 631.64(b) and (c).

(5) Previous Project Management Experience. Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

(6) Sustainability and Replicability. Provide assurances that if the project is successful, the demonstration partners will continue to improve and develop the demonstrated approach. Describe the aspects of the demonstration approach that will allow other work force development entities to replicate the proposed project. Note: The cost per participant will be a consideration in any replication consideration by other entities. Discuss the potential applicability of the project, or aspects of the project (such as new assessment tools, etc.), to other dislocated worker programs.

Part IV. Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results will be advisory in nature and not binding on the ETA Grant Officer. Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population (10 Points)

The description of the characteristics of the target group to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service need. Documentation is provided showing that a significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The project identifies under represented groups to be trained in the targeted occupation(s).

B. Targeted Jobs (15 Points)

The jobs in the manufacturing industry identified by SIC code are clearly available to workers who have received appropriate training and preparation given:

(1) The match between the documented skill shortage and the training planned;

(2) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications;

(3) The substantial level of involvement of employers in making known their needs regarding requisite worker skills necessary for hiring program completers

(4) The documentation and reliability of job availability is based upon recognized, reliable and timely sources of information

(5) Where appropriate, the role of workers or representatives of a labor organization representing the workers in the design and/or delivery of training in enhancing worker skills during workplace change

C. Service Plan (12 Points)

The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances;

(2) The complexity of the training and the skills to be developed relative to their characteristics and previous job experience

(3) The jobs in which they are to be placed relative to targeted wage at placement goals;

(4) The length of program participation planned prior to placement.

D. Costs (20 Points)

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including One-Stop/Career Center organizations. The cost information provided regarding similar training available through other training providers is within an acceptable range or sufficient rationale is provided for the cost differences. The impact of development/start-up and innovation on costs is explained clearly in the proposal and is reasonable.

Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

The degree to which other interested partners in the workforce development system invest resources to test the concepts put forth in the application.

D. Management (10 Points)

The project management plan is designed to track project performance in such a way as to assure that benchmarks are achieved in a timely manner, issues affecting performance such as employer involvement, collaboration partners commitments, etc. are quickly identified and addressed, and planned outcomes will be achieved in a cost effective manner.

The applicant (as a part of a collaborative approach) has experience working with technology training. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

E. Collaboration (15 Points)

The proposal includes evidence of direct participation by JTPA SubState Grantees and One-Stop/Career Center entities (where present) in the planning and management of this grant. Evidence of participation of employers whose positions are targeted under the grant is present. Evidence of coordination with other programs and entities for project design or provision of services is also be provided. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

F. Innovation (13 Points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. ''Innovation'' refers to the degree to which such concept(s), design and/or services are not currently found in dislocated worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

G. Sustainability and Replicability (5 Points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using JTPA Title III formula-allotted funds or other public or private resources. The likelihood that the approach may be applicable to a broad range of dislocated worker programs across the country. The proposal provides evidence that the approach and training strategy(ies) used can be replicated by other workforce development partners to address technology skill shortages in their local area.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, targeted jobs, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance (Standard Form) SF–424 constitutes a binding offer.

Part V. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their

additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly progress reports, during initial start-up and implementation of the project, and Quarterly Progress Reports.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis.

3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers as well as project financial and management data and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC, this 9th day of December, 1998.

Janice E. Perry,

Grant Officer.

Appendices

1. Appendix A—Application for Federal Assistance (Standard Form 424)
2. Appendix B— Budget Information Sheet
3. Appendix C—Application Checklist
4. Appendix D—Implementation Benchmarks and Time Line

BILLING CODE 4501–30–P

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction	Preapplication ☐ Construction ☐ Non-Construction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipa
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H Independent School Dist.
I State Controlled Institution of Higher Learning
J . Private University
K Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable)

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer IdentificationNumber (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided.

   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities.

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

Appendix B *PART II - BUDGET INFORMATION*

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:
PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

Application Checklist

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the Solicitation and whether or not these provisions have been included, complied with or addressed. This document is not intended to be comprehensive or address every aspect of the solicitation.

Organization Applying_____.

Contact Person_____.

Phone Number_____.

Date submitted_____.

Application Process

Please check below:

___Application is 20 pages or less.
___Attachments limited to 10 or fewer.
___An original and three copies submitted.
___SF424 (Appendix A) included.
___Budget Information Sheet (Appendix B) included.
___Checklist (Attachment C) included.
___Implementation schedule (Attachment D) included.
___Executive Summary of two pages or less included.

Financial and Technical Provisions

Provide page number below:

___Target Population identified, with supportive documentation.

___Manufacturing industry's(ies') jobs targeted are described and SIC codes are listed.
___Role and involvement in the project of employers experiencing skill shortages discussed and documented.
___Role of the local JTPA Substate Grantee for dislocated worker programs and One-Stop/Career Center system discussed and documented.
___Number and type of targeted jobs and requisite skill sets for employment addressed.
___Specific skill standards and certification for targeted occupations identified and discussed.
___Sources and credibility of labor market/job data cited.
___Approach to identifying and recruiting eligible participants included.
___Eligibility determination approach discussed.
___Process in selecting eligible participants discussed.
___Job placement strategy included.
___Sequence of services and activities to be provided discussed.
___Flowchart of participant services included.
___Applicants' prior experience with dislocated workers addressed.
___All project outcomes and measures of success specified in Part III D addressed.
___Method of assessing impact of coordination included.
___Coordination with other entities discussed.
___Innovation and impact of the project discussed.
___Management structure and staffing plan addressed ___Organizational chart and relationships included.
___Mechanism to ensure financial accountability discussed.
___Basis for applicant's administrative authority addressed.
___Applicant's Method/System to collect, track, manage, report, and utilize data on the project's progress and performance addressed.
___Ability to collect and submit SPIR data indicated.
___Benchmarks to indicate planned implementation schedule included.
___Method to obtain feedback from participants and employers discussed.
___Past experience in Federal demonstration grant projects discussed.
___Project's sustainability addressed.

Appendix D

DISLOCATED WORKER
MANUFACTURING TECHNOLOGY DEMONSTRATION GRANT
IMPLEMENTATION STRATEGY BENCHMARKS AND TIMETABLE FORM

Below are examples of the types of tasks found in implementing a demonstration grant. The tasks, methdology and tangible results for any particular project may be different and probably include more tasks than those illustrated below. It is important, however, for any demonstration planning process to set forth the all of the necessary tasks to be accomplished and to think through the sequencing of sub-tasks and timing requirements necessary to assure the project can be accomplished effectively and efficiently within the period of performance. The time frames should be realistic ones that project administrators and operators can fulfill.

SPECIFIC TASKS TO BE COMPLETED	*(for use of grantee not to be included in application submittal)* ACCOUNTABLE PERSON (specify agency/ organization if outside grantee organization)	METHODOLOGY/APPROACH TO BE USED	TANGIBLE RESULT	TIME FRAME *(begin with Day 1 when notification of grant award is received)*	
				FROM	TO
1. Hire staff		a. Write job description b. Announce opening c. Interview candidates d. Select individual e. Individual reports for work f. All staff positions filled	a. Completed job description b. Announcement published c. Personnel papers completed on candidate d. Project at full staff complement		

2. Ensure adequate facilities to operate project		a. Determine space needs b. Arrange for space c. Negotiate lease d. Obtain necessary furniture and other equipment e. Review maintenance and security needs	Lease signed		
3. Establish participant reporting procedures		a. Review and identify participant data to be collected b. Form prepared to collect participant data or contract prepared for processing of data c. Staff trained in collection and coding of data d. Management report of data designed and tested			
4. Development of customer satisfaction measures		a. Identify the areas in which to determine customer satisfaction b. With consultant, design and test customer satisfaction survey c. Train staff in customer satisfaction philosophy e. Determine schedule for collection of customer satisfaction data f. Analyze and report on customer satisfaction findings g. Use findings to make appropriate program adjustments	a. Areas identified with regard to participant, employer and training provider satisfaction b & c. Surveys developed and pilot tests conducted d. Staff training completed on customer satisfaction e. Schedule for customer satisfaction data collection established f. Report analyzing customer satisfaction prepared and shared with appropriate staff g. Data used to initiate program adjustments		

5. Develop procedures for collection and reporting of financial data		a. Review required data and report forms to ensure that financial reporting system will collect required information. b. Develop internal report that will ensure that project personnel with operational responsibility will be able to keep informed of project expenditures c. Assign staff responsibility to review reports regularly d..... e....			
6. Develop and implement participant recruitment plan.		a. Establish responsibility for recruitment results b. Determine appropriate entities to participate in recruitment efforts c. Design recruitment materials			
7. Develop and implement agreements as necessary with other appropriate agencies and entities		a. Establish contact with ..... b. Develop draft agreements as necessary c. Negotiate and obtain necessary signatures....			
8. Develop and implement job development plan		a. Identify likely employers b. Survey of potential employers to determine need for additional workers and their characteristics c. .... d.....			

9. Establish training needs, curriculum and select training provider(s)		a. Using information from employers, identify training required for placement with interested employers b. Ensure that curriculum to meet employers' needs is available or develop curriculum in collaboration with employers c. Determine method for selection of training providers	a. Areas most in need of trained workers per area's employers are identified b. Curriculum reviewed with employers c. Training provider(s) selected. d. Any necessary special arrangements with training provider(s) completed.		
10. Establish job search and placement assistance plan for participants		a.			
11. Establish Advisory Panel		a. Identify appropriate members b. Select desired members and issue invitation to participate c. Conduct training of panel regarding responsibilities to project d. Schedule meetings and tentative agendas			

12. Develop management benchmarks for program review and improvement		a. Identify data to be used to determine effectiveness of project activities (recruitment, assessment, training enrollments, training completions, job placements, wage rate, follow-up placement rate) b. Determine how data will be collected, the frequency of review, possible use of data collected, etc.	

[FR Doc. 98–33168 Filed 12–14–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration

Program: Incumbent Worker Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of Availability of Funds and Solicitation for Grant Applications (SGA).

SUMMARY: All information required to submit a grant application is contained in this announcement. The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the ability of the workforce development system to partner with employers, training providers and others to develop incumbent worker training programs which promote retention, as documented by continued employment at the employer-of-record; upgrading the skills of incumbent workers; increasing the firm's or firms' or sector's or industry's profitability; and enabling workers to become more competitive in the marketplace.

The program will be funded with Secretary's National Reserve funds appropriated for Title III of the Job Training Partnership Act (JTPA) and administered in accordance with 29 CFR parts 95 and 97 as applicable.

This notice provides information on the process that eligible entities must use to apply for these demonstration funds and how grantees will be selected. It is anticipated that up to $9 million will be available for funding demonstration projects covered by this solicitation.

DATES: The closing date for receipt of proposals is March 1, 1999 at 4 p.m. (Eastern Time).

ADDRESSES: Applications shall be mailed to: U.S. Department of Labor; Employment and Training Administration; Division of Acquistion and Assistance; Attention: Mamie D. Williams, Reference: SGA/DAA 99–002; 200 Constitution Avenue, N.W., Room S–4203; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Mamie D.Williams, Division of Acquistion and Assistance. Telephone (202) 219–8739 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This announcement consists of five parts. Part I describes the authorities and purpose of the demonstration program and identifies demonstration policy. Part II describes the application process and provides guidelines for use in applying for demonstration grants. Part III includes the statement of work for the demonstration projects. Part IV describes the selection process, including the criteria that will be used in reviewing and evaluation applications. Part V discusses the demonstration program's monitoring, reporting and evaluation.

Part I. Background

A. Authority

Section 323(a) (6) of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under section 322 of JTPA (29 U.S.C. 1662a). In addition, section 324 of the Act allows for demonstration projects that provide assistance to new entrants in the workforce and incumbent workers. Demonstration program grantees must comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

Employers and employees alike are facing increasing challenges in their efforts to remain competitive. Increased competition, along with other factors such as the reductions in the defense industry have resulted in significant downsizing of workforces. The increasing adoption of technology has resulted in the realization that the skills of many workers are redundant and must be upgraded in order for them to be able to compete in the current economy.

Many organizations have seen the need to train and re-train existing members of their workforce to enable the companies, as well as the employees, to remain competitive. These organizations have invested in employer-based training to upgrade the skills of the current workforce. Some of this training is conducted in-house by company employees. Other training is contracted out to local training providers such as community colleges and private trade schools. Some firms, who may not have the capacity or resources to develop additional employer-based training, have foregone training altogether but are finding that without it employees will be unable to progress to the next level, resulting in a workforce that is unable to keep up with the demands of the ever-changing marketplace. In addition, it has been documented by a number of studies that a small percentage of workers are the recipients of the majority of the training, leaving a large gap in the number of workers receiving sufficient training to remain competitive.

While in general the term ''incumbent worker training'' may be used to denote any existing efforts on the part of employers to provide training to currently-employed workers in order to help keep these employees employed, the term will be used in the solicitation to describe efforts to keep firms and workers competitive by keeping workers employed, averting layoffs, upgrading workers' skills, increasing wages earned by employees, and improving employees' employability.

The purpose of this demonstration is to test the ability of the nation's workforce development system to partner with employers, training providers and others to train and re-train incumbent workers in the nation's workforce. The U.S. Department of Labor has specific goals for the incumbent worker training demonstration. They are:

1. To support projects that further job retention and career development for improved economic self-sufficiency for employed workers including those most vulnerable to job loss;

2. To increase the capacity of the workforce development system to support incumbent worker training;

3. To support projects that increase the capability of companies to access and retain skilled workers;

4. To gain an increased understanding on ''return on investment,'' particularly through outcome measures;

5. To increase training capacity and understanding of incumbent worker training by employers.

C. Demonstration Policy

1. Grant Awards

DOL anticipates awarding a total of $9,000,000 to ten to twelve grants in two categories, with individual grant amounts varying depending upon the type of grant awarded. It is anticipated that awards will be made by April 30, 1999. Award decisions will be published on the Internet at ETA's Home Page at http://www.doleta.gov.

2. Allowable Activities

Allowable activities include, but are not limited to, those listed under sections 314(c) and 314(d) of the Job Training Partnership Act. They include basic readjustment services such as assessment of educational attainment and interests and aptitudes. Job development and placement activities

are prohibited, as they are the responsibility of the employer in incumbent worker training situations. Training for workers may include basic education such as basic math, grammar, and English as a Second Language training, and skill training to upgrade existing skills, or to provide new skills.

Funds provided through this demonstration may be used to provide supportive services, if appropriate based upon the needs of the workers, e.g., they are necessary to enable the individual who is eligible for training, but cannot afford to pay for such supportive or services to participate in the training program. Supportive services may be provided if appropriate to the needs of the workers. Such services are defined in section 4(24) of JTPA. (Use ETA's web site reference above to view.) Needs-related payments may not be provided with grant funds.

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, if appropriate and justified. Applicants must justify the use of grant funds for training that an employer is in a position to pay for and would have provided in the absence of the requested grant. Grant funds may not be used to pay salaries for program participants or for acquisition of production equipment. Applicants may budget funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award. The level of detail in the project plan may affect the amount of funding provided.

3. Specific Outcome Goals

For all projects, the specific outcome goals are as follows:

(1) To develop incumbent worker training programs for current employees;

(2) To develop partnerships with other entities in the development of the training program including other firms within the same industry; other firms within the same sectors; local training institutions; and/or intermediary organizations such as unions, service delivery areas, states, substate regions, etc.

(3) To develop incumbent worker training programs which result in one or more of the following:

—To promote retention as documented by continued employment at the employer-of-record for specified period of time;

—To improve workers' basic and transitional skills;

—To upgrade skills of workers;

—To maintain or increase wage levels;

—To increase the firm's/ or firms'/ or sector's/ or industry's profitability;

—To update workers' obsolete skills;

—To enable workers to become more competitive in the marketplace.

(4) To develop a training program which continues to be sustainable within firms and local areas after the period of the federal grant ends;

(5) To document efforts toward achieving lifelong learning;

(6) To develop and document efforts toward replicating the incumbent worker training effort elsewhere within the workforce development system;

(7) To disseminate information on lessons learned throughout the workforce development system.

In addition to the above, the following specific outcome goals apply to large firms or industries:

—To develop incumbent worker training programs which result in one or more of the following:

—To promote retention as documented by continued employment at the employer-of-record for specified period of time by focusing on non-managerial workers most vulnerable to layoffs or those who would face barriers to reemployment at a similar wage if they were laid off;

—To develop interventions for employees most ''at risk'' of job loss;

2. Types of Projects

Two types of projects will be funded under this Solicitation for Grant Application (SGA): incumbent worker training for small and medium-size firms or regional sectors and incumbent worker training for large firms or industries. Applications for each type of project will be considered against other applications in the same category.

A. Incumbent Worker Training for Small and Medium-size Firms or Regional Economic and Industry Sectors or Regional Industries. Many small and medium-size firms (those with 500 or fewer employees) may be unable to offer incumbent worker training solely with their own resources, but in combination with federal dollars may be able to develop incumbent worker training programs that result in one or more of the goals enumerated above. Many small firms may not have the capacity to apply for or administer a grant in isolation, but in combination with other firms in the same regional sector may be able to offer a more broad-based training effort that strengthens that regional sector. This type of project may only assist workers and firms with 500 or fewer employees.

Eligible Applicants: For projects providing incumbent worker training for small and medium-sized employers or regional economic and industry sectors or regional industries, the eligible applicant must be an intermediary organization, which will work with a number of small and medium-size employers and coordinate their training activities. Such intermediary organizations may include a state, another public entity, a training institution, such as a community college, a manufacturing extension center funded through the Department of Commerce's Manufacturing Extension Partnership Program, a substate grantee (SSG), or a local workforce board or private industry council. Federal funds may not be used to duplicate or supplant other funding available. Any intermediary organization capable of fulfilling the terms and conditions of this solicitation may apply.

Under the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award grant or loan. This is a risk-free Federal program: therefore, all for-profit organizations that apply will not be able to receive a fee if awarded a grant.

Eligible Participants: Eligible participants for proposed projects include employed workers who are vulnerable to layoffs, who have low skills, those who are new entrants to the workforce, those in need of basic skills, those with obsolete skills, those who would face significant barriers to re-employment if laid off, and/or those who lack skills necessary to advance in the organization.

Maximum Amounts Available: A maximum of $1,000,000 per project proposal, with no more than $100,000 in participant-related costs per individual firm. A total of $6,000,000 will be allocated for this activity.

B. Incumbent Worker Training for Large Firms or Industries or Regional Sectors. Large firms or industries may have greater resources to develop and administer incumbent worker training programs, but may also have greater needs. In this case the federal funds may supplement the training efforts developed by large firms or industries to accomplish one or more of the goals enumerated above.

Eligible Applicants: Eligible applicants for projects providing incumbent worker training for large employers or industries or regional sectors include employers with greater than 500 employees, or groups of large employers, or an intermediary organization such as a state, another public entity, a training institution, such

as a community college, a substate grantee (SSG), a manufacturing extension center funded through the Department of Commerce's Manufacturing Extension Partnership Program, or a local workforce board or private industry council, who would work with a number of large employers or industries or sectors and coordinate their training activities. Employers are encouraged to partner with other employers or organizations to make maximum use of available funding. Federal funds may not be used to duplicate or supplant other funding available. Any organization capable of fulfilling the terms and conditions of this solicitation may apply.

Under Lobbying Disclosure Act of 1995, Section 18, an organization described in section 501(c)(4) of the Internal Revenue code of 1986 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award grant or loan. This is a risk free Federal program: Therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant.

Eligible Participants: Eligible participants for proposed projects include non-managerial workers most vulnerable to layoffs and/or those who are low-waged, low-skilled, or those who would face significant barriers to reemployment at a similar wage if they were laid off, e.g., new entrants to the workforce, those in need of basic skills, and those with obsolete skills. Applicants must demonstrate that the incumbent workers are non-managerial employees.

Maximum Amount Available: A maximum of $1,000,000 per grant with no more than $250,000 in participant-related costs per individual firm. A total of $3,000,000 will be allocated for this activity.

3. Coordination

All applicants are required to demonstrate partnership relationships with publicly-funded local workforce organizations such as workforce investment boards, one-stop career centers, and private industry councils. Where appropriate, partnerships should also included trade unions, manufacturing extension programs, economic development organizations, training institutions, and other local stakeholders. Any efforts proposed in isolation will not have the maximum impact on building capacity within that region or industry and are not likely to be funded.

In order to maximize the use of public resources and avoid duplication of effort, applicants must coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within a project area fulfill this requirement.

4. Cost Sharing/Match

Incumbent worker training should be a collaborative effort between private and public resources. The Department of Labor will not bear the entire cost of incumbent worker training through demonstration funding. It will be a shared expense, with DOL contributing a portion of the costs and the employer and/or other partners contributing the rest. Activities conducted should be eligible both for the match (or cost sharing) and the federal funds. Participating employers are expected to pick up the costs of some of these activities.

There has been considerable discussion about the contributions to be made by the employer to publicly-financed incumbent worker training. The impact of cost sharing or match or the ability to cost share or match differs, depending upon such factors as the size of the workforce, the type of industry or sector being impacted, whether workers belong to a union or not, and the current financial state of the industry or firm. What may be seen as a sacrifice on the part of one employer may seem superfluous to another employer.

Those items eligible to be considered part of the cost-sharing or match are described in section III.C., ''Collaboration and Cost Sharing/ Match.''

5. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government.

6. Option to Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of funds, successful program operation, and the needs of the Department.

Part II. Application Process and Guidelines

A. Contents

An original and 3 copies of the application shall be submitted. The application shall consist of two (2) separate and distinct parts: Part I, the Financial Proposal, and Part II, the Technical Proposal.

1. Financial Application

Part I, the Financial Proposal, shall contain the SF–424, ''Application for Federal Assistance'' (Appendix A) and the ''Budget Information'' (Appendix B). The Federal Domestic Assistance Catalog number is 17.246.

The budget shall include on separate pages detailed breakouts of each proposed budget line item, including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services, supportive services, and retraining services. For each budget line item that includes funds or in-kind contributions from a source other than the grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

2. Technical Proposal

Part II, the technical proposal shall demonstrate the applicant's capabilities in accordance with the Statement of Work in Part III of this solicitation. A grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application shall include the Checklist provided as Appendix C, a Time line outlining project activities, and an Executive Summary not to exceed two pages. NO COST DATA OR REFERENCE TO PRICE SHALL BE INCLUDED IN THE TECHNICAL PROPOSAL.

B. Hand-Delivered Applications

Applications should be mailed no later than five (5) days prior to the closing date for the receipt of applications. However, if applications are hand-delivered, they must be received at the designated place by 4 p.m., Eastern Time on the closing date for receipt of applications. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified time and closing date. Telegraphed and/or faxed proposals will not be honored. Applications that fail to adhere to the above instructions will not be honored.

C. Late Applications

Any application received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it:

(1) Was sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the closing

date specified for receipt of applications (e.g., an offer submitted in response to a solicitation requiring receipt of application by the 30th of January must have been mailed by the 25th); or

(2) Was sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of application. The term ''working days'' excludes weekends and U.S. Federal holidays.

The only acceptable evidence to establish the date of mailing of a late application sent by U.S. Postal Service registered or certified mail is the U.S. postmark on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if it had been mailed late. ''Postmark'' means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, applicants should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

The only acceptable evidence to establish the date of mailing of a late application sent by ''Express Mail Next-Day Service—Post Office to Addressee'' is the date entered by the post office receiving clerk on the ''Express Mail Next Day Service—Post Office to Addressee'' label and the postmarks on both the envelope and wrapper and the original receipt from the U.S. Postal Service. ''Postmark'' has the same meaning as defined above. Therefore, an applicant should request the postal clerk to place a legible hand cancellation ''bull's eye'' postmark on both the receipt and the envelope or wrapper.

D. Withdrawal of Applications

Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before award. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

Part III. Statement of Work

Each grant application must follow the format outlined in this Part. For sections A through G below, each application should include:

(1) Information that indicates adherence to the provisions described in Part I, Background and Part II, Application Process and Guidelines, of this announcement; and

(2) Other information that the applicant believes will address the evaluation criteria identified in Part IV of this solicitation.

Information required under A and B below shall be provided separately for each labor market area where incumbent workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

A. Project Design

This section should explain how firms and individuals within the target population will be identified for the project. Describe the assessment that will be conducted for participating firms and individuals. Describe how the type(s) of training planned for project participants will be determined, the types of training anticipated for participants, and the opportunities available upon completion of assessment and training services. Provide the documentation on which such descriptions are based. Include information about the number and type of jobs available which require updated skills not yet possessed by planned participants, wage information, and the information on specific sets of skills, knowledge or duties (including any industry-sponsored standards or certifications) necessary to perform the jobs. Identify sources of the occupational information or data used. Identify the types of training necessary and how they are appropriate to the company(ies) or firm(s) or sector(s). Anecdotal data should not be used.

Company, industry, or sector or other local labor market information can be used to document needs. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites can be used as a source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee local job training plans may also be considered. If training is needed for retention of workers, provide documentation that this is the case. If opportunities are not available for at-risk workers within the firm, but are available outside of the firm with additional training, please provide this documentation.

(1) *Purpose.* Describe the specific purpose or purposes of the proposed project.

(2) *Target population.* Describe the proposed target population for the project and how this population was identified. If that population is limited to one or more subgroups of the incumbent worker population, explain the basis for such limitation. Describe the size, location, and needs of the target population relative to the services to be provided. Provide documentation showing there is a significant number of incumbent workers with the target population's characteristics in the project area(s).

(3) *Outreach and recruitment.* Describe how eligible incumbent workers and firms will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching the target population.

(4) *Eligibility determination.* Describe the criteria and process to be used in determining the appropriateness and eligibility of participating firms and the eligibility of potential participants in the project.

(5) *Selection criteria.* Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons in participating firms. Explain how the selection criteria relate to the specific purpose of the proposed project.

(6) *Services to be provided.* Describe the services to be provided from the time of selection of participants through the completion of training. Define the end of the service strategy. Describe any services to be provided after training or re-training. The descriptions shall provide a clear understanding of the services that will be necessary for participants to receive training, to retain or upgrade their jobs or job skills, including services not funded under the grant. Define whether the services to be provided are part of a retention strategy or other strategy for the worker and/or the company(ies). Grant-funded activities should, at a minimum, include assessment and training services. Identify policies to demonstrate when supportive services are appropriate for individual participants.

Identify any assessment tools proposed to be used before or after services are provided to identify the needs of both the companies and the workers. Describe how training will be customized to account for transferable skills, previous education, and

particular circumstances of the target population and the skill needs of the employer(s). Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services through other providers.

(7) *Firm selection and participant flow.* Provide flowcharts with time indications to illustrate how the project will work with firms and participating individuals to ensure access to necessary and appropriate services. Describe the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular firms and individual participants. Define the end of the service strategy.

(8) *Relationship to prior experience.* Show how the applicant's prior experience in working with incumbent workers affects or influences the design of the proposed project.

B. Planned Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures may include, but are not limited to:

(1) The number of participants projected: to be enrolled in services, to successfully complete services through the project, to retain their jobs after specified periods of time, to learn new skills which will assist them in retaining or upgrading their current positions or in moving to a new job, to be ''placed'' into new, enhanced jobs, or jobs in another occupational class or another occupation, if appropriate, either with the same company or another company;

(2) Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

(3) Wages of participants prior to training and after training;

(4) As part of the targeted outcome for wage after training, each project should benchmark the average weekly wage in the relevant sector or industry in the labor market in which each project will operate;

(5) Customer satisfaction with the project services, and of critical points in the service delivery process for both employers and participating individuals;

(6) Planned average cost per participant (amount of the grant request divided by the number of program-related training recipients); and

(7) Employer-specific outcome measures that are relevant to the purpose of these grants, including measures related to participants' use of knowledge and skills learned during project-related training;

(8) Other additional measurable, performance-based outcomes which are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of services and comparison with other available service strategies, an increase in the firms' profitability, or the improved ability of workers to become more competitive in the marketplace.

Note: An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.

DOL may conduct additional studies during and after the completion of the projects examining such factors as long-term wage gains, retention, and labor market needs. Participating companies must agree to make such information available to DOL for at least a two-year period following the completion of the grant. Other information may be gathered by using Bureau of Labor Statistics data. DOL may contract with a qualified organization to conduct these follow-up studies.

C. Collaboration and Cost Sharing/ Match

Describe the nature and extent of collaboration and working relationships between the applicant and publicly-funded local workforce organizations such as workforce investment boards, one-stop career centers, and private industry councils, training institutions, and other local stakeholders in the design and implementation of the proposed project. In addition, describe partnerships with trade unions, manufacturing extension programs, economic development organizations, if applicable. Include services to be provided through resources other than grant funds under this demonstration. Applicants are encouraged to commit matching funds to the implementation and management of their proposed programs. Matches may be in the form of cash or in-kind contributions. These may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; provision of staff time at no cost to the project; release time in order for employees to obtain training during their regularly-assigned work hours; replacement costs for workers to cover times when employees are in training; training space; the cost of paying the training providers to develop and/or provide training; the cost of staff time to coordinate training; actual cash contributed to sustain the training efforts; the purchase of training equipment and supplies; and any other justified and approved training-related expenses such as the cost of training managers, keeping in mind maintenance of effort.

Sources of matching funds may include but are not limited to employers, employer associations, labor organizations, and training institutions. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions.

Match is encouraged on a 50/50 basis—50 percent of the cost of the grant to be provided by the applicant or other entity and 50 percent by the grant. These percentages are guidelines that may be waived for extenuating circumstances described in the application by the applicant.

Provide evidence which ensures the collaboration described can reasonably be expected to occur, such as letters of agreement or formally established advisory councils. Because a core purpose of this demonstration program involves the publicly funded workforce system, the applicant shall describe working relationships with local Substate Grantee(s) and One-Stop Career Center entities where present. Describe activities that may be undertaken to link activities to program interventions under this grant to employer, industry, or curriculum/learning centers currently designing and developing occupational/ job skill standards and certifications. Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications.

Documentation of consultation on the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs when a labor organization represents a substantial number of workers engaged in similar work.

D. Innovation

Describe any innovation in the proposed project, including (but not limited to) innovations in concepts to be tested, services, delivery of services, training methods, job development, or job retention strategies. Explain how the proposed project is similar to and differs from the applicant's prior and current activities. Describe how successful activities and processes will be institutionalized within participating firms, partners, and local areas.

E. Project Management

(1) *Structure.* Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project.

(2) *Program Integrity.* Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR Part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to determine the achievement of project outcomes as indicated in section D of this part; and report on participants, outcomes, and expenditures.

(3) *Monitoring and Reporting.*

(a) Describe how the project will keep records of its activities, as required in 20 CFR 631.63 and 29 CFR parts 95 and 97 as appropriate, which will include information such as the following:

(b) Benchmarks. Provide a timeline of benchmarks covering the period of performance of the project. Include a monthly schedule of planned start-up events; a quarterly schedule of planned participant activity, showing cumulative numbers of participating firms, enrollments, participation in training and other services, terminations and quarterly cumulative expenditure projections.

(c) Participant progress. Describe how a participant's and a firm's continuing participation in the project will be monitored.

(d) Project performance. Identify the information on project performance that will be collected on a short-term basis (e.g., weekly or monthly) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary.

Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be available through DOL-supported initiatives.

(e) Impact of Coordination and Innovation. Describe the process for assessing and reporting on the impact of coordination and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

F. Grievance Procedure

Describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at section 144 of JTPA and 20 CFR 631.64(b) and (c).

G. Previous Project Management Experience.

Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

Part IV. Evaluation Criteria

Selection of grantees for awards will be made after careful evaluation of grant applications by a panel selected for that purpose by DOL. Panel results will be advisory in nature and not binding on the ETA Grant Officer. Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population (15 points)

The description of the characteristics of the target group of firms and individuals to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service needs. Employer commitment and readiness are demonstrated either through direct evidence or a rigorous assessment process. Sufficient information is provided to explain how the number of firms served and incumbent workers to be enrolled in the project was determined. The service plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project.

B. Service Plan and Cost (30 points)

(a) The scope of services to be provided is consistent with the demonstration program and project purposes and goals.

(b) The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances;

(2) The opportunities available after training relative to targeted wages and job openings;

(3) The match between documented demand skills and the training planned;

(4) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications;

(5) The length of program participation planned.

(c) Documentation and reliability of skills needs within participating firms and/or labor markets is based upon recognized, reliable and timely sources of information.

(d) The project service plan for incumbent worker training is a complementary component to the provision of other forms of assistance to participating firms.

(e) Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including the One-Stop Career Center System. The impact of innovation on costs is explained clearly in the proposal and is reasonable.

(f) Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to

achieve program goals will be taken into consideration in the rating process.

C. Management (20 points)

The applicant (as a part of a collaborative approach) has experience working with or has partnered with organizations skilled in assessing training needs and developing training. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned performance and expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

D. Collaboration (20 points)

The proposal includes evidence of direct participation by JTPA Substate Grantees and the One-Stop Career Center System (where present) in the planning and management of this grant. Evidence of involvement by actual or prospective participating employers whose positions are targeted under the grant is present. Evidence of coordination with other programs and entities for project design or provision of services may also be provided. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. Relationship to a regional and/or State plan for economic and workforce development is clearly articulated. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

E. Innovation (10 points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. ''Innovation'' refers to the degree to which such concept(s), design and/or services are not currently found in incumbent worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals. The proposal identifies potential benefits for other workforce development programs resulting from this grant.

F. Sustainability (5 points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using other public or private resources. The proposal identifies active planning or other developmental activities for incumbent worker training that will build on and benefit from this project. These may be within participating firms or in external activities.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance (Standard Form) SF–424 constitutes a binding offer.

Part V. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically.

Applicants selected as grantees will be required to provide the following reports:

1. Monthly and Quarterly Progress Reports.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis.

3. Participant and firm-based reporting (to be developed).

4. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC this 10th day of December, 1998.

Janice E. Perry,

Grant Officer.

Appendices

1. Appendix A—Application for Federal Assistance (Standard Form 424)

2. Appendix B—Budget Information

3. Appendix C—Application Checklist

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN):

☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐-☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	(C)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C

Review Guide for State Incumbent Worker System Building Proposals

State:_____
Regional Contact:_____
Regional Review Completed by:_____
Date:_____

Content	Yes	No	Remarks
Does the proposal contain the name of the State and the name of a contact person?			
Does the proposal contain the signature of the Governor or the Authorized Designee?			
Does the proposal contain the date of submission?			
Does the proposal contain the time period covered?			
Has the proposed been coordinated with the State JTPA liaison?			
OVERVIEW			
Does the proposal describe the State's current activities in the incumbent worker field?			
Does the proposal describe the State's goals for this effort?			
STRATEGY FOR STATEWIDE EFFORTS			
Does the proposal describe what will be necessary for a broad-based strategy Statewide for incumbent worker training, how much this effort will cost, and what funds have already been committed to this effort?			
Does the proposal describe how this effort will include planning for the selection of organizations, firms, or sectors to participate in incumbent worker activities and who will represent them in the planning and implementation processes?			

			Review Guide page 2 State_____
Content	**Yes**	**No**	**Remarks**
STAKEHOLDERS TO BE TARGETED			
Does the proposal identify the organizations in the State which are already working on incumbent worker training?			
Does the proposal describe what stakeholders will be included in the planning process and their relevance to this effort?			
NEEDS FOR INCUMBENT WORKER TRAINING			
Does the proposal describe what already exists in the area of privately-funded and publicly-funded efforts and what organizations are already working together on this effort? Does the proposal describe how these needs were determined?			
Does the proposal describe the goals for the planning effort in the area of need identification? Are training needs documented? Does the proposal indicate who will be eligible for the training?			
TRAINING PROVIDERS			
Does the proposal identify potential issues related to selection of training providers and does it describe how the plan will address these issues?			
OUTCOME GOALS			
Does the proposal address how specific outcome goals for incumbent worker training will be determined and how achievement of goals will be measured?			
MANAGEMENT OF PROJECTS			
Does the proposal describe how the project will be managed, with the name of the project manager and the organization?			

			Review Guide page 3 **State**_____
Content	**Yes**	**No**	**Remarks**
Does the proposal address how the planning activity will address the management of prospective incumbent worker training projects?			
BUDGET			
Does the proposal describe how much money is budgeted for this effort, including specific line items as contained in standard form 424A?			
Does the proposal describe each line item, with the basis for each cost? Does the proposal identify any non-system building grant funds devoted to the effort?			
TIME LINE			
Does the proposal describe which activities will take place during the project's period of performance to complete the State plan?			
EVALUATION			
Does the proposal describe how this demonstration project will be evaluated?			
ADDITIONAL INFORMATION			
Does the proposal provide any additional information to explain the State's plan for Incumbent Worker Training?			

[FR Doc. 98–33169 Filed 12–14–98; 8:45 am]
BILLING CODE 4510–30–C

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Workforce Investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

Time and Date: The meeting will begin at 9:00 a.m. on January 7, 1999, and continue until approximately 4:30 p.m., and will reconvene at 9:00 a.m. on January 8, 1999, and adjourn at close of business that day. Time is reserved from 3:00 to 4:30 p.m. on January 7, 1999 for participation and presentations by members of the public.

Place: U.S. Department of Labor, 200 Constitution Avenue NW, Frances Perkins Building, Room North 3437–A & B, Washington, DC 20210.

Status: The meeting will be open to the public. Persons with disabilities, who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

Matters to be Considered: The agenda will focus on the following topics:

- Brief report of meeting of November 5 & 6, 1998,
- Report from the workgroup on regulations for the Workforce Investment Act,
- Report from the workgroup on youth programs,
- Report from the workgroup on performance standards.

For Further Information Contact: Alicia Fernandez-Mott, Chief, Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 8th day of December, 1998.

Anna W. Goddard,

Director, Office of National Programs, Employment and Training Administration.

[FR Doc. 98–33187 Filed 12–14–98; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL CAPITAL PLANNING COMMISSION

Prince Georges County, Maryland; Mixed-Use Waterfront Destination Resort; Meeting

AGENCY: National Capital Planning Commission.

ACTION: Proposed construction of a Mixed-Use Waterfront Destination Resort in Prince Georges County, Maryland; Public Meeting to receive comments on draft environmental impact statement.

SUMMARY: The National Capital Planning Commission (NCPC) has prepared a Draft Environmental Impact Statement (DEIS) on the construction and operation of the proposed National Harbor project in accordance with Section 102(2)(c) of the Environmental Policy Act of 1969, the National Historic Preservation Act (NHPA) of 1966, and the Environmental Policies and Procedures implemented by NCPC. As the lead federal agency for the preparation and completion of the draft and final EIS, NCPC announces its intent to conduct a public meeting to receive comments on the DEIS at the following date and time. Wednesday, January 20, 1999 at 7:00 p.m.; Oxon Hill High School, 6701 Leyte Drive, Oxon Hill, Maryland.

In the event of inclement weather, the meeting will be held on Wednesday, January 27, 1999 at the same time and place. The purpose of the public meeting is to afford all interested persons the opportunity to present their views regarding the information presented in the DEIS.

SUPPLEMENTAL INFORMATION: The National Harbor resort development is proposed to be built on two parcels totaling 533.9 acres in Prince Georges County just south of the Capital Beltway (I–95/I–495) between the Woodrow Wilson Memorial Bridge and the Beltway interchange at Indian Head Highway (Maryland Route 210). Approximately 241 acres of the site consists of land under Smoot Bay in the Potomac River. The development would include hotels, restaurants, retail and entertainment facilities, office space, and a visitor's center, as well as associated vehicular transportation and parking facilities, pedestrian walkways, and other infrastructure improvements.

On December 11, 1998, the DEIS will be available at the offices of the National Capital Planning Commission and at the Prince Georges County Branch Library at 6200 Oxon Hill Road, Oxon Hill, Maryland. Additional information about the National Harbor DEIS may be found on the World Wide Web site at http://www.ncpc.gov/today.html. The public meeting will begin with a short formal presentation and will then be open to the public for comments on the DEIS. In an effort to accommodate those who wish to speak, the following procedures will be followed:

- Upon entering the meeting, every individual who wishes to speak must sign up and include his/her name (clearly written) and official home mailing address. A speaker's list will be created and speakers will be called in the order of sign-up. No sign-ups will be accepted after 8:00 p.m.
- Advance sign-up is available by calling NCPC at (202) 482–7251.
- Group representatives presenting formally adopted positions of their group and elected officials may speak for five (5) minutes. Individuals may speak for three minutes. In the interest of fairness, no time extensions will be allowed. All comments should address the content of the DEIS. It is expected that all attendees will be courteous and respectful of the views of others.

Written comments will also be accepted through February 1, 1999, and will receive the same weight as comments made at the public meeting. All such comments should be addressed to: National Capital Planning Commission, Attention: Eugene Keller, 801 Pennsylvania Avenue, N.W., Suite 301, Washington, D.C. 20576.

Comments may also be sent by e-mail to eugene@ncpc.gov.

All comments will be fully considered in the preparation of the final EIS. That document will become available on or about February 26, 1999.

FOR FURTHER INFORMATION CONTACT: Eugene Keller, National Capital Planning Commission, (202) 482–7251.

Sandra Shapiro,

General Counsel, National Capital Planning Commission.

[FR Doc. 98–33200 Filed 12–14–98; 8:45 am]

BILLING CODE 7501–02–M

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10:00 a.m., Thursday, December 17, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Request from a Federal Credit Union to Expand its Community Charter.
2. Request from a Federal Credit Union to Merge and Convert Insurance.
3. Appeal from a Federal Credit Union of Regional Director's Denial of a Community Charter.
4. Request from a State Chartered Corporate Credit Union to Convert to a Federally Chartered Corporate Credit Union.
5. Community Development Revolving Loan Program for Credit

Unions: Notice of Applications for Participation and Interest Rate for Loans.

6. Proposed Small Credit Union Program.

7. Proposed Small Credit Union Program, and Reconsideration of Six Additional FTEs.

8. Proposed Rule: New Part 715 and Amendments to Part 741, NCUA's Rules and Regulations, Supervisory Committee Responsibilities and Financial Statement and Audit Requirements.

9. Proposed Rule: Amendments to Sections 701.20, 713, and 741.201, NCUA's Rules and Regulations, Fidelity Bond Regulation.

10. Proposed Rule: Amendments to Section 701.30, NCUA's Rules and Regulations, Safe Deposit Box Service.

11. Notice and Request for Comments: Federal Credit Union Bylaws.

12. Final Rule: Amendments to Section 701.23, NCUA's Rules and Regulations, Purchase, Sale and Pledge of Eligible Obligations.

13. Interim Final Rule: Part 707, NCUA's Rules and Regulations, Truth in Savings.

14. Final Rule: Amendment to Section 701.21(g), NCUA's Rules and Regulations, Nonmember Assumption of Real Estate Loans.

15. Final Rule: Chartering and Field of Membership Policies.

16. Delegations of Authority: Chartering and Field of Membership.

RECESS: 12:30 p.m.

TIME AND DATE: 1:30 p.m., Thursday, December 17, 1998.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Administrative Action under Section 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemption (8).

3. Administrative Action under Sections 206, 208, and 306 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

4. Administrative Action under Part 703 of NCUA's Rules and Regulations. Closed pursuant to exemptions (8) (9)(A)(ii), and (9)(B).

5. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), and (10).

6. Two (2) Personnel Actions. Closed pursuant to exemptions (2) and (6).

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 98–33251 Filed 12–10–98; 5:04 pm]

BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Partnership Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Partnership Advisory Panel (State Partnership Agreements Section 1 and Section 2), to the National Council on the Arts will be held on January 14–15, 1999 (Section 1), and January 21–22, 1999 (Section 2). The panels will meet from 9:00 a.m. to 5:30 p.m. on January 14 and January 21, and from 9:00 a.m. to 5:00 p.m. on January 15 and January 22, in Room 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506.

These meetings will be open to the public on a space available basis. Topics will include review of State Partnership Agreement applications and discussion of guidelines and policy issues.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allow, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: December 9, 1998.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 98–33193 Filed 12–14–98; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

INFORMATION PERTAINING TO THE REQUIREMENT TO BE SUBMITTED:

1. *The title of the information collection:* 10 CFR Part 20 Standards for Protection Against Radiation.

2. *Current OMB Approval Number:* 3150–0014.

3. *How often the collection is required:* Annually for most reports; at license termination for reports dealing with decommissioning.

4. *Who is required or asked to report:* NRC licensees, including those requesting license termination.

5. *The number of annual responses:* The total annual number of NRC licensees responding to this requirement by either reporting or recordkeeping is 5939.

6. *The number of hours needed annually to complete the requirement or request:* 165,498 (approximately 28 hours per licensee).

7. *Abstract:* 10 CFR Part 20 establishes standards for protection against ionizing radiation resulting from activities conducted under licenses issued by the NRC. These standards require the establishment of radiation protection programs, maintenance of radiation records, recording of radiation received by workers, reporting of incidents which could cause exposure to radiation, submittal of an annual report to NRC of the results of individual monitoring, and submittal of license termination information. These mandatory requirements are needed to protect occupationally exposed individuals from undue risks of excessive exposure to ionizing radiation and to protect the health and safety of the public.

Submit, by February 16, 1999, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW, (Lower Level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/NEWS/OMB/index.html) 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 may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC, 20555–0001, or by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 9th day of December, 1998.

For the U.S. Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–33203 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–05798, License No. 34–10445–01]

Shelwell Services, Inc., Hebron, Ohio: Notice of Public Meeting and Opportunity for a Hearing Regarding Proposed License Termination

Background: In a letter dated January 13, 1998, Shelwell Services Inc. (Shelwell) requested the termination of byproduct material License No. 34–10445–01. The Shelwell facility is located at 645 East Main Street, Hebron, Ohio. Shelwell is licensed to use sealed sources and unsealed radioactive material in well logging and tracer studies of oil and gas wells. In September 1983, the licensee accidentally drilled into a 2-curie cesium-137 sealed source, which caused the spread of radioactive contamination. The site was substantially decontaminated following the 1983 incident. The licensee has recently completed additional decontamination, and reported that the site will be ready for release for unrestricted use when some stored sealed sources and a small amount of containerized radioactive waste are removed from the site. Copies of the licensee's termination request and related correspondence are available for review and copying for a fee at the NRC's Region III office at 801 Warrenville Road, Lisle, IL 60532–4351.

The Nuclear Regulatory Commission (NRC) staff will approve termination of the license, if the staff determines that the site has been adequately decontaminated, and that the site is suitable for release for unrestricted use in accordance with 10 CFR 30.36; 10 CFR Part 20, Subpart E; and other applicable requirements. If the staff determines that portions of the site have been adequately decontaminated, but the stored sealed sources or waste have not been removed from the site, then the license may be amended to release the decontaminated portions of the site for unrestricted use, and a decision made on termination at a later date, when the stored sources and waste have been removed from the site.

The NRC staff is also preparing an environmental assessment of Shelwell's license termination request. The final findings of the assessment will be published in a future **Federal Register** notice, prior to the staff's decision on Shelwell's license termination request.

Notice of Public Meeting: Prior to acting upon the license termination request, the NRC staff plans to hold a public meeting to discuss the request, receive comments, and answer questions from the public. The meeting will be held at the Holiday Inn, 733 Hebron Road, in Heath, Ohio, on January 13, 1999, at 7:00 p.m.

Opportunity for a Hearing: The NRC hereby provides notice that this is a proceeding on an application for license termination falling within the scope of Subpart L, Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings, of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with § 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to the Rulemakings and Adjudications Staff, Office of the Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays; or

2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(h);

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(d).

In accordance with 10 CFR § 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Shelwell Services, Inc., 447 Lakeshore Drive West, Hebron, Ohio 43025, Attention: Mr. Clyde Shelton, and

2. The NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm, Federal workdays, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For Further Information Contact: Mr. George M. McCann, U.S. Nuclear Regulatory Commission, Region III, 801 Warrenville Road, Lisle, IL, 60532–4351. Telephone: (630) 829–9856.

Dated at Rockville, Maryland, this 9th day of December, 1998.

For the U.S. Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–33201 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 For the U.S. Enrichment Corporation Paducah Gaseous Diffusion Plant, Paducah, Kentucky

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 shown 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 Paducah Gaseous Diffusion Plant. 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(c)(19). 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, 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: November 5, 1998.

Brief description of amendment: The amendment proposes to change the completion dates for Compliance Plan Issues 46 and 50. The completion dates are being changed from December 15, 1998, to January 18, 2000. These issues require plant modifications to ensure that the criticality accident alarm system (CAAS) alarm horns are capable of being heard throughout the affected areas of the process buildings and to provide CAAS alarm horns for those unalarmed facilities within the evacuation area of other buildings. USEC will provide alternative means of personnel notification in the event of a CAAS alarm. The amendment also proposes criteria for determining audibility of the CAAS alarm horns.

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.

The proposed changes to the Compliance Plan completion dates and the addition of criteria for determining alarm horn audibility will have no effect on the generation or disposition of effluents. Therefore, the proposed changes will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The CAAS does not prevent criticality, therefore, the possibility of a criticality occurring is not increased. However, in the unlikely event a criticality did occur, the personnel notification might not be as prompt as relying on the CAAS horns. Therefore, the potential radiation exposure for an individual could be higher because the individual remained in the area for a longer period of time. This slight chance for increased exposure is not considered to be significant. The proposed changes will not significantly increase any exposure to radiation due to normal operations. Therefore, the changes will not result in a significant increase in individual or cumulative occupational radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in any building 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.

The CAAS system is not involved in any precursor to an evaluated accident. Extension of the completion dates for the modifications to improve CAAS audibility has no effect on the probability of occurrence of a criticality accident. The consequences of a potential criticality accident will not be significantly increased since the ability of the CAAS to detect a criticality is unchanged and the compensatory measures currently in place will remain in place until the modifications are completed. It is possible that personnel exposure could be slightly increased due to possible short delays in personnel notification. The addition of acceptance criteria for subjectively measuring audibility will not alter either the probability or the

consequences. Therefore, these changes will not significantly increase the probability of occurrence or consequence of any postulated accident currently identified in the safety analysis report.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The CAAS is used to mitigate the consequences of a criticality accident. The proposed changes do not introduce any new or different accidents than those previously analyzed. Therefore, the proposed changes will not create the possibility of a new or different type of equipment malfunction or a new or different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes to the completion dates for the CAAS modifications extend the period for having areas of the plant not covered by the audible alarm horn, however, the compensatory measures provided in Compliance Plan Issues 46 and 50 will remain in place. These include use of building howlers for the process buildings and the use of radios in unalarmed buildings. These measures will provide adequate notification in the event of a criticality accident. The proposed acceptance criteria for determining audibility provide a subjective means for ensuring audibility. Therefore, the changes do not result in a significant decrease in the margins 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.

The proposed changes do not change the safeguards or security programs. The CAAS audibility acceptance criteria provide a subjective means of determining audibility and may improve the effectiveness of the safety program. The continued use of alternative methods of notification for the CAAS alarms (building howlers and radios) due to the extension of the completion dates for Compliance Plan Issues 46 and 50 will ensure that personnel are promptly notified of CAAS alarms. Therefore, the overall effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective immediately after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise Compliance Plan Issues 46 and 50 to reflect the new completion dates of January 18, 2000. The amendment will also add acceptance criteria for determining CAAS alarm horn audibility.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 7th day of December, 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–33204 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket 70–7001]

Notice of Amendment to Certificate of Compliance GDP–1 for the U.S. Enrichment Corporation (Paducah Gaseous Diffusion Plant), Paducah, Kentucky

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 shown 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 Paducah Gaseous Diffusion Plant. 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(c)(19). 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, 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: September 15, 1997

Brief description of amendment: The amendment proposes to revise Technical Safety Requirement (TSR) 2.3.4.7, Criticality Accident Alarm System (CAAS), Required Action A.1.5 to provide additional time to operate the withdrawal station in normal steady state operation should the alarm system be declared inoperable. This would allow the accumulators in the product withdrawal area to be filled while the CAAS was inoperable instead of immediately placing the cascade into the recycle mode.

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.

The proposed changes to the TSR to provide additional time to conduct operations when the CAAS is inoperable will have no effect on the generation or disposition of effluents. Therefore, the proposed TSR modification will not result in a change to the types or amount of effluents that may be released offsite.

2. The proposed amendment will not result in a significant increase in individual or cumulative occupational radiation exposure.

The CAAS does not prevent criticality, therefore, the possibility of a criticality occurring during the period of CAAS inoperability is not increased. Personnel access during the period of inoperability is limited and individuals are required to have an alternate means of criticality alarm notification. However, in the unlikely event a criticality did occur during this period, the personnel notification might not be as prompt as the CAAS. Therefore, the potential radiation exposure for an individual could be higher because the individual remained in the area for a longer period of time. This slight chance for increased exposure is not considered to be significant. The proposed changes will not significantly increase any exposure to radiation due to normal operations. Therefore, the changes will not result in a significant increase in individual or cumulative radiation exposure.

3. The proposed amendment will not result in a significant construction impact.

The proposed changes will not result in 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.

The proposed change to TSR 2.3.4.7 to allow the accumulators to be filed in the event of CAAS inoperability does not increase the probability of any accident. It is possible that personnel exposure could be slightly increased due to possible short delays in personnel notification. For personnel in the immediate vicinity of any criticality, the consequences would not be expected to change. Consequences to the facility would not be changed. These changes will not significantly increase the probability of occurrence or consequence of any postulated accident currently identified in the safety analysis report.

5. The proposed amendment will not result in the possibility of a new or different kind of accident.

The proposed TSR modification will allow the routine operation of filling an accumulator to occur while the CAAS is inoperable. This change does not introduce any new or different accidents than those previously analyzed. Therefore, the proposed changes will not create the possibility of a different type of equipment malfunction or a different type of accident.

6. The proposed amendment will not result in a significant reduction in any margin of safety.

The proposed changes do not change the types of accidents that could occur or the probability of any accidents. The margin of safety for withdrawal related operations is not changed. Criticality detection would be provided through the use of personnel alarming devices. The changes do not significantly decrease the margins 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.

Implementation of the proposed changes do not change the safety, safeguards, or security programs. Therefore, the effectiveness of the safety, safeguards, and security programs is not decreased.

Effective date: The amendment to Certificate of Compliance GDP–1 becomes effective 15 days after being signed by the Director, Office of Nuclear Material Safety and Safeguards.

Certificate of Compliance No. GDP–1: Amendment will revise TSR 2.3.4.7 to provide additional time to operate the withdrawal station in normal steady state operation should the CAAS be declared inoperable.

Local Public Document Room location: Paducah Public Library, 555 Washington Street, Paducah, Kentucky 42003.

Dated at Rockville, Maryland, this 7th day of 1998.

For the Nuclear Regulatory Commission.

Carl J. Paperiello,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–33208 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Self-Shielded Irradiator Licenses, Dated October 1998

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing the availability of NUREG–1556, Volume 5, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Self-Shielded Irradiator Licenses,'' dated October 1998.

ADDRESSES: Copies of NUREG–1556, Vol. 5, may be obtained by writing to the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy of the document is also available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Sally L. Merchant, Mail Stop TWFN 9–F–31, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7874.

SUPPLEMENTARY INFORMATION: On December 23, 1997 (62 FR 67100), NRC announced the availability of draft NUREG–1556, Volume 5, ''Consolidated Guidance about Materials Licenses: Program-Specific Guidance about Self-Shielded Irradiator Licenses,'' dated October 1997, and requested comments on it. This draft NUREG report was the fifth program-specific guidance developed to support an improved materials licensing process. The NRC staff considered all the comments, including constructive suggestions to improve the document, in the preparation of the final NUREG report.

The final version of NUREG–1556, Volume 5, is now available for use by applicants, licensees, NRC license

reviewers, and other NRC staff. It supersedes the guidance for applicants and licensees previously found in Regulatory Guide 10.9, ''Guide for the Preparation of Applications for Licenses for the Use of Self-Contained Dry Source-Storage Gamma Irradiators,'' dated December 1988, and the guidance for licensing staff previously found in Policy and Guidance Directive, FC 84–16, Revision 1, ''Standard Review Plan for Applications for Use of Self-Contained Dry Source-Storage Gamma Irradiators,'' dated January 26, 1989. In addition, this draft report also contains information found in pertinent Technical Assistance Requests and Information Notices. NRC staff will use this final report in reviewing these applications.

Electronic Access

NUREG–1556, Volume 5, will also be available electronically approximately 1 month after publication of this notice by visiting NRC's Home Page (http://www.nrc.gov) and choosing ''Nuclear Materials,'' and then ''NUREG–1556, Volume 5.''

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of the Office of Management and Budget.

Dated at Rockville, Maryland, this 7th day of December, 1998.

For the Nuclear Regulatory Commission.

Donald A. Cool,

Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 98–33202 Filed 12–14–98; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Interest Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or are derivable from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's web site (http://www.pbgc.gov).

DATES: The interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in December 1998. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in January 1999.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 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:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate in determining a single-employer plan's variable-rate premium. The rate is the ''applicable percentage'' (currently 85 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the ''premium payment year''). The yield figure is reported in Federal Reserve Statistical Releases G.13 and H.15.

The assumed interest rate to be used in determining variable-rate premiums for premium payment years beginning in December 1998 is 4.46 percent (*i.e.*, 85 percent of the 5.25 percent yield figure for November 1998).

The following table lists the assumed interest rates to be used in determining variable-rate premiums for premium payment years beginning between January and December 1998.

For premium payment years beginning in:	The assumed interest rate is:
January 1998	5.09
February 1998	4.94
March 1998	5.01
April 1998	5.06
May 1998	5.03
June 1998	5.04
July 1998	4.85
August 1998	4.83
September 1998	4.71
October 1998	4.42
November 1998	4.26
December 1998	4.46

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in January 1999 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 9th day of December 1998.

John Seal,

Acting Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 98–33138 Filed 12–14–98; 8:45 am]

BILLING CODE 7708–01–P

POSTAL RATE COMMISSION

Sunshine Act Meeting

NAME OF AGENCY: Postal Rate Commission.

TIME AND DATE: 3:00 p.m., December 10, 1998.

PLACE: Commission Conference Room, 1333 H Street, NW, Suite 300, Washington, DC 20268–0001.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Issues.

CONTACT PERSON FOR MORE INFORMATION:

Stephen L. Sharfman, General Counsel, Postal Rate Commission, Suite 300, 1333 H Street, NW, Washington, DC 20268–0001, (202) 789–6840.

Dated: December 11, 1998.

Margaret P. Crenshaw,

Secretary.

[FR Doc. 98–33253 Filed 12–11–98; 10:44 am]

BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23592; International Series Release No. 1173; 812–11422]

Cableuropa S.A.; Notice of Application

December 8, 1998.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the ''Act'') from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order under section 6(c) of the Act exempting a special purpose vehicle and any special purpose vehicle that applicant establishes in the future in the same manner and for the same purpose (each, ''SPV'') from all provisions of the Act. The order would permit SPV to sell certain debt securities (''Notes'') and use the proceeds to finance the business activities of applicant and companies directly or indirectly controlled by applicant (''Operating Companies'').

FILING DATE: The application was filed on December 7, 1998.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on January 4, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Applicant, Edificio Europa 2, Calle Musgo 2. Urb., La Florida. 28023 Aravaca, Madrid.

FOR FURTHER INFORMATION CONTACT: Kathleen L. Knisely, Staff Attorney, at (202) 942–0517, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (tel. 202–942–8090).

Applicant's Representations

1. Applicant, a limited liability corporation organized under the laws of the Kingdom of Spain, is a Spanish cable television and telecommunications company. Applicant's primary business is to manage and provide technical assistance to the Operating Companies. The Operating Companies are limited liability companies organized under the laws of the Kingdom of Spain and engaged in providing broadband cable television and telecommunications services to customers in Spain.

2. SPV will be a public limited company formed under the laws of England and Wales. SPV will be organized specifically to raise funds for the operations of applicant and the Operating Companies by issuing the Notes and lending the proceeds to applicant and the Operating Companies. SPV will be organized, and conduct its activities, in accordance with rule 3a–5 under the Act, with certain exceptions discussed below. Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

3. Applicant has determined to raise capital through SPV because the direct issuance of the Notes by applicant would not be feasible under Spanish tax and corporate law. Under Spanish tax law, significant tax disadvantages may be borne by applicant were it to own or control SPV. In addition, Spanish corporate law also further restricts the direct issuance of the Notes by applicant or a finance subsidiary of applicant. For these reasons, at least 95% of equity securities of SPV will be held by an English private limited company (''HoldCo SPV'') with applicant holding the remaining interest. All of HoldCo SPV's equity securities will be held by a professional trust corporation (''TrustCo'') under the terms of an English law charitable trust. The declaration of trust establishing the charitable trust will give TrustCo discretion to apply any residual value held by it for such purposes as it may select, provided they constitute ''charitable purposes'' under English law. In any case, any charity selected to benefit from any residual value in HoldCo SPV's assets (including the shares it owns in SPV will not pay any consideration in connection with such acquisition.

4. SPV intends to issue the Notes in reliance on Regulation S and Rule 144A under the Securities Act of 1933 (''1933 Act'') and shortly thereafter file a registration statement under the 1933 Act to register a separate series of high-yield debt securities with identical terms to the initial Notes to be offered in exchange for the initial Notes. These Notes will be unconditionally guaranteed by applicant on a subordinated basis.

5. Applicant and SPV, in connection with the offering of the Notes, will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint an agent to accept any process which may be served, in any suit, action, or proceedings brought against applicant or SPV based upon their obligation under the Notes as described in the application. The consent to jurisdiction and appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Notes have been paid.

6. SPV will loan at least 85% of any cash or cash equivalent raised by SPV to applicant and the Operating Companies as soon as practicable, but in no event later than six months after SPV's receipt of the cash or cash equivalents. In the event SPV borrows amounts in excess of the amounts to be loaned to applicant and the Operating Companies at any given time, SPV will invest the excess in temporary investments pending lending the money to applicant and the Operating Companies. Consistent with rule 3a–5, all investments by SPV, including all temporary investments, will be made in government securities, securities of applicant or a company controlled by applicant, or debt securities which are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

7. SPV's articles of association and its memorandum of association and any trust indenture agreement will: (i) limit its activities to issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Companies; and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV, TrustCo, or applicant.

8. HoldCo SPV's articles of association and its memorandum of association will:

(i) limit its activities to borrowing funds from applicant to purchase and hold shares of SPV;

(ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo or applicant;

(iii) prohibit the transfer of SPV's shares to any party other than TrustCo or applicant; and

(iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indebtedness other than the loan from applicant sufficient to cover the cost of purchasing the shares of SPV and costs incidental to the maintenance of HoldCo SPV and SPV.

Applicant's Legal Analysis

1. Applicant states that SPV may be viewed as falling technically within the definition of an investment company under section 3(a)(1) of the Act. Applicant requests an exemption under section 6(c) of the Act exempting SPV from all provisions of the Act. Section 6(c) of the Act permits the Commission to grant an exemption from the provisions of the Act if, and to the extent, that such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Applicant state that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that SPV meets all of the requirements of rule 3a–5 except for one, which it cannot meet for Spanish tax and corporate law reasons. Rule 3a–5(b)(1)(i) under the Act requires that all of SPV's common stock be owned by applicant or a company controlled by applicant. Applicant asserts that, while for Spanish tax and corporate law reasons SPV's common stock will be held by HoldCo SPV, SPV will be organized to serve solely as a conduit for applicant's and the Operating Companies' capital raising activities. Applicant further states that SPV's function will be limited by its constitutional documents and any trust indenture agreement to the activities of a traditional finance subsidiary.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. SPV will comply with all provisions of rule 3a–5 under the Act, except with respect to rule 3a–5(b)(1)(i), over 95% of SPV's common shares will be held by HoldCo SPV (all of whose shares will in turn be held under the terms of an English law charitable trust), with the rest held by applicant. For purposes of rule 3a–5 under the Act, applicant will be deemed to be SPV's ''parent company'' and each Operating Company will be deemed to be a ''company controlled by the parent company.''

2. SPV's articles of association and memorandum of association and any trust indenture agreement will: (i) limit the SPV's activities is issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Companies (as well as other activities incidental to the issuance of the Notes, loaning the proceeds thereof, and the day-to-day operations of the SPV); and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV, TrustCo, or applicant.

3. HoldCo SPV's articles of association and its memorandum of association will: (i) limit HoldCo SPV's activities to borrowing funds from applicant to purchase and hold shares of SPV; (ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo (pursuant to the terms of the charitable trust) or applicant; (iii) prohibit the transfer of SPV's shares to any party other than TrustCo or applicant; and (iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indebtedness, other than a loan from applicant sufficient to cover the costs of purchasing the shares of SPV and costs incidental to the maintenance of HoldCo SPV and SPV.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33134 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40758; File No. SR–CHX–98–27]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc., Relating To Crossing Orders of 25,000 Shares or More

December 8, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 5, 1998, the Chicago Stock Exchange, Inc. (''CHX'' 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 CHX. 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

CHX is proposing to add Interpretation and Policy .02 to Article XX, Rule 23 of the Exchange's rules relating to the execution of certain cross transactions involving 25,000 shares or more on the Exchange's floor. The text of the proposed rule change is available at the Office of the Secretary, CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CHX 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. CHX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's general auction market procedures are codified in CHX Article XX, Rule 16, which provides for the manner in which bids and offers at the same price will be sequenced for execution. A member who makes the first bid or offer at a particular price has ''priority'' at that price, which means that the member is the first one in the market to be entitled to receive an execution at that price. If no member can claim priority, all members who are bidding or offering at a particular price are deemed to be on ''parity'' with each other, or equivalent in status.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Members are on parity with each other when two or more bids or offers are announced simultaneously, or after a trade takes place leaving several bids or offers unfilled at the same price as

Continued

Unlike the rules of certain other exchanges,[4] however, the CHX does not currently permit bids and offers that have parity to obtain precedence based on size (a so-called ''size-out'' rule).[5] In addition, unlike some other exchanges,[6] the CHX does not currently have a ''clean cross'' rule (as an exception to the normal priority rules) that would permit a member to cross a large block of stock, without the cross being broken up, by permitting the cross to obtain priority over all other existing bids and offers at the same price, regardless of the size of such bids or offers.[7]

The purpose of the proposed rule filing is to add new interpretation and policy .02 to Article XX, Rule 23, to allow a member or member organization who has an order to buy and an order to sell 25,000 shares or more of the same security to cross those orders at a price that is at or within the prevailing quotation, without the transaction being broken up at the cross price so long as (i) the size of the proposed cross transaction is of a size that is greater than the aggregate size of all interest communicated on the Exchange floor at that price at the time of the proposed cross, and (ii) neither side of the cross is for the account of the executing member or member organization.

As is the case for cross transactions that are permitted under existing CHX rules, prior to effecting the cross under the new proposal, the member will be required to make a public bid and offer on behalf of both sides of the cross.[8] The offer must be made at a price which is higher than the bid by the minimum trading variation permitted for such security. Under the proposal, another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other market interest having priority at that price before trading with any part of the cross transaction.

Because the proposal provides that the bid or offer of the member desiring to execute the cross would be entitled to priority at such price (over pre-existing bids and offers at that price) only if the size of the cross is greater than the aggregate size of all interest communicated on the Exchange floor (which includes the specialist's bid or offer—including any limit order reflected in such quote—and any communicated interest of floor brokers or market makers standing in the crowd), the proposed rule is more akin to a size-out rule rather than a special priority rule.

The difference between the CHX proposal and the size-out rules contained on other exchanges is that the priority of earlier bids and offers will not have to be removed, by means of a sale, before effecting the cross. In addition, a cross transaction effected in the CHX proposal does not affect the priority of existing orders in a specialist's book, and once the cross is executed, such priority (based on time rather than size) shall remain as it was before the execution of the cross transaction. In this sense, the proposal does have some attributes of a special priority rule. However, unlike the special priority rule afforded certain crosses on other exchanges, which are reported to the tape as ''stopped stock,'' cross transactions effected under the proposed rule will be reported to the tape without a ''tape designator.''

The CHX proposal limits the types of orders eligible to be crossed. Specifically, as stated above, no part of the cross can include an order for the account of the executing member or member organization. Under the proposal, only customer orders of a floor broker (*i.e.*, orders in which the floor broker acts as agent) can be included in the cross. For purposes of this proposal, the terms customer order includes professional orders not for the account of the executing member (*i.e.*, orders for the accounts of broker-dealers and other members or member organizations communicated from off the floor).

The proposal is intended to facilitate the execution of certain cross transactions on the CHX. The Exchange asserts that confining the proposed size threshold to block size orders of 25,000 shares or more would limit the effects of the rule primarily to actively traded, liquid securities.

The CHX further believes that the proposal, as drafted, furthers the important auction market principle of price improvement by allowing another member, certain conditions, to trade with either the bid or offer side of the cross transaction to provide a price that is better than the proposed cross price.

Finally, the Exchange believes that limiting the proposal to crosses not involving principal transactions of the executing broker (*i.e.*, limiting the proposal to orders in which the floor broker is acting as agent), is consistent with Section 11(a)(1)(G) of the Act[9] as well as portions of other crossing rules at other exchanges. For example, in approving a crossing rule for the PCX, the Commission stated that it ''believes that the [PCX] proposal would not grant priority, parity or precedence to the order of a member in a manner inconsistent with Section 11(a)(1)(G) of the Act or Rule 11a1–1(T)(a)(3) thereunder.'' [10] The PCX proposal defined customer to include any order that the broker represents in an agency capacity, including a professional order that is not for an account associated with the executing brokers. The Commission concluded that because ''this definition of customer order excludes, and thus does not grant priority to, an order for an account over which the broker or an associated person of the broker exercises investment discretion, the Commission is satisfied that the proposed rule change complies with Section 11(a).'' [11]

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles or trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

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the executed trade. *See* CHX Art. XX, Rule 16 (b) and (c).

[4] *See* New York Stock Exchange (''NYSE'') Rule 72 and similar Philadelphia Stock Exchange and Boston Stock Exchange rules. The American Stock Exchange (''Amex'') has a modified version of a ''size out'' rule for crosses of 25,000 shares or more. *See* Amex Rule 126(g), commentary .01 and .02.

[5] Under a typical size-out rule, the priority of existing bids and offers are first removed by means of a sale so that all bids and offers are on parity. Then, a person desiring to execute a cross can usually do so by claiming precedence based on size, so long as the size of the cross is greater than any other single bid or offer at that price.

[6] *See, e.g.*, NYSE Rule 72(g) which gives priority to an agency cross transaction of 25,000 shares or more that is executed at or within the prevailing quotation, without regard to the size or price of existing bids or offers on the floor. Other members can typically interact with the cross only by bettering one side of the cross, and even then, can only do so after satisfying all other existing bids or offers at that price. The Pacific Exchange, Inc. (''PCX'') and Amex have similar crossing rules.

[7] While the CHX does have a crossing rule, Article XX, Rule 23, this rule only permits crosses *between* (and not at) the CHX disseminated market. Thus, under current rules, assuming a specialist has properly reflected all limit orders from his book in his quote, the crossing rule does not have any effect on the Exchange's general priority, parity and precedence rules because all crosses must be at a better price than the disseminated market. Therefore, they are entitled to priority because of price (and not because of a special priority rule giving certain crosses priority over other bids and offers).

[8] *See* CHX Art. XX, Rule 23.

[9] 15 U.S.C. 78k(a)(1)(G).

[10] *See* Exchange Act Release No. 33391 (December 28, 1993), 59 FR 336 (January 4, 1994) (order approving SR–PSE–91–11).

[11] *Id.*

[12] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

CHX 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

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the 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 proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX.

All submissions should refer to File No. SR–CHX–98–27 and should be submitted by January 5, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

[13] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33135 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 40762, File No. SR–DTC–98–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to the Institutional Delivery System

December 8, 1998.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 1, 1998, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on November 12, 1998, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. 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 modifies the Advice of Correction/Cancellation function in DTC's Institutional Delivery system.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Current, DTC's Institutional Delivery (''ID'') system allows a broker-dealer to submit requests to cancel incorrect confirmations through its Advice of Correction/Cancellation function (''AOCC'').[3] In cases where the confirmation is not yet affirmed, DTC eliminates the confirmation from the ID system processing and distributes a cancellation message to all parties receiving the original confirmation. In cases where the confirmation has been affirmed, DTC does not immediately eliminate the confirmation from the ID system but instead distributes an ''attempt to cancel'' message on behalf of the broker to alert parties that the trade should not be settled. If no action is taken by S+21, the system automatically eliminates the confirmation.

The purpose of the proposed rule change is to modify DTC's AOCC function by allowing the affirming party to reverse an affirmed confirmation so that the confirmation would not be eligible for any further action other than an outright cancellation by the broker-dealer. By permitting a reversal, confirmations will be eliminated in a more timely manner thereby fostering greater certainty of trade information available on the ID system. The reversal action, which may be the response to an attempt to cancel by the broker-dealer or may be initiated by the affirming party, will be permitted up to 10:00 a.m. on the business day before the settlement date (S–1). Once a reversal action is executed, the trade will be deleted from the ID system, and subsequent reaffirmation of the reversed ID confirmation will not be permitted. In keeping with existing AOCC function procedures, the ID system will provide notification to all parties upon the systems's receipt of an AOCC that authorizes a reversal of an affirmed confirmation.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[4] and the rules and regulations thereunder because it promotes efficiencies in the clearance and settlement of transactions in securities by facilitating the cancellation of

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] The ID system's AOCC function is one of three electronic mail features that enables an institution or its agent which has received a confirmation through the ID system to notify the broker of the reason(s) why the institution disagrees with the confirmation. This communication allows the broker-dealer to resolve the discrepancies between its records of the trade and the institution's records. *See* Securities Exchange Act Release No. 33466 (January 1994), 59 FR 3139 [File No. SR–DTC–93–07] (order approving rule changes relating to enhancements to DTC's ID system); 36050 (August 2, 1995), 60 FR 41139, [File No. SR–DTC–95–10] (order approving rule changes relating to modifications of the AOCC feature and Authorization/Exception processing in DTC's ID system).

[4] 15 U.S.C. 78q–1

affirmed confirmations which should not be settled and allows the records of trades to reflect the transactions more accurately.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments on the proposed rule change were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(iii) [5] of the Act and pursuant to Rule 19b–4(e)(4) [6] promulgated thereunder because the proposal effects a change in an existing service of a registered clearing agency that does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and does not significantly affect the respective rights or obligations of DTC or persons using the service. At any time within sixty days of the filing of such 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, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–98–20 and should be submitted by January 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33133 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78s(b)(3)(A)(iii).

[6] 17 CFR 240.19b–4(e)(4).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40750; File No. SR–Phlx–98–54]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Instituting a One-Year Pilot Program to Return Phlx Dell Options to Trading on the Phlx Options Trading Floor Using Amex Technology

December 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 December 2, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On December 4, 1998, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Edith Hallahan, Deputy General Counsel, Phlx, to Michael Walinskas, Deputy Associate Director, Commission, dated December 3, 1998 (''Amendment No. 1''). In Amendment No. 1, the Exchange proposes Commentaries to Phlx Rules 1051–1055 to accommodate the use of Amex technology to trade Phlx Dell options. The remaining substance of Amendment No. 1 is incorporated into this notice and order granting accelerated approval.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to institute a one-year pilot program to return Phlx Dell options to the Phlx trading floor from the American Stock Exchange, L.L.C. (''Amex'') trading floor using Amex technology on or about December 7, 1998. Amex technology would be used to enter, execute and process transactions on the Phlx trading floor in Phlx Dell options. Despite the use of Amex technology, the Phlx will continue to be responsible for surveillance of Phlx Dell options and Phlx transaction charges will continue to apply. Phlx rules will also continue to apply, except as outlined below.

The Exchange notes that operational functions respecting these options will be handled by Amex systems, including quotation processing, booking orders, transaction processing, trade correction, and submission to clearing through The Options Clearing Corporation (''OCC'').

The Exchange has re-addressed the application of certain Phlx rules that are impacted by Amex technology, determining that the following Phlx rules, as discussed below, would not apply or would require modification or interpretation: 1051, 1052, 1053, 1054, 1055, and 1080.

The text of the proposed rule change is available at the Office of the Secretary, Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to trade Phlx Dell options on the Phlx trading floor using Amex technology on a pilot basis for one-year. In addition, the Phlx proposes the ability to switch back from Amex to Phlx technology, with certain notification.

Background. On June 12, 1998, the Phlx received Commission approval to relocate Phlx Dell options to the Amex trading floor on a temporary basis.[4] As part of the relocation, Amex trading systems and technology are currently used on the Amex trading floor for automated order entry and execution, quotation processing, booking orders, transaction processing, trade correction, and clearing through OCC. The relocation proposal expires on December 12, 1998.

Since the relocation in June, trading in Phlx Dell options has significantly increased.[5] The Exchange believes that the increase in volume is due in part to the perception among order flow providers that efficient customer order entry and executions have resulted from Amex systems. Thus, the Exchange proposes to continue to use Amex technology upon the return of Phlx Dell options to the Phlx trading floor. The Exchange believes that continuing to use Amex systems may limit customer confusion as well as continue to provide efficient order entry and executions, based upon the experience in trading Phlx Dell options on the Amex.

The Exchange continues to implement technological improvements to its AUTOM[6] System, such as upgrading the features of its electronic limit order book, the X–Station. Specifically, the Exchange is in the process of implementing the X–Station on a floor-wide basis, featuring improved cancellation order processing.[7] The Phlx continues to believes that its improvements are benefiting AUTOM users. In addition, the Exchange intends to implement other system enhancements, such as the inclusion of market data on the X–Station and an alert for quote throughs. The Phlx also remains committed to continuing to address AUTOM users, including a focus on active options such as Dell. Despite the return of Phlx Dell options to the Phlx trading floor using Amex technology, all other Phlx options will continue to trade using Phlx technology, including the AUTOM System.

Phlx Option. Because Phlx Dell options will be processed and cleared through Amex systems, a quotation in Phlx Dell options located on the Phlx will still appear as an Amex quote. For instance, vendor systems may indicate that Dell is an ''Amex'' option. Further, Phlx Dell options trades will appear in market data systems as Amex trades and may be cleared with other Amex trades. Accordingly, trades cleared by OCC may have Amex identifier codes on certain OCC reports. Nevertheless, Dell continues to be a Phlx option.[8] OCC has previously advised its members that Phlx Dell options are registered, listed and traded under the rules of Phlx.[9] Phlx Dell options volume will subsequently be attributed to the Phlx for various purposes, including the determination of Option Price Reporting Authority (''OPRA'') revenues.

Due to the use of Amex technology to trade Phlx Dell options, the Phlx represents that Amex will be responsible for reporting system outages as well as other system events pursuant to the Commission's Automation Review Policy (''ARP'') and related regulatory review requirements.[10] Phlx also represents that Amex will also be responsible for communicating with its systems users regarding system outages and changes and other system-related events.

Amex Technology—Trade Processing. With respect to option trade processing, the Amex and Phlx systems operate differently, primarily because of the timing and method of submission of trade participant information. Phlx executions are reported as ''matched trades'' through the AUTOM System, including complete participant clearing information at the time of execution, for submission to OPRA. Also at that time, initial comparison has occurred.

Amex verification and reconciliation, on the other hand, takes places throughout the day[11] via the Intra-Day Clearing (''IDC'') system, separate from trade reporting functions. IDC provides an on-line, input-driven correction facility between member firms and the IDC system. IDC terminals are operational throughout the trading day. Members with a password have the ability to access uncompared, advisory, rejected, and force match option trades. The IDC system allows clearing information to be input during the trading day rather than at the time of execution, separating and reducing the amount of information inputted at the time of execution for trade reporting purposes.

As a result of these differences in trade processing by Amex systems, Phlx Rules 1051–1055 are affected. Rule 1051, *General Comparison and Clearance Rule,* provides that all Exchange options transactions shall be reported to the Exchange *at the time of execution for comparison of trade information at the specialist's post* and all compared transactions shall be cleared through the OCC. Proposed Commentary .01 will clarify that utilizing Amex technology for Phlx Dell options results in the submission of some, but not all, trade information at the specialist's post, as clearing and detailed participant information would follow via IDC.

Rule 1052, *Responsibility Of Clearing Options Member For Exchange Options Transactions,* places responsibility on clearing member organizations to clear *Exchange* options transactions. Proposed Commentary .01 will clarify that Phlx Dell options trading on Amex technology are ''Exchange'' transactions for this purpose as well.

Phlx Rules 1053, *Filing of Trade Information,* and 1054, *Verification Of Contracts and Reconciliation Of Uncompared Trades,* require certain trade information should be supplied or verified *at the time of execution*.[12] These rules also provide that such information should be in a form prescribed by the Exchange, and, respectively, in accordance with procedures established by the Exchange. The Phlx proposes that, with respect to an option trading using Amex

[4] *See* Securities Exchange Act Release No. 40088 (June 12, 1998), 63 FR 33426 (June 18, 1998) (''June Dell options order'').

[5] Volume has increased 66% since June from 38,418 contracts per day before the move to 50,615 contracts per day after the move. Recently, daily volume has exceeded 55,000 contracts.

[6] The Phlx Automated Options Market (AUTOM) System is the Exchange's electronic order delivery system, which provides automatic entry and routing of option orders to the Exchange trading floor, pursuant to Phlx Rule 1080.

[7] The Exchange notes that improved cancel-replace order processing was perceived as one reason to relocate Phlx Dell options to the Amex.

[8] The Exchange intends to seek interpretative relief from Commission Rule 10b–10 that representing that an options transaction took place on the Amex does not constitute a false statement by the broker-dealer issuing the transaction confirmation.

[9] Phlx Dell options are currently registered by OCC as securities listed on Phlx via a Form 8 amendment under the Act. Trading Phlx Dell options using Amex technology in no way suggests that these options are listed on the Amex.

[10] *See* Securities Exchange Act Release Nos. 27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989); and 29185 (May 9, 1991), 56 FR 22490 (May 15, 1991). ARP I and ARP II are Commission policy statements that provide guidelines for the review and assessment of information technology resources and supporting trading and information dissemination systems.

[11] The Exchange notes that this pertains to manually executed orders, such as trades between two Registered Options Traders (''ROTs'') or trades manually executed by a floor broker. Orders executed through Amex's Auto-Ex system or by the specialist through Amex Options Display Book, however, are automatically entered upon execution into the IDC system as a compared traded similar to Phlx trades. *See* Amendment No. 1, *supra* note 3.

[12] Phlx Option Floor Procedure Advice F–2 will apply to Phlx Dell options trading using Amex technology, such that it is the duty of the largest participant to report the trade. In the event that there is only one buyer and seller, the seller is required to report the trade.

technology, some trade information (such as clearing and participant information) need not be reported at the time of execution at the specialist post and that these are Exchange transactions for the purposes of Rule 1053 and 1054.

Phlx Rule 1055, *Reporting Of Compared Trades To Options Clearing Corporation,* will continue to apply to Dell options as it requires the Exchange to furnish OCC with a report of all compared trades based on a comparison service performed by the Exchange on that day, which will incorporate the IDC system described above. Proposed Commentary .01 stats that Amex technology shall furnish the report and perform the comparison service referred to in this Rule. In addition, the proposal deletes a reference to Rule 1075 [13] in Rule 1055.[14]

Amex Technology—Automated Order Entry and Execution. Amex technology [15] regarding automated options order routing occurs through the Common Message Switch (''CMS'').[16] The Exchange shall provide prior written notice to the Exchange membership describing key elements of Amex technology and the resulting order routing implications. With respect to contra-side participation for automatically executed trades, Amex's Auto-Ex feature rotates among trading crowd participants (specialists and ROTs) separately for puts and calls, which differs from the single '''Wheel'' for each option in the AUTOM system. Thus, the Wheel provision of Phlx Rule 1080 and Floor Procedure Advice F–24 cannot apply.

Pursuant to Advice F–24(e), the Phlx assigns contra party participation on the Wheel by assigning a certain number of contracts to each participant signed onto the Wheel per each order. Whereas the Amex Auto-Ex system distributes the entire order on a rotational basis to each participant. In addition, the rotation among participants is different, as specialist participation on the Phlx Wheel, as enumerated in Advice F–24, depends upon the Auto-Ex guarantee in that option. This aspect of Advice F–24(e) will not apply to Phlx Dell options.

Liability.

With respect to the liability provisions of Phlx By-Law Article XII, Section 12–11 as well as other liability-related provisions in Amex rules,[17] the use of the facilities clearly includes Phlx Dell options trading on the Phlx, despite the use of Amex technology. Thus, non-liability for damages sustained by a member or member organization growing out of the use by such member organization of the facilities afforded by the Exchange for the conduct of their business should be extended to Amex systems. In trading Phlx Dell options using Amex technology, the Phlx, its members, member organizations and employees shall accept the same limitations on the liability of Amex, as provided in the Amex Constitution and Rules with respect to the use of Amex technology systems for the conduct of business, as such limitations apply to any Amex member, member organization or employee thereof.[18]

Other Phlx rule implications. Phlx Dell options will continue to be traded under Phlx rules, including minimum trading increments, strike price intervals, and position and exercise limits. Phlx Rule 1080 and Floor Procedure Advice F–24, regarding contra-side participation continue to apply to automated orders, to the extent its provisions conform to Amex technology and except as otherwise described herein. For instance, Amex parameters will apply regarding the maximum order size eligible for electronic delivery.[19]

Surveillance. although Phlx Dell options continue to be Phlx options, utilizing Amex technology necessitates that surveillance data be generated by the Amex and submitted to the Phlx on a next-day basis. The Phlx incorporates such data into its existing surveillance procedures and generates similar surveillance reports respecting Phlx Dell options. Certain surveillance data, such as block trades, may be forwarded to the Phlx in the form of reports depending upon technical and operational factors, and such data would then be incorporated into Phlx surveillance procedures. Other than the reliance on Amex for data and large block trade reports, surveillance of Phlx Dell options will remain the responsibility of Phlx.

Transaction Fees. Phlx transaction fees will continue to apply to Phlx Dell options, thus, Phlx will be responsible for transaction fee billing and collection in accordance with such Phlx procedures. The Phlx anticipates that fees to the Phlx respecting Amex systems use will be determined by an agreement with the Amex. Similar to surveillance matters, data-sharing will be necessary in order for all such billing to be complete.

Deputization of Amex floor brokers. When Phlx Dell options temporarily relocated to the Amex trading floor, another method for order entry was through a deputized Amex floor broker. Deputization involved a waiver of compliance with Phlx's rules governing floor brokers and the requirements for membership. However, with the return of Phlx Dell options to the Phlx trading floor, such deputization is no longer necessary; Phlx floor brokers will resume providing this additional method of order entry.

Notification. Prior to the return of Phlx Dell options to the Phlx trading floor, the Exchange will also notify all member firms of the change in trading location, emphasizing the continuation of Amex technology. The Exchange has conducted training sessions for floor personnel regarding Amex systems. As stated above, the Exchange will also distribute memoranda regarding the differences in trade reporting and pre-clearing procedures between the Phlx Dell options trading on Amex technology and the Phlx options trading on Phlx technology throughout the Phlx trading floor. Because Phlx Dell options will continue to be traded using Amex technology, the larger system and order routing changes that were required upon initial relocation to the Amex in June should not result. Nevertheless, the Exchange plans to notify its members, as well OCC, of the return to the Phlx trading floor.

The Exchange believes that using Amex systems for Phlx Dell options on the Phlx trading floor should provide consistency for members and investors as well as a continuation of efficient order execution. The Phlx also continues to improve upon its own technology for the remainder of the Phlx options floor, as discussed above. Termination of its technology arrangement with Amex, formal or informal, or the inability of Amex technology to function properly, as reasonably determined by the Exchange, would warrant a switch to Phlx technology. The Exchange would

[13] The Commission notes that Phlx does not currently have a Rule 1075. As such, the deletion of this reference from Rule 1055 is not a substantive change.

[14] See Amendment No. 1, *supra* note 3.

[15] This is not intended to be a complete description of Amex technology regarding automated options order routing. This limited description is provided merely to identify the impact of trading Phlx Dell options using Amex technology on Phlx rules.

[16] The proposed rule change to temporarily relocate Phlx Dell options to the Amex referred to the Amex Order File and related sub-systems such as the Amex Options Display Book (''AODB''), Touch Order Entry Terminal (''TOETS''), and Auto-ex.

[17] *See also* Phlx Rule 1080(e)

[18] In the proposal, the Phlx codifies the limitation of Amex liability to Phlx members in proposed Commentary .03 to Phlx Rule 1080. Proposed Commentary .03 also provides that Phlx members may not copy, modify, disclose, damage, improve or create derivative works from, sublease, assign or in any other way permit use by any other third party of such Amex technology. *See* Amendment No. 1, *supra* note 3.

[19] Currently, such maximum size is 50 contracts.

provide prior written notice to the Commission, Phlx members, OCC and the Amex should such a switch be necessary.

2. Statutory Basis

For the reasons discussed above, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act in general, and in particular, with Section 6(b)(5),[20] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by maintaining consistency in the order entry and execution for Phlx Dell options trading on the Phlx.

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

No written comments were either solicited or received.

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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–98–54 and should be submitted by January 5, 1999.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

The Commission finds that Phlx's proposal to institute a one-year pilot program to trade Phlx Dell options on the Phlx trading floor using Amex technology is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)[21] in that the arrangement between Phlx and Amex fosters cooperation and coordination with persons engaged in regulation, clearing, settling, processing information with respect to, and facilitating transactions in securities.[22]

With respect to the proposed Commentaries to Exchange Rules 1051–1055, the Commission believes that the proposed rule changes are reasonable and consistent with the Act as a temporary measure to conform Phlx rules with the use of Amex technology. Although the Commission believes that the proposed rule changes are necessary to allow Phlx Dell options to be traded on the Phlx trading floor using Amex technology, the Commission has concerns regarding a number of aspects of the proposal. The Commission recognizes that importing Amex technology to the Phlx is critical to the Phlx being able to properly handle trading of Dell options on their trading floor. We observe that the technology being used has not been tailored to permit trading of Dell options in a manner that would be consistent with existing Phlx rules.[23] As noted above, the Exchange is committed to implementing technological improvements to its current electronic systems including its electronic limit order book, the X-Station.[24] The Commission expects that the Exchange will endeavor to continue to improve its technology to enable Phlx Dell options to trade on Phlx in a manner consistent with existing Phlx Rules. The Commission believes that the existing proposal is not a desirable long-term solution for trading Phlx Dell options. The trading processing requirements and Wheel assignment rules applicable to Phlx-traded Dell options are being utilized out of necessity rather than by choice—they are embedded in the Amex technology that Phlx believes is necessary in order to maintain fair and orderly markets in Phlx Dell options.

In the filing, Phlx also proposed an amendment to Rule 1080, disclaiming Amex's liability to Phlx members for damages growing out of the use and enjoyment of Amex's technology and imposing liability on Phlx members for the misuse or damage of the Amex technology. In the June Dell options order, the Commission approved an interpretation of Phlx By-Law Article XII, Section 12–11, which disclaims Phlx's liability to Phlx members for damages growing out of the use and enjoyment of Phlx's facilities, extending that limitation of liability to the Amex.[25] The Commission continues to believe that this limitation of liability of the Amex[26] to Phlx members growing out of the use and enjoyment of the Amex technology is reasonable and consistent with the Act. This Commentary to Rule 1080 merely codifies the currently existing understanding between Phlx members and the Amex as stated in the June Dell options order.

In the proposal, the Exchange represents that the Amex will be responsible for reporting system outages as well as other systems events pursuant to the Commission's ARP policy and related regulatory review requirements.[27] The Commission agrees that, because Amex technology is being used, the Amex may be in the best position to report system outages and other system events. Nonetheless, the Exchange is ultimately responsible for ensuring that such outages and system events are reported to the Commission.

Finally, the Commission notes that, to minimize investor confusion in the trading of Phlx Dell options, Phlx has stated that it will provide adequate notice to its members to ensure that they and the investing public are aware that Phlx Dell options are listed, traded, and supervised according to Phlx rules, but are to be traded using Amex technology on the Phlx trading floor.

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

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78f(b)(5).

[22] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[23] *See supra* Section II—*Amex Technology—Trade Processing.*

[24] *See supra* Section II—*Background.*

[25] *See* June Phlx Dell options order, *supra* note 4.

[26] The Commission notes that, in the June Phlx Dell options order, the limitation of liability only involved the Amex where in this filing, the limitation of liability includes the National Association of Securities Dealers, Inc. (''NASD''). This is due to the recent merger of the Amex and the NASD.

[27] *See supra* Section II—*Phlx Option.*

Federal Register. Granting accelerated approval to the proposal will enable the Exchange to return Phlx Dell options to the Phlx options trading floor prior to the expiration of the Phlx Dell options order. 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.[28]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[29] that the proposed one-year pilot program (SR–Phlx–98–54) is approved on an accelerated basis through December 6, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[30]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–33136 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region I Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Hartford, Connecticut will hold a public meeting at 8:30 A.M. on Monday, January 11, 1999, at the Hartford District Office, 330 Main Street, Hartford Connecticut 06106 to discuss such matters as may be presented by members and staff of the U.S. Small Business Administration, or others present.

For further information contact: Ms. Marie Record, District, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut, telephone (860) 240–4700.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–33189 Filed 12–14–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council; Public Meeting

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m. December 17, 1998 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information contact: Yolanda Lassiter, U.S. Small Business Administration, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203; (414) 297–1092.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 98–33190 Filed 12–14–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

OFFICE OF THE SECRETARY

Aviation Proceedings, Agreements Filed During the Week Ending December 4, 1998

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–98–4827
Date Filed: December 1, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 979
Reso 024j—Special Construction Rules on Seasonality & Day-of-Week Conditions
Intended effective date: January 1, 1999.

Docket Number: OST–98–4828
Date Filed: December 1, 1998
Parties: Members of the International Air Transport Association
Subject:
(1) PTC2 Telex Mail Vote 977
Within Europe Reso 017hh r1
(2) PTC3 Telex Mail Vote 976
Japan-China Reso 010z r2
Intended effective date:
(1) January 1, 1999
(2) December 7, 1998.

Docket Number: OST–98–4829
Date Filed: December 1, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Telex Mail Vote 969
Special Cargo Amending Reso (except to/from U.S.)
Amendments to Mail Vote & Summary
Intended effective date: February 1, 1999.

Docket Number: OST–98–4834
Date Filed: December 1, 1998
Parties: Members of the International Air Transport Association
Subject:
COMP Cargo Telex Mail Vote 970
Cargo Reso 010LL
Intended effective date: February 1, 1999.

Docket Number: OST–98–4851
Date Filed: December 3, 1998
Parties: Members of the International Air Transport Association
Subject:
CTC COMP 0101 dated May 19, 1998
Composite Cargo Resolutions r1-518 r2-595 r3-597
Economic Justifications from: American, Delta, Federal Express, and United
Intended effective date: October 1, 1998

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–33160 Filed 12–14–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of The Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending December 4, 1998

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–98–4838.
Date Filed: December 2, 1998.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: December 30, 1998.
Description: Application of Puerto Rico Airways Corp. d/b/a Puerto Rico Airways pursuant to 49 U.S.C. Section 41102, applies for a certificate of public convenience and necessity authorizing interstate scheduled air transportation of persons, property and mail between any point in any state in the United States or the District of Columbia, or any

[28] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[29] 15 U.S.C. 78s(b)(2).

[30] 17 CFR 200.30–3(a)(12).

territory or possession of the United States, and any other point of the United States or the District of Columbia, or any territory or possession of the United States.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 98–33161 Filed 12–14–98; 8:45 am]

BILLING CODE 4910–62–P

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Dosso Dossi, Court Painter in Renaissance Ferrara''

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 133359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, ''Dosso Dossi, Court Painter in Renaissance Ferrara'', imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at The Metropolitan Museum of Art, New York, New York, from on or about January 11, 1999 to on or about March 28, 1999 and at the J. Paul Getty Museum, Los Angeles, California, from on or about April 27, 1999 to on or about July 11, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For a copy of the list of exhibit objects or for further information, contact Paul Manning, Assistant General Counsel, Office of the General Counsel, 202/619–5997, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: December 10, 1998.

Les Jin,

General Counsel.

[FR Doc. 98–33191 Filed 12–14–98; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 63, No. 240

Tuesday, December 15, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Association

50 CFR Part 660

[I.D. 103098A]

RIN 0648–AL49

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries, Amendment 8; Crustacean Fisheries, Amendment 10; Bottomfish and Seamount Groundfish Fisheries, Amendment 6; Precious Corals Fisheries, Amendment 4

Correction

In proposed rule document 98-29653 beginning on page 59758, in the issue of Thursday, November 5, 1998, make the following correction:

On page 59758, in the third column, under the heading **DATES:**, in the third line, ''1998'' should read ''1999''.

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40716; File No. SR–NASD–98–63]

Self-Regulatory Organizations; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Fees for Nasdaq's Workstation II Service for Those Subscribers Who Are Not Members of the NASD

Correction

In notice document 98–32096 beginning on page 66619 in the issue of Wednesday, December 2, 1998, make the following correction:

On page 66621, in the first column, in the first paragraph, in the last line, ''?????'' should read ''December 23, 1998''.

BILLING CODE 1505–01–D

Federal Register

Tuesday
December 15, 1998

Part II

Securities and Exchange Commission

17 CFR Parts 200, 230, 239, 240, 249, and 260

Cross-Border Tender Offers, Business Combinations, and Rights Offerings; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 230, 239, 240, 249, and 260

[Release Nos. 33–7611, 34–40678; International Series Release No. 1171; File No. S7–29–98]

RIN 3235–AD97

Cross-Border Tender Offers, Business Combinations and Rights Offerings

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: The Securities and Exchange Commission (the ''Commission'') today is proposing tender offer and Securities Act registration exemptive rules for cross-border tender offers, business combinations, and rights offerings. We are proposing these exemptions to facilitate the participation in these types of transactions by U.S. holders of the securities of foreign companies.

DATES: Comments should be received on or before February 16, 1999.

ADDRESSES: Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. You may also submit your comments electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–98; this file number should be included in the subject line if E-mail is used. Comment letters can be inspected and copied in our public reference room at 450 Fifth Street, N.W., Washington, D.C. We will post electronically submitted comments on our Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Laurie L. Green, Special Counsel or Christina Chalk, Special Counsel, Office of Mergers and Acquisitions, Division of Corporation Finance at (202) 942–2920; Nancy J. Sanow, Senior Special Counsel, or Margaret A. Smith, Attorney-Advisor, Office of Risk Management and Control, Division of Market Regulation, at (202) 942–0772; at Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: We are proposing new Rules 800, 801 and 802 under the Securities Act of 1933 (''Securities Act''),[1] and Rule 4d–10 under the Trust Indenture Act of 1939 (''Trust Indenture Act''),[2] revisions to Form F–X and Rule 144 under the Securities Act,[3] revisions to Rules 10b–13, 13e–3, 13e–4, 14d–1, 14d–2, 14d–7, 14d–10, 14e–1 and 14e–2[4] under the Securities Exchange Act of 1934 (''Exchange Act'')[5] and Rules 30–1 and 30–3[6] of the Commission's Rules Delegating Authority to the Directors of the Division of Corporation Finance and Market Regulation, respectively. We are also publishing for comment a new Form CB under the Securities Act and the Exchange Act.

Table of Contents

I. Executive Summary

In today's global market, it is very common for U.S. persons to hold securities of foreign companies. Foreign offerors, however, often exclude U.S. security holders from tender offers,[7] exchange offers,[8] rights offerings and business combinations[9] involving the securities of a foreign company. Offerors often exclude U.S. security holders due to conflicts between the U.S. regulation and the regulation of the home jurisdiction or the perceived burdens of complying with multiple regulatory regimes. U.S. security holders, therefore, often are unable to receive any benefits offered in these types of transactions.

Today, we are proposing exemptions[10] to encourage issuers and bidders to extend tender offers, rights offerings and business combinations to the U.S. security holders of foreign private issuers.[11] The proposed exemptions balance the need to provide U.S. security holders with the protections of the U.S. securities laws against the need to promote the inclusion of U.S. security holders in these types of cross-border transactions. The specific exemptions are:

- First, certain tender offers for the securities of foreign private issuers would be exempt from the provisions of the Exchange Act and rules thereunder governing tender offers.[12] Bidders could

[1] 15 U.S.C. 77a *et seq.*

[2] 15 U.S.C. 77aaa *et seq.*

[3] 17 CFR 239.42 and 17 CFR 230.144.

[4] 17 CFR 240.10b–13, 240.13e–3, 240.13e–4, 240.14d–1, 240.14d–2, 240.14d–7, 240.14d–10, 240.14e–1 and 240.14e–2.

[5] 15 U.S.C. 78a *et seq.*

[6] 17 CFR 200.30–1 and 200.30–5.

[7] For purposes of this release, the term ''tender offer'' includes tender offers where either cash or stock is issued in the offer.

[8] For purposes of this release, the term ''exchange offer'' means a tender offer where stock is issued in the offer.

[9] For purposes of this release, the term ''business combination'' means a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of security holders of one or more of the participating companies. It also includes a statutory short form or ''squeeze out'' merger that does not require a vote of security holders.

[10] The Commission has also recently proposed significant revisions to the tender offer regulations. These revisions would update and simplify the rules and regulations applicable to takeover transactions. Regulation of Takeovers and Security Holder Communications, Securities Act Release No. 7607 (November 3, 1998).

[11] ''Foreign private issuer'' is defined in Rule 3b–4 under the Exchange Act and Rule 405 under the Securities Act [17 CFR 240.3b–4(c) and 230.405].

[12] 15 U.S.C. 78m(e) and 78n(d); 17 CFR 240.13e–4, 14d–1 to 14d–10, 14e–1 and 14e–2.

use the exemption when U.S. security holders hold of record 10 percent or less of the subject securities. We refer to this exemptive relief in this release as the ''Tier I'' exemption.

- Second, when U.S. security holders own more than 10 percent of the class of securities sought in the offer, limited tender offer exemptive relief would be available to eliminate frequent areas of conflict between U.S. and foreign regulatory requirements. Bidders could rely on this exemptive relief when the record holdings of U.S. security holders do not exceed 40 percent of the subject class. We refer to this exemptive relief in this release as the ''Tier II'' exemption. The relief proposed under the Tier II exemption represents a codification of current Commission exemptive and interpretive positions.
- Third, under proposed Securities Act exemptive Rule 801, securities issued in certain rights offerings by foreign private issuers would be exempt from the registration requirements of the Securities Act. A foreign private issuer could rely on the exemption when U.S. security holders hold of record five percent or less of the issuer's securities that are the subject of the rights offering.
- Fourth, under proposed Securities Act exemptive Rule 802, securities issued in exchange offers for foreign private issuers' securities would be exempt from the registration requirements of the Securities Act of 1933 (the ''Securities Act'')[13] and the qualification requirements of the Trust Indenture Act of 1939 (the ''Trust Indenture Act'').[14] Securities issued in certain business combinations involving foreign private issuers would also be exempt. Offerors could rely on these exemptions when U.S. security holders hold of record five percent or less of the subject class of securities.
- Fifth, tender offers for the securities of foreign private issuers would be exempt from Rule 10b–13 under the Exchange Act. Under certain circumstances, this exemption would allow purchases outside the tender offer during the offer. This exemption would be available when U.S. security holders hold of record 10 percent or less of the subject securities.

The U.S. anti-fraud and anti-manipulation rules would, however, continue to apply to these transactions.

In addition to the above exemptions, we are proposing amendments to the Commission's general organization rules. These amendments would delegate to the Directors of the Divisions of Corporation Finance and Market Regulation authority to exempt certain tender offers from specific tender offer requirements.

II. Discussion

A. Background

1. Reasons for Proposals

Generally, if a bidder wants to acquire a foreign private issuer, it must comply with the securities or takeover laws of the target company's home jurisdiction. If the target has U.S. security holders, the bidder must also comply with U.S. securities laws. Bidders often simply exclude U.S. holders from the opportunity to participate in the transaction to avoid the application of U.S. laws.[15]

The same is true of exchange offers and business combinations. Foreign offerors often are unwilling to register securities under the Securities Act when the amount of holdings in the United States is relatively small. Further, they are unwilling to incur a continuous reporting obligation under the Exchange Act as a result of registration under the Securities Act. These concerns are also significant deterrents to extending rights offerings to U.S. holders.

When bidders exclude U.S. security holders from tender or exchange offers, they deny U.S. security holders the opportunity to receive a premium for their shares and to participate in an investment opportunity. Similarly, when issuers exclude U.S. security holders from participation in rights offerings, U.S. security holders lose that opportunity to purchase shares at a possible discount from market price.

Nevertheless, these transactions may affect the interests of U.S. security holders. For example, market activity in the target company's stock after announcement of a tender offer may affect the price of the stock. Even though U.S. security holders cannot participate in the tender offer, they must react to the event by deciding whether to sell, hold, or buy additional securities. They must make this decision without the benefit of information required by either U.S. or foreign securities regulation. Indeed, to avoid triggering registration, filing and disclosure requirements under U.S. securities laws, bidders and issuers will often take affirmative steps to prevent their informational and offering materials from being transmitted to U.S. holders. Thus, U.S. holders receive information about extraordinary transactions affecting their interests only indirectly (for example, through the financial press) and often after a significant delay.

2. Prior Commission Action to Facilitate Inclusion of U.S. Security Holders in Cross-Border Tender Offers, Business Combinations and Rights Offerings

On June 6, 1990, we published a concept release seeking comment on a suggested conceptual approach to U.S. regulation of international tender and exchange offers. We sought to encourage bidders for foreign companies to extend these offers to U.S. security holders.[16] After reviewing the public comments,[17] we published releases in June 1991, proposing exemptive rules, registration forms and schedules, and the issuance of an exemptive order for tender offers subject to the U.K. City Code on Takeovers and Mergers (the ''City Code''),[18] that would implement the concept release with respect to cross-border tender and exchange offers.[19] We also proposed new exemptive rules with respect to cross-border rights offerings to address similar concerns regarding the common practice of excluding U.S. security holders (together, the ''1991 proposals'').[20]

The commenters generally supported the 1991 proposals. They indicated that when U.S. security holders have already invested in a foreign private issuer's securities, the benefits of having the opportunity to tender their securities in a tender offer at a premium price or purchase additional securities in a rights offering, often at a discount,

[13] 15 U.S.C. 77a *et seq.*

[14] 15 U.S.C. 77aaa *et seq.*

[15] Because a large percentage of foreign companies have only a small number of U.S. security holders, it is quite common for bidders for the securities of those foreign companies to exclude U.S. holders. For example, based on a sample of 31 tender offers compiled in 1997 by the U.K. Takeover Panel (the entity that regulates tendered offers in the United Kingdom), when the U.S. ownership of the target was less than 15% (30 offers), the bidders excluded U.S. persons in all of the offers. When the U.S. ownership was more significant, such as 38% (one offer), the bidders included U.S. persons. In the 30 offers that excluded U.S. persons, the ownership percentage was as follows: in 27 offers, U.S. persons held less than 5%; in the remaining three offers, U.S. persons held 7%, 8% and 10–15%, respectively.

[16] Concept Release on Multinational Tender and Exchange offers, Securities Act Release No. 6866 (June 6, 1990) [55 FR 23751].

[17] The Commission received 31 letters of comment on the concept release. Those letters and a summary of the comments can be obtained for public inspection and copying by requesting File No. S7–10–90 through our public reference room in Washington, D.C.

[18] The City Code on Takeovers and Mergers and the Rules Governing Substantial Acquisition of Shares (Fifth Edition, Dec. 12, 1996) (the ''City Code''). The City Code states general principles for the regulation of takeovers conducted in the United Kingdom and the Republic of Ireland.

[19] International Tender and Exchange Offers, Securities Act Release No. 6897 (June 5, 1991) [56 FR 27582].

[20] Cross-Border Rights Offers, Securities Act Release No. 6896 (June 4, 1991) [56 FR 27564].

outweigh the detriments of not receiving the full protections offered by U.S. securities laws.[21]

3. The Current Proposals

Encouraging bidders to include U.S. security holders in multinational offers for the securities of foreign private issuers is even more important in today's global market than in 1991 because of the broader ownership of foreign securities by U.S. security holders[22] and the increase in both the number and dollar value of cross-border transactions since 1991.[23] Since the last time we proposed regulatory relief, we know that many tender offers have excluded U.S. security holders.[24] Similarly, foreign private issuers continue to cash out U.S. security holders in rights offerings.[25]

Today we propose, with significant modifications, exemptive rules and forms similarly proposed in 1991. We modified the 1991 proposals based upon our experience with cross-border tender offers, rights offerings, and business combinations. Since that time, we have granted relief on a case-by-case basis.[26]

We also make some of these proposals today because recent legislative action granted us general exemptive authority under the Securities Act and the Exchange Act.[27] This authority provides greater flexibility to address these issues in a meaningful fashion.

We have competing concerns. While we want to encourage bidders to include U.S. security holders, we would like to extend the protections of the U.S. federal securities laws to investors. The ramifications to a bidder could be significant. Making an offer to U.S. holders of foreign securities ordinarily may trigger: (i) disclosure and filing obligations under the Securities Act and the Exchange Act, and (ii) corresponding rights and protections for the U.S. security holders that are (iii) enforceable in a U.S. court (*e.g.*, Section 11 of the Securities Act). The proposed exemptions would balance these competing concerns by focusing relief in the areas where U.S. ownership is smallest or where there is a direct conflict between U.S. and foreign regulations.

The proposed rule changes, however, do not affect the rights and claims of U.S. security holders arising under the anti-fraud and anti-manipulation provisions of the federal securities laws. For example, if a foreign private issuer uses one of the proposed exemptions to make an offer to a U.S. security holder that includes a material misrepresentation or omission, that U.S. security holder would have a cause of action under the anti-fraud provisions. It may be difficult, however, for a security holder to enforce any judgments under the U.S. federal securities laws against the foreign private issuer whose assets, senior management and directors may be located in a foreign country. We think the benefit of allowing U.S. security holders to participate in multinational offers outweighs any possible diminution in protection U.S. security holders would have under the federal securities laws.

U.S. security holders would still have the full anti-fraud protection of Section 14(e). For example, the Tier I exemption for certain tender offers includes an exemption from all provisions of Rule 14e–1. The specific requirements of Rule 14e–1 are prophylactic in nature, as ''means reasonably designed to prevent'' fraudulent or deceptive acts.[28] Notwithstanding the exemption, the anti-fraud protections under Section 14(e) of the Exchange Act still apply.[29] Accordingly, although Tier I exempts bidders from the specific duration, notice, and payment requirements of Rule 14e–1, a bidder who, for example, fails to provide any notice to U.S. holders that it has extended the duration of any offer and materially increased the amount of the consideration, or that it may fail to pay the consideration for an unreasonably long time period could violate the anti-fraud provisions including Section 14(e).

The proposed exemptions require that U.S. security holders be treated at least as favorably as foreign security holders in the transaction.[30] The exemptions would not be available if only U.S. security holders were permitted to participate in the transaction. This minimizes the possibility that the exemptions would be used solely as a means to create a market for the offeror's securities in the United States. It also minimizes the risk that a bidder could buy out only the U.S. security holders in a tender offer without complying with the U.S. security laws.

Q1. In proposing these exemptive rules, we are seeking comment on whether the underlying premise that this approach is in the interest of investors is still valid. For example, have Commission rulemaking and informal initiatives in the last decade to facilitate cross-border offerings and acquisitions rendered the proposed exemptive relief unnecessary or inappropriate? Does the opportunity for U.S. security holders to participate in multinational tender offers justify the proposed use of the exemptive authority and possible diminished protection of U.S. securities laws?

The proposals are intended to facilitate inclusion of U.S. security holders in offshore transactions, rather than provide means to avoid U.S.

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[21] The Commission received a total of 52 comment letters on the two 1991 proposals. Those letters and a summary of the comments can be obtained for public inspection and copying by requesting File No. S7–17–91 and File No. S7–18–91 at our public reference room in Washington, D.C.

[22] U.S. ownership in foreign companies increased from $158.8 billion in 1991 to $558.9 billion in 1996. *Federal Reserve Statistical Release, Flow of Funds Accounts of the United States,* March 14, 1997. The number of foreign companies reporting under the Exchange Act has more than doubled since 1991 (439), with over 1,100 foreign companies reporting as of June 1998.

[23] The number of cross-border mergers and acquisitions in Europe increased from 1,434 in 1991 to 1,648 in 1997. The dollar value of such transactions increased from $40.4 billion in 1991 to $136.9 billion in 1997. *Mergers & Acquisitions,* March/April 1998.

[24] *See, e.g., John Labatt Ltd.* v. *Onex Corp.,* 890 F. Supp. 235 (S.D.N.Y. 1995) (Court held that the failure to extend the offer to U.S. security holders did not violate U.S. securities laws. The U.S. ownership in the target was approximately 12%). Two of the 10 largest tneder offers completed in 1996 excluded U.S. holders: Central & South West's offer for Seeboard PLC (tender offer price represented a 20% premium to the share price) and General Public Utilities' offer for Midlands Electricity PLC (tender offer price represented a 14.3% premium to the share parice). *Mergers & Acquisitions,* March/April 1997. *See also* Note 15 (discussing other tender offers that excluded U.S. security holders).

[25] Based on information received from the follwoing depositary banks, investors holding American Depositary Receipts (''ADRs'') through the Bank of New york were cashed out in 29 of the 37 rights offerings from 1994 to 1996. Investors holding ADRs through Morgan Guaranty Trust Company of New York received cash in lieu of rights in 23 of the 24 rights offerings. Of the 23, six of the offers permitted qualified U.S. institutional buyers to participate in the rights offerings.

[26] Since 1990, bidders in 54 transactions sought exemptive relief from the staff to facilitate including U.S. shareholders. Twenty of those transactions would have been eligible for the Tier I exemption proposed today and 31 would have been eligible to use the Tier II exemption. Three of these transactions would have been ineligible for either Tier I or Tier II exemptions, since U.S. persons held more than 40% of the securities sought in the offer. Thus, based on transactions that were open to U.S. holders, on average, the Tier II exemption could have been invoked approximately four times a year since 1990.

[27] *See* National Securities market Improvement Act of 1996, 104 Pub. L. No. 290, 110 Stat. 3416 (1996) (the ''National Securities Markets Improvement Act'').

[28] 17 CFR 240.14e–1.

[29] Section 14(e), 15 U.S.C. 78n(e), provides in part:

It shall be unlawful for any person to make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with any tender offer.

[30] See proposed Rules 801(a)(3); 802(a)(2); 13e–4(h)(8)(i); and 14d–1(c)(1).

jurisdiction. Nevertheless, we are considering whether to provide guidance regarding when U.S. security holders can be provided information about the offshore transaction without triggering U.S. requirements. Specifically, if a bidder could use the Internet to disseminate materials relating to an offshore tender offer without causing U.S. tender offer requirements to apply to that offer, U.S. security holders might obtain more timely and reliable information about the offer and its effect on their investment, even though they may not be permitted to participate in the offer.[31] We, of course, would be concerned that posting offshore tender offer materials on the Internet could amount to a solicitation of U.S. security holders, that in effect urges them to find indirect means to participate in the tender offer.

Q2. We request comment on whether materials relating to offshore tender offers could be posted on the Internet without triggering U.S. tender offer requirements with respect to that offer. Would these postings be helpful in providing U.S. security holders with timely information concerning extraordinary transactions affecting their holdings? If so, what conditions should attach to dissemination of offshore tender offer materials over the Internet?

B. Proposed Tier I Exemption

Under the proposed Tier I exemption, eligible tender offers would not be subject to Rules 13e–3, 13e–4, Regulation 14D or Rules 14e–1 and 14e–2.[32] These provisions contain disclosure, filing, dissemination, minimum offering period, withdrawal rights and proration requirements that are intended to provide security holders with equal treatment and adequate time and information to make a decision whether to tender into the offer. Under the proposed Tier I exemption, tender offers for the securities of foreign private issuers are exempt from these U.S. tender offer requirements, so long as:

- U.S. security holders of record hold 10 percent or less of the class of securities sought in the tender offer;
- In the case of a class of securities subject to Rule 13e–4 or Regulation 14D under the Exchange Act, bidders submit, rather than file, an English language translation of the offering materials to the Commission under cover of Form CB and file a consent to service on Form F–X;
- U.S. security holders participate in the offer on terms at least as favorable as those offered to any other holders, including price, type of consideration and choice among different alternatives being offered; and
- Bidders provide U.S. security holders with the tender offer circular or other offering document, in English, on a comparable basis as provided to other security holders.

The exemption would be available to U.S. and foreign bidders. The domicile or reporting status of the bidder is not relevant. Instead of complying with the U.S. tender offer rules, a bidder taking advantage of the Tier I exemption would comply with any applicable rules of the foreign target company's home jurisdiction or exchange.

1. U.S. Ownership Limitation

The Tier I tender offer exemption is substantially similar to the exemption for cash tender offers contained in the 1991 proposals. Like in the 1991 proposals, we propose 10 percent as the maximum level of ownership by U.S. security holders that a target company can have and be eligible for the exemption.[33] Under the 1991 proposals, we solicited comment on whether to increase the 10 percent limitation for U.S. ownership to 15 or 20 percent.

Commenters on the 1991 proposals largely favored adopting a higher eligibility percentage. As proposed, however, we preliminarily have decided that 10 percent is an appropriate level of U.S. ownership for exclusive reliance on home jurisdiction requirements. At and below that level of U.S. ownership, broad-based exemptions may be necessary to encourage inclusion of U.S. security holders. Above that level, more tailored relief of the type envisioned by Tier II to address conflicting regulatory mandates and offering practices appears to be sufficient, based on our experience in granting exemptive relief for those offers. When U.S. ownership does not exceed 10 percent of the target securities, we believe that U.S. holders' interests are best served by being able to participate in, rather than being excluded from, the tender offer, even though they do not receive the full protections of the U.S. tender offer rules.

Q3. We seek comments on the appropriateness of the 10 percent limitation on U.S. ownership. Should the threshold be higher, for example 20 percent, or lower, such as five percent? If the threshold were higher, would the Tier II exemption be necessary?

2. Disclosure and Dissemination—Proposed Form CB

A bidder relying on the Tier I exemption must submit any offer materials prepared under foreign law to the Commission for notice purposes only, under the cover of proposed Form CB. Also, if the target company, or any officer, director or other person provides a recommendation with respect to the offer, they may satisfy their disclosure obligations under Rules 14e–2 and 14d–9 by submitting the recommendation to the Commission on Form CB. If the tender offer is subject only to Section 14(e) and Regulation 14E, the offering document would not need to be submitted to the Commission, since the current regulations do not require a filing in connection with those offers. The materials submitted under cover of Form CB would not be deemed filed with the Commission. Therefore, the person submitting the materials would not be subject to the express liability provisions of Section 18 of the Exchange Act.[34]

Form CB must be received by the Commission no later than the next business day after the tender offer is commenced. A number of countries, such as the United Kingdom, provide that an offer commences when the offering document is first physically sent to security holders. A number of commenters on the 1991 proposals expressed concern that it would be difficult to submit documents to the Commission contemporaneously with the publication or mailing of documents overseas. Thus, offerors and targets will have one extra day from the date the offering circular or disclosure document is first published, sent or given to security holders to submit the offering circular or disclosure document to the Commission under the cover of Form CB. If the bidder is a foreign company, it must also file a Form F–X with the Commission contemporaneously with the submission of the Form CB.[35]

Offerors must disseminate any tender offer circular or other informational document to U.S. security holders in English on a comparable basis as provided to security holders in the foreign target company's home jurisdiction. If the foreign target company's home jurisdiction permits

[31] We recently gave written guidance with respect to registration requirements under the federal securities laws. Statement of the Commission Regarding Use of Internet Websites, Securities Act Release No. 7516 (March 23, 1998) [63 FR 14806].

[32] Rules 13e–3, 13e–4, 14d–1 through 14d–10 and 14e–1 and 14e–2, 17 CFR 240.13e–3, 240.13e–4, 240.14d–1 through 240.14d–10 and 240.14e–1 and 240.14e–2.

[33] *See* Section II.H, *infra*, for a discussion of how U.S. ownership is determined.

[34] 15 U.S.C. 78r.

[35] Form F–X is used by certain non-U.S. companies to appoint an agent for service in the United States.

dissemination solely by publication, the offeror must likewise publish the offering materials simultaneously in the United States.

As now proposed, eligible Tier I transactions also would be exempt from the Commission's going private disclosure requirements under Rule 13e–3.[36] Rule 13e–3 mandates the filing of a Schedule 13E–3. Schedule 13E–3 requires disclosure about the fairness to unaffiliated security holders of the transaction that may cause an equity security to lose its public trading market. Those disclosure requirements would, however, remain applicable to offers subject to the Tier II exemption.

Rule 13e–3 disclosure is important in assessing the fairness of a going private transaction. However, it may not be practical to impose Rule 13e–3 procedural, disclosure and filing requirements when there are no other U.S. requirements, including disclosure requirements about the background, terms or conditions of an offer. For Tier I offers, the home jurisdiction would establish the basic disclosure and dissemination requirements applicable to the offer. In a predominantly foreign transaction, compliance with Rule 13e–3 has been problematic when the affiliated transaction would not be subject to challenge under home country law solely on the basis of lack of fairness. In these transactions, the staff has permitted modified disclosure that focuses on how the board of directors arrived at their determination to purchase the interests of unaffiliated security holders at the offering price rather than requiring a fairness determination.[37]

The proposed rules would not affect the beneficial ownership reporting requirements of Sections 13(d), 13(f) and 13(g) of the Exchange Act, because the need for disclosure of the ownership and control of reporting companies, domestic and foreign, outweighs any burdens related to filing reports under those rules.[38]

Q4. Should Sections 13(d), 13(f) and 13(g) apply to non-U.S. persons owning securities in foreign private issuers? Should these rules apply only if U.S. record ownership exceeds a certain percentage, such as 5 or 10 percent?

As noted, the anti-fraud and anti-manipulation provisions contained in the Exchange Act also would continue to apply.[39] In 1991 a number of commenters expressed concern that if the anti-fraud provisions continue to apply, bidders will not extend the offer to U.S. security holders. We nevertheless continue to believe that the anti-fraud and anti-manipulation rules are necessary for the protection of U.S. security holders.

3. Equal Treatment

Offerors relying on the Tier I exemption must permit U.S. security holders to participate in the offer on terms at least as favorable as those offered to any other security holders of the subject securities. This requirement would mandate that U.S. security holders be offered the same amount and form of payment, including securities if offered elsewhere. Also, the procedural terms of the tender offer, that is, duration and withdrawal rights, must be the same for all security holders.

Q5. We request comments on whether the tender offer exemptive rules should permit U.S. security holders to be offered cash consideration only, even if securities are offered to non-U.S. security holders. If bidders can offer a cash-only alternative to U.S. security holders, should we impose protections to ensure that U.S. security holders are receiving equivalent value for their securities? Similarly, we are aware that as a practical matter, holders of American Depositary Shares (''ADSs'') may have a shorter time period in which to tender. Would the requirement that the procedural terms of the tender offer be the same for all holders prevent reliance on the exemption when the subject securities are held in ADS form in the United States?

An exception to this equal treatment requirement would provide that if the transaction is exempt from registration under the Securities Act, the offeror may exclude target company security holders residing in any state that does not provide an exemption from registration.[40] Similarly, if the offeror registers securities under the Securities Act, the offeror may exclude target company security holders residing in any state that refuses to register or qualify the offer and sale of securities in that state after a good faith effort by the offeror.

In both cases, however, the offeror must offer those security holders cash consideration instead of excluding them, if it has offered cash consideration to security holders in another state or in a jurisdiction outside the United States. The offeror must offer the cash consideration only if it previously offered a cash-only alternative consideration—not merely a partial cash alternative consideration.

Another exception to the equal treatment requirement would provide that the offeror does not need to offer a ''loan note'' alternative to U.S. security holders. It is quite common in the United Kingdom for a bidder in a cash tender offer to extend a loan note option to the target company's security holders instead of paying cash. This procedure allows target security holders to receive a short-term note, which may be redeemed in whole or in part for cash at par on any interest date in the future.[41] This exception would be available when the purpose of the loan notes is the deferral of the recognition of income and capital gains on the sale of securities and such a deferral is not available to U.S. security holders. Also, the offeror cannot list the loan notes on any exchange or organized securities market, or register them under the Securities Act and still qualify for the Tier I exemption.

The Tier I exemption contemplates that the bidder may have to comply with more than one jurisdiction's regulations.[42] The chartering jurisdiction may mandate more protections or disclosure than the principal foreign market. If the bidder cannot or does not wish to extend these additional protections or disclosure to

[36] 17 CFR 240.13e–3.

[37] *See* In the Matter of Procordia Aktiebolag and Aktiebolaget Volvo, Securities Exchange Act Release No. 27671 (Feb. 2, 1990)(7.9% U.S. record holders); In the Matter of Incentive AB and Gambro AB, Securities Exchange Act Release No. 36793 (Jan. 31, 1996)(1.89% U.S. record holders).

[38] 15 U.S.C. 78m(d), 78m(g), and 78m(f).

[39] For example, Sections 10(b) and 14(e) of the Exchange Act, 15 U.S.C. 78(b) and 78n(e), and Rules 10b–5 and 14e–3 thereunder, 17 CFR 240.10b–5, and 240.14e–3 would continue to apply.

[40] In some cases, securities issued under proposed Rules 801 and 802 may be subject to state registration requirements. Rights offerings under proposed Rule 801 are less likely to pose conflicts with state securities laws. The securities laws of many states contain a provision patterned after Section 402(14) of the Uniform Securities Act exempting from registration securities offerings to existing security holders of the issuer. Exemptions from state law registration requirements for securities offered through exchange offers, such as those covered by proposed Rule 802, are much more rare.

[41] ''Loan notes'' generally are unsecured short-term debt obligations, which are guaranteed as to principal and interest by a bank and permit the holder to require all or any part of the principal amount of the loan notes to be repaid at par together with any accrued interest on any interest payment date. Under U.K. tax laws, a security holder who receives loan notes and does not own more than five percent of the outstanding shares of the target company would not be subject to a capital gains tax to the extent the security holder receives loan notes. A U.S. security holder, on the other hand, would be subject to a capital gains tax under the Internal Revenue Code, since the security holder would not be accorded special treatment under the installment sales method of income recognition. I.R.C 453(k)(2)(A).

[42] Commenters on the 1991 proposals raised concerns that a home country may have no regulatory safeguards. They suggested that in those instances, it would be fair to require the U.S. offer to comply with the regulatory structure of the target company's principal foreign market.

U.S. security holders, under today's proposals, the bidder would not have Tier I exemptive relief. The bidder, therefore, would need to seek relief from the Commission in order to extend the tender offer to U.S. security holders without complying fully with Exchange Act tender offer requirements. The bidder would need to submit a written request for exemptive relief to the Commission. In determining whether to grant relief, we would consider whether the additional protections or disclosures are necessary, under the particular facts and circumstances of the transaction, to protect the interests of U.S. security holders.

C. Proposed Tier II Exemption

1. Conditions for the Exemption

Under the Tier II offer exemption, bidders would be entitled to limited relief from the U.S. tender offer rules to minimize conflicts with the foreign regulatory schemes. A bidder may rely upon the Tier II exemption if:

- The target company is a foreign private issuer; and
- U.S. security holders do not hold of record more than 40 percent of the securities sought in the offer.

The exemption would be available to U.S. and foreign bidders. The domicile or reporting status of the bidder is not relevant.

We preliminarily believe that there should be a ceiling on the maximum percentage of U.S. security holders of the subject class to ensure that when U.S. ownership is significant, the full protections of the U.S. tender offer rules apply. When U.S. ownership exceeds 40 percent, it is unlikely that the offer would exclude U.S. security holders. We will consider relief on a case-by-case basis when there is a direct conflict between the U.S. laws and practice and those of the home jurisdiction. Any relief would be limited to what is necessary to accommodate conflicts between the regulatory schemes and practices.[43]

In no event will the Division exempt application of the anti-fraud and anti-manipulation provisions, including Section 14(e).[44] Section 14(e) provides that it is unlawful for a person to make a material untrue statement, or material omission, or to engage in fraudulent, deceptive, or manipulative acts in connection with any tender offer. Receipt of an exemption from the bright-line prophylactic requirements of Rule 14e–1[45] does not obviate the need to comply with the anti-fraud and anti-manipulation requirements, including those contained in Section 14(e). Thus, for example, while an exemption from the requirement under Rule 14e–1(b)[46], which provides a bright-line threshold of ten days notice if the offeror increases or decreases the consideration offered, may be appropriate, the anti-fraud provisions may require notice of material changes in an offer.

The areas of exemptive relief under Tier II have been identified by bidders as common impediments to extending offers into the United States in past requests for exemptive relief.[47] They include:

(1) an offer is deemed to commence upon mailing or publication pursuant to the home jurisdiction's requirements rather than upon announcement;

(2) a bidder may terminate withdrawal rights before the expiration of the offer if it has met all conditions to the offer and satisfied all duration requirements of the U.S. tender offer rules;

(3) a bidder may divide the offer into two separate offers having the same terms in which the U.S. offer would comply with the U.S. regulatory scheme and the non-U.S. offer would comply with the home jurisdiction rules, excluding U.S. security holders from the foreign offer and limiting the U.S. offer to U.S. security holders;

(4) whether the bidder meets the requirements for prompt payment for, or return of, tendered securities will depend on home jurisdiction requirements and practice; and

(5) bidders may announce extensions of the offer in accordance with the practices of the home jurisdiction, rather than before the commencement of trading on the next business day as required by the U.S. rules.

In Section II.C.2, we discuss each aspect of the proposed Tier II exemption in more detail. We also provide guidance on a bidder's ability to reduce the minimum tender condition without extending the offer if certain conditions are met.

Q6. We request comments on the scope of the proposed relief and the conditions proposed in the Tier II exemption. Are there any other areas where relief should be granted? Are there areas of relief proposed that should not be granted? Should there be more conditions attached? For example, should a foreign bidder relying on the Tier II exemption be required, as proposed, to File a Form F–X appointing an agent for service of process in the United States?

If relief beyond the proposed Tier II exemption is necessary, the Commission staff would consider requests on an expedited basis under the proposed delegated authority. In such a case, the bidder would need to submit a written application requesting relief, along with a discussion of the basis for the request.[48] The application must comply with the requirements of Rule 0–12 under the Exchange Act.

The Tier II exemption would be available regardless of the home jurisdiction of the foreign subject company.[49] By creating an approach

[43] *See* In the Matter of Trinity Acquisition PLC, Exchange Act Release No. 40246 (July 22, 1998) (U.S. persons held 45.46% of the target's securities); In the Matter of GE Capital Corp., Exchange Act Release No. 38888 (July 30, 1997) (U.S. persons held 58.27% of the target's securities). Because of the significant U.S. ownership interest in the target companies, the relief was narrowly tailored to accommodate direct conflicts between U.S. and U.K. law or practice and to allow the offers to proceed in a manner that did not impair the interests of U.S. persons.

[44] 15 U.S.C. 78n(e)

[45] 17 CFR 240.14e–1.

[46] 17 CFR 240.14e–1(b).

[47] We granted relief in the following transactions based on common conflicts between foreign and U.S. regulatory schemes:

AUSTRALIA: Australian National Indus. Ltd.; Palmer Tube Mills Ltd., SEC No-Action Letter (Aug. 30, 1994).

CANADA: Varity Corp., SEC No-Action Letter (Oct. 15, 1991).

FRANCE: Rhône-Poulenc S.A., SEC No-Action Letter (July 8, 1993); Pechiney Privatization, SEC No-Action Letter (Dec. 6, 1995).

IRELAND: In the Matter of Den norske stats oljeselskap a.s. and Statoil (U.K.) Ltd., Exchange Act Release No. 36379 (Oct. 17, 1995).

SWEDEN: In the Matter of Pharmacia & Upjohn, Inc., Pharmacia Aktiebolag and The Uphohn Co, Exchange Act Release No. 36240A (Sept. 27, 1995); In the Matter of Incentive AB and Gambro AB, Exchange Act Release No. 36793 (Jan. 31, 1996).

SWITZERLAND: Ciba Specialty Chemicals Holding Inc., SEC No-Action Letter (Feb. 18, 1997).

UNITED KINGDOM: Pacificorp, Exchange Act Release No. 38776 (June 25, 1997); In the Matter of Amersham International PLC and Nycomed ASA, Exchange Act Release No. 38797 (July 1, 1997).

[48] If the request relates to an issuer tender offer, the request should be directed to the Office of Risk Management and Control in the Commission's Division of Market Regulation or the Office of Mergers and Acquisitions in the Commission's Division of Corporation Finance. If the request relates to a third party tender offer, the request should be directed to the Officer of Mergers and Acquisitions.

[49] The proposed Tier II exemption differs from the 1991 proposals. The 1991 proposals granted relief through an order that was limited to third-party tender offers for the securities of U.K. target companies subject to the City Code (the ''U.K. Exemptive Order''). The U.K. Exemptive Order would have allowed the bidder to proceed on the basis of U.K. offering documents without complying with U.S. disclosure requirements, and would have allowed tender offers to proceed simultaneously in the United Kingdom and the United States on the same terms and in accordance with both the Williams Act and the City Code. The Tier II offer exemption is modeled after the accommodations reflected in the U.K. Exemptive Order. However, because of the extensive ownership by U.S. persons of securities of foreign issuers from jurisdictions other than the United Kingdom, and our experience in granting accommodations for offers based on

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that is not country-specific, U.S. security holders will have the greatest opportunity to participate in offers for foreign companies without regard to national boundaries. Because the Tier II exemptive relief is limited, it is not necessary to determine whether the tender offer rules and practices of a particular jurisdiction are adequate. Also, a bidder need not demonstrate that there is an actual conflict between U.S. tender offer rules and rules of the home jurisdiction in order to rely on the Tier II exemption. The offers relying upon the proposed exemption would still be subject to any disclosure, filing, and most of the procedural and equal treatment requirements of the U.S. tender offer rules that would otherwise apply to the offer, as well as the going private disclosure and procedural requirements of Rule 13e–3. Further, the exemption requires that certain conditions be met to ensure an adequate level of investor protection while at the same time removing common impediments to including U.S. security holders in foreign tender offers. Consistent with the broader approach of the proposed Tier II exemption, the exemptive relief would be available to both issuer [50] and third-party offers.

Q7. We request comments on whether the non-country specific exemption is appropriate.

Q8. Is the Tier II exemption necessary at all since, based on transactions filed with us, it appears that there will be relatively few offers for the securities of foreign private issuers that will be ineligible for the Tier I exemption if the proposed 10 percent (or possibly higher) threshold is adopted? Instead, should we continue our current practice of granting relief on a case-by-case basis, but in an expedited manner pursuant to the proposed delegated authority provision?

For tender offers conducted under Canadian law, an additional option exists. The rules under the Multijurisdictional Disclosure System (''MJDS'') with Canada permit bidders for the securities of Canadian foreign private issuers to conduct cash tender offers and exchange offers in the United States on the basis of Canadian regulations and disclosure standards.[51] Eligibility is subject to certain conditions, including that U.S. record ownership of the subject class may not exceed 40 percent. Thus, a bidder for the securities of a Canadian foreign private issuer could proceed under the MJDS or the rules proposed today, depending on the level of U.S. ownership of the target securities.

The Tier II exemption would not allow the offer to proceed on the basis of the home country disclosure documents. The 1991 proposals were based on our finding that the disclosure standards applicable to cash tender offers in the United Kingdom were similar to those imposed by the U.S. tender offer rules. We have not, and could not, make this finding with respect to each jurisdiction that would be covered by the Tier II exemption. In addition, there appears to be little need for this relief, since we have not been required to grant exemptive relief with respect to the disclosure requirements of Schedule 14D–1. Bidders typically do not need regulatory relief when the target's home jurisdiction simply requires more disclosure than our rules, or vice versa. We believe that we can resolve problems caused by conflicts between the different disclosure standards of different jurisdictions on a case-by-case basis, through our comment process. Compliance with U.S. disclosure requirements also is appropriate in light of the relief proposed for Tier I offers; only offers for foreign private issuers with more than 10 percent of their shares held in the United States would be subject to our disclosure standards.

Q9. Are there particular disclosure items under Schedule 14D–1 or other tender offer rules that should be the subject of exemptive relief? For example, should offers conducted pursuant to the Tier II exemption remain, as proposed, subject to the Commission's going private disclosure requirements?

The proposed exemption also does not provide relief from the U.S. dissemination standards.[52] This requirement is appropriate since the dissemination of information does not appear to impose significant burdens.

Q10. Are there aspects of the U.S. dissemination requirements that create conflicts with foreign requirements or practice or are otherwise unduly burdensome in the case of predominantly foreign offers?

Q11. We request comments on whether the 40 percent threshold is appropriate. Is a 30 percent threshold more appropriate? Should an offer for any foreign private issuer be excluded from the Tier II exemption whenever the primary trading market for the subject security is in the United States?

2. Scope of Tier II Exemptive Relief

a. *Commencement of an offer.* The U.S. tender offer rules applicable to third-party cash offers for registered equity securities require a bidder to file with the Commission and to disseminate a mandated disclosure document within five business days of a public announcement of the significant terms of the offer.[53] Some foreign jurisdictions, however, require a bidder to publicly announce its intention to make a tender offer even though the bidder is not yet prepared to commence the offer.[54] In addition, the subject company triggers an obligation to file a Schedule 14D–9 by making an announcement that could be deemed to be a recommendation or solicitation with respect to the offer.[55]

The proposed exemption provides that an offer would commence only upon mailing or publishing the offer, even if the bidder makes a public announcement that would otherwise trigger the commencement requirements under the U.S. tender offer rules, as long as the announcement:

(1) Is required by home jurisdiction law or practice;

(2) Contains no information beyond the requirements of the home jurisdiction law or practice;

(3) If disseminated in written form in the United States, contains a legend noting that the offer will not commence until the bidder mails or publishes the offering document, which may not occur for a specified period, as permitted by the home jurisdiction; and

(4) Any offer documents are mailed no later than 30 days following the announcement or the bidder makes a public announcement if it decides not to commence the offer.

In addition, anyone making such an announcement would not be making a solicitation or recommendation with respect to the offer within the meaning of Rule 14d–9. Requirements (1), (2) and (4) were contemplated in the 1991 proposed U.K. Exemptive Order. Requirement (3) was not contemplated in the 1991 proposed U.K. Exemptive Order.

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regulatory schemes in other jurisdictions, the Tier II offer exemption would not be limited to offers governed by the City Code.

[50] The U.K. Exemptive Order would have covered only third-party offers, since the City Code does not govern issuer tender offers.

[51] Multijurisdictional Disclosure and Modifications to the Current Registration and Reporting System for Canadian Issuers, Exchange Act Release No. 29354 (June 13, 1991) [56 FR 30036].

[52] Rules 13e–4(e), 14d–4, 14d–9 and 14e–2, 17 CFR 240.13e–4(e), 240.14d–4, 240.14d–9 and 240.14e–2.

[53] Rule 14d–2(b), 17 CFR 240.14d–2(b).

[54] Under U.K. law, once a bidder forms a firm intention to make an offer, the bidder must make a detailed announcement of the terms of its offer. *See* City Code, Rule 2.2(a). The bidder must then mail the offer document within 28 days of that announcement. *See* City Code, Rule 30.1.

[55] Rule 14d–9, 17 CFR 240.14d–9.

Including the legend on the announcement when disseminated into the United States will ensure that U.S. investors are aware that commencement of the offer may be delayed. The 30-day maximum time limit for mailing the offer documents will ensure that there is not a significant delay in mailing the materials. This requirement is consistent with the U.K. requirement that the materials be mailed within 28 days of the announcement.[56]

Q12. We request comment on whether it is necessary to require that offers commence within 30 days of announcement. Is a different time period more appropriate? Further, would the proposed legend concerning the delay in commencement add meaningful protection for U.S. investors?

b. *Withdrawal Rights.* Under U.S. law, the bidder must permit tendering security holders to withdraw shares throughout the term of the offer, including any extension, and even following the close of the offer if the bidder has not accepted the tendered securities for payment within 40 days after the commencement of the offer.[57] As highlighted in previous Commission exemptive orders and the 1991 proposed U.K. Exemptive Order, U.S. withdrawal rights may conflict with withdrawal rights available to security holders in other jurisdictions.

Under the U.K. City Code, for example, the bidder must provide security holders the right to withdraw previously tendered shares only if an offer does not become ''unconditional as to acceptances'' within 21 days after the first closing date of the initial offer.[58] The City Code also requires that an offer remain open for at least 14 days after going unconditional as to acceptances and that shares be immediately purchased once the offer goes wholly unconditional.[59] Allowing withdrawal rights after the offer has received the required level of acceptances would jeopardize the regulatory policy embodied in the City Code that offers may not proceed unless the bidder obtains control in the offer.

Since 1991, the Commission has consistently granted relief from the U.S. withdrawal rights requirements in U.K. offers during the mandatory extensions following the offer going wholly unconditional. Withdrawal rights are less important at this stage in the offer, because shares could have been purchased by the bidder at that time under U.S. law (*i.e.*, when all conditions have been met). U.S. law does not require the bidder to extend the offer after obtaining its minimum acceptance level.

Under the Tier II exemption proposed today, the bidder could terminate withdrawal rights before the expiration of the offer if the offer is for all outstanding shares[60] and if the bidder:

(1) Satisfies or waives all conditions to the offer;

(2) Satisfies all minimum time periods;

(3) Extends withdrawal rights during all minimum time periods;

(4) Accepts and promptly pays for all previously tendered securities; and

(5) Immediately accepts and promptly pays for all securities tendered thereafter.[61]

If the bidder satisfies all these conditions, and if it has previously advised U.S. security holders of the possibility of early termination, the bidder may terminate withdrawal rights even if a previously announced voluntary extension of the initial offering period has not expired.[62]

This exemption provides relief from the requirement that withdrawal rights be extended throughout the term of the offer and the requirement that withdrawal rights be provided if the securities have not been accepted for payment within 40 days after commencement of the offer.

Q13. Should bidders be permitted to terminate withdrawal rights earlier than the satisfaction of certain conditions, such as before governmental regulatory approval? Should we consider requests for this relief on a case-by-case basis rather than incorporating it into the Tier II exemption?

c. *All-holders/best price.* The U.S. rules require that a bidder open the tender offer to all security holders and that the consideration paid to any security holder be as high as the consideration paid to any other security holder (the ''all-holders/best price rule'').[63] The Commission has issued exemptive relief from this requirement to permit a bidder to divide its offer into two separate offers. The U.S. offer would comply with the U.S. regulatory scheme and the non-U.S. offer would comply with the home jurisdiction rules. The bidder would exclude U.S. security holders from the foreign offer and limit the U.S. offer to U.S. security holders.[64] We have also granted relief when bidders have offered a ''loan note'' alternative (a form of installment payment common in U.K. offers) only to U.K. security holders and not to U.S. security holders.[65] The loan notes provide certain U.K. tax benefits that are not applicable to U.S. security holders. Therefore, it is not necessary to offer U.S. security holders that alternative. The proposed Tier II exemption would extend both kinds of relief to all offers eligible for the exemption.

The proposed Tier II exemption would not address the situation where the bidder seeks to offer cash-only consideration to U.S. security holders to avoid registering the exchange offer under the Securities Act. This would include the device of ''vendor

[56] We recently adopted a safe harbor under the tender offer rules. The safe harbor provides that a bidder or target company does not trigger the disclosure or filing requirements of the tender offer rules by granting representatives of the press access to offshore press conferences or meetings with management, or to press releases and other materials, even though a proposed tender offer is discussed at those meetings or in the materials. A bidder or target company would not need to satisfy the requirements imposed by the Tier II exemption to avoid triggering Rule 14d–2(b) or 14d–9 as a result of these types of offshore press activities. Bidders will have to rely on the Tier II exemption only when the announcement of the offer is disseminated in a manner inconsistent with the requirements of the offshore press safe harbor, for example, by publishing the announcement in the United States. Rule 14d–1(c), 17 CFR 240.14d–1(c).

[57] Exchange Act Section 14(d)(5), 15 U.S.C. 78d(5); Rule 14d–7, 17 CFR 240.14d–7.

[58] City Code, Rule 34. An offer typically becomes ''unconditional as to acceptances'' when the bidder receives enough tendered securities that (when combined with the securities already owned or purchased) constitute more than 50% of the aggregate number of the target company's outstanding shares. *See* City Code, Rule 10.

[59] City Code, Rule 31.4. An offer normally becomes ''wholly unconditional'' once all conditions to the offer have been satisfied.

[60] If we permitted this relief in a partial offer, security holders who tendered prior to the termination of withdrawal rights would be prorated on a different basis than those who tender after the termination of withdrawal rights. Because we are requiring that security holders who tender prior to the termination of withdrawal rights be paid promptly upon that termination, a bidder would not know at the time of purchase the amount of tenders that would come in after the termination of withdrawal rights. Consequently, the bidder would need to prorate security holders differently depending on when they tendered.

[61] This position would also apply in situations such as Swedish transactions where withdrawal rights are terminated for a ten-day period during which the bidder determines whether the minimum condition has been satisfied. *See, e.g.*, In the Matter of Incentive AB and Gambro AB, Exchange Act Release No. 36793 (Jan. 31, 1996). The Commission has granted exemption relief in those situation, since all conditions (other than the minimum tender condition) and minimum time periods have been satisfied prior to terminating withdrawal rights. If the bidder determines that the minimum tender condition is not satisfied and extends the offer instead of returning the tendered shares, withdrawal rights must be extended during this additional offering period.

[62] *See, e.g.*, In re Central and South West Corp. and Houston Indus., Exchange Act Release No. 36285 (Sept. 27, 1995).

[63] Rule 14d–10, 17 CFR 240.14d–10.

[64] *See, e.g.*, In the Matter of Incentive AB and Gambro AB, Exchange Act Release No. 36793 (Jan. 31, 1996).

[65] *See, e.g.*, In re Central and South West Corp. and Houston Indus., Exchange Act Release No. 36285 (Sept. 27, 1995).

placements,'' where U.S. security holders receive a cash payment that is funded by the sale into the market overseas of any securities received in the offer.[66] In adopting the all-holders rule, we contemplated that, under appropriate circumstances, we would grant requests for relief in connection with exchange offers by foreign bidders.[67] This relief would permit U.S. security holders to receive cash, rather than the bidder's securities which would trigger the registration requirements of the Securities Act. We have demonstrated in numerous registered exchange offers, both negotiated and hostile, that the registration requirements of the Securities Act are not an insurmountable obstacle to meeting foreign time schedules. Moreover, relief may be unnecessary because foreign regulators may not permit bidders to offer U.S. security holders cash-only consideration when that consideration is not offered to all holders. We will continue to address these kinds of relief on a case-by-case basis.

Q14. We request comments on whether the Tier II exemption should include relief permitting a bidder to offer cash, rather than securities, to U.S. security holders. Would the need to treat U.S. security holders differently be greatly diminished if we adopt proposed Rule 802?

d. *Notice of extensions.* Under the U.S. tender offer rules, all tender offers must remain open for a minimum of 20 business days, subject to mandatory extensions for changes in the terms of the offer.[68] Today's proposals do not provide relief from the duration and extension requirements. We are not aware of jurisdictions where the U.S. duration and extension periods conflict with those of the home jurisdiction. Some home jurisdiction regulations permit a shorter time period.[69] But in our experience, those home jurisdiction rules do not prohibit the bidder from keeping the offer open or extending the offer for a longer period of time.

Q15. Is there a need for relief from the minimum offering and extension period requirements of the U.S. tender offer provisions?

Under the U.S. tender offer rules, if a bidder determines to extend an offer beyond a scheduled expiration date it must publish a notice of the extension by the beginning of the next business day.[70] The proposed Tier II exemption would permit bidders to announce extensions of the offer in accordance with the practices of the home jurisdiction, rather than prior to the commencement of trading on the next business day as required by U.S. rules. We are aware of situations when the U.S. rules conflict with those of the home jurisdiction, such as when the tabulation process requires more time for the bidder to decide whether to extend an offer.[71]

e. *Prompt payment for or return of tendered securities.* After expiration of an offer, U.S. tender offer rules require an offeror to promptly pay for, or return, tendered securities.[72] This ''prompt'' payment standard is satisfied if payment is made in accordance with normal settlement periods. Under T+3 settlement requirements, that period is now three trading days in the United States.[73] In the United Kingdom, for example, once the bidder is allowed to purchase tendered securities, payment must be made within 14 calendar days.[74] We have granted relief from the prompt payment rule in many exemptive orders.[75] The Tier II exemption would make promptly payment relief available so long as the bidder pays for the securities in accordance with the home country's requirements.

f. *Reduction of minimum condition.* The U.S. rules require that at least five business days remain in an offer following the waiver of the minimum tender condition. This permits investors to learn of, and react to, this material change to the offer.[76] The concern is that certain security holders may want to withdraw if the bidder lowers the minimum condition, while others may want to tender into the offer.

In the United Kingdom, it is common for the bidder to reduce the minimum condition from 90 to 51 percent, once all other conditions to the offer are satisfied, and immediately purchase the tendered securities. Under the City Code, the offer then must remain open for 14 days (the ''Subsequent Offering Period''). During the Subsequent Offering Period, the offer is open for acceptances, but not withdrawals.[77] Bidders anticipate that during the Subsequent Offering Period, sufficient tenders will come in to satisfy the 90 percent minimum condition. The 90 percent minimum condition is important to achieve because that is the amount required to conduct a compulsory acquisition.

Purchasing securities immediately after the reduction or waiver of the minimum condition is inconsistent with the U.S. tender offer requirements. To address this conflict, we have permitted a bidder in a cross-border tender offer to reserve the right to reduce the 90 percent condition and announce this reservation by press release and advertisement in a U.S. newspaper of national circulation at least five business days before any reduction.[78] Since bidders must disclose that they are reserving the right to reduce the minimum condition five days before they reduce it, security holders have sufficient time to withdraw their securities. Those security holders wishing to tender into the offer once the minimum condition is lowered will be able to tender during the Subsequent Offering Period.[79] Bidders believe this relief is necessary because they will not know before the expiration date whether to reduce the minimum condition, since many holders do not tender until the last day of the offer. They would only reduce the minimum condition if the number of tenders on such date is close to the 90 percent level and they believe they will get to the 90 percent level during the Subsequent Offering Period.

We will not object if bidders meeting the requirements for the Tier II exemption reduce or waive the minimum acceptance condition without extending withdrawal rights during the remainder of the offer (unless an

[66] *See, e.g.,* Oldcastle, Inc., SEC No-Action Letter (July 3, 1986).

[67] Amendments to Tender Offer Rules—All-Holders and Best Price, Securities Act Release No. 6653 (July 11, 1986) [51 FR 25873].

[68] Rule 14e–1 (a) and (b), 17 CFR 240.14e–1 (a) and (b).

[69] For example, French regulations require that the offer be held open for 20 French business days, which may differ from U.S. business days. General Regulations of the Paris Bourse by the Conseil des Bourses de Valeurs, Article 5–2–10 (1996). U.K. regulations require that the offer be held open for 21 calendar days. City Code, Rule 31.1.

[70] Rule 14e–1(d), 17 CFR 240.14e–1(d).

[71] We have granted exemptive relief to Swedish offers where, due to market practice in the jurisdiction, it is impracticable to announce an extension for up to 10 days following the expiration of the offer. During that period, shareholders do not have withdrawal rights. *See* In re Pharmacia & Upjohn, Inc., Pharmacia Aktiebolag and the Upjohn Co., Exchange Act Release No. 36240A (Sept. 27, 1995); In the Matter of Incentive AB and Gambro AB, Exchange Act Release No. 36793 (Jan. 31, 1996).

[72] Rule 14e–1(c), 17 CFR 240.14e–1(c).

[73] Rule 15c6–1(a), 17 CFR 240.15c6–1(a).

[74] City Code, Rule 31.8.

[75] *See, e.g.,* In the Matter of Texas Utilities and The Energy Group PLC, Exchange Act Release No. 39810 (March 27, 1998).

[76] Interpretive Release Relating to Tender Offer Rules, Exchange Act Release No. 24296 (Apr. 3, 1987), [52 FR 11458].

[77] *See* Section II.C.2.b for a discussion of the permissibility of terminating withdrawal rights during the Subsequent Offering Period.

[78] *See* In the Matter of Pacificorp and The Energy Group, Exchange Act Release No. 38776 (June 25, 1997).

[79] Since the U.S. rules do not contemplate a Subsequent Offering Period, this relief should not be appropriate in a domestic transaction.

extension is required by Rule 14e–1), if the following conditions are met:

- The bidder must announce that it may reduce the minimum condition five business days prior to the time that it reduces the condition. A statement at the commencement of the offer that the bidder may reduce the minimum condition is insufficient;
- The bidder must disseminate this announcement through a press release and other methods reasonably designed to inform U.S. security holders, which could include placing an advertisement in a newspaper of national circulation in the United States;
- The press release must state the exact percentage to which the acceptance condition may be reduced and state that a reduction is possible. The bidder must declare its actual intentions once it is required to do so under the regulations of the home jurisdiction;
- During this five-day period, security holders who have tendered their shares in the offer will have withdrawal rights;
- This announcement must contain language advising security holders to withdraw their tenders immediately if their willingness to tender into the offer would be affected by a reduction of the minimum acceptance condition;
- The procedure for reducing the minimum condition must be described in the offering document; and
- The bidder must hold the offer open for acceptances for at least five business days after the satisfaction of the minimum acceptance condition.

D. Other Rules Governing Tender Offers

1. Rule 10b–13

We are proposing to amend Rule 10b–13 under the Exchange Act to facilitate the inclusion of U.S. security holders in tender offers for foreign securities.[80] Rule 10b–13 prohibits a person who is making a tender or exchange offer from purchasing or arranging to purchase, directly or indirectly, the security that is the subject of the offer (or any security that is immediately convertible into or exchangeable for the subject security) otherwise than pursuant to the offer.[81] The rule's prohibitions apply from the time of public announcement of the offer until the time the bidder is required, pursuant to the offer's terms, either to accept or reject the tendered securities. Rule 10b–13 protects investors by preventing a bidder from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer's terms.[82] The rule applies to the bidder, whether the bidder is the issuer or a third party, the bidder's affiliates, and the offer's dealer manager.[83]

Many foreign jurisdictions do not expressly prohibit a bidder from purchasing or arranging to purchase the subject security outside the terms of the offer. A number of these jurisdictions, however, do require that the bidder provide consideration to tendering security holders that is equivalent to the higher of the offer price and the highest price paid to any person whose securities were purchased outside the terms of the offer.[84] This means that tendering security holders will receive the benefit of any higher prices paid for securities outside the offer. In contrast, Rule 10b–13 is premised in part on the view that because of the time value of money, persons whose shares are purchased before payment is made in the offer receive a consideration different from that received by tendering security holders, even if they receive the same per share price.[85] Nevertheless, the requirement that bidders pay in the offer the highest price paid for shares purchased outside the offer is similar to the requirement in Rules 14d–7 and 13e–4(f)(4) under the Exchange Act that the highest consideration paid to any security holder pursuant to a tender offer be paid to all security holders that tender into the offer.

A strict application of Rule 10b–13 in some cases could disadvantage U.S. security holders. For example, a bidder may decide to exclude U.S. security holders from the offer when Rule 10b–13 would (1) preclude purchases outside the offer; and (2) the participation of U.S. security holders is not necessary to the success of the offer. In that circumstance, flexible application of Rule 10b–13 is necessary and appropriate to encourage bidders for the securities of foreign private issuers to extend their offers to U.S. security holders. At the same time, any relief extended to foreign tender offers should be limited to circumstances that do not undermine the investor protection goals of Rule 10b–13.

We have some experience in balancing these objectives. We issued an exemption from Rule 10b–13 in 1991 for tender or exchange offers relying on the MJDS with Canada.[86] That exemption recognizes that Canadian procedures applicable to tender offers afford a large measure of the protections provided by Rule 10b–13.[87] Additionally, in the 1991 proposals, we sought comment on whether we should provide an exemption from Rule 10b–13 to bidders of foreign securities when certain conditions are satisfied. Although the 1991 proposals were not adopted, the Commission has granted a number of exemptions from Rule 10b–13 to accommodate cross-border tender offers. These exemptions were subject to provisions pertaining to recordkeeping and compliance with applicable tender offer laws or regulations, as well as the conditions suggested in the 1991 proposals that:

(1) The U.S. offering documents prominently disclose the possibility of any purchases or arrangements to purchase the subject security (or certain related securities), or the intent to make such purchases, otherwise than pursuant to the terms of the tender offer;

(2) The bidder discloses in the United States information regarding such purchases to the extent such disclosure is made pursuant to the home jurisdiction's rules governing tender offers; and

(3) Such purchases are made outside the United States.[88]

For tender or exchange offers that are substantially foreign in character, we preliminarily believe that allowing U.S. security holders to participate in these offers outweighs the benefits derived from applying Rule 10b–13 to such offers. Commenters on the 1991 proposals supported this view. They stated that relief from Rule 10b–13 is appropriate for tender offers that are essentially foreign in character, especially if any such exemption is consistent with the relevant laws, rules, and practices of the foreign jurisdiction

[80] The Commission recently commenced a comprehensive review of Rule 10b–13, including its application in the context of offers for U.S. issuers. In connection with this review, we recently proposed revising Rule 10b–13 and redesignating it as Rule 14e–5. Securities Act Release No. 7607 (November 3, 1998). If those proposals are adopted, any changes made to Rule 10b–13 to accommodate cross border transactions will be incorporated into Rule 14e–5.

[81] 17 CFR 240.10b–13.

[82] *See* International Tender and Exchange Offers, Securities Act Release No. 6897 (June 5, 1991) [56 FR 27582, 27597].

[83] *See, e.g.,* Offer for Smith New Court PLC (July 26, 1995).

[84] *See, e.g.,* City Code Rules 6.1 and 6.2; *see also* Ontario Securities Act §§ 97(1), 97(2), 97(3); Ontario Securites Commission Policy Statement 9.3.

[85] *See* Brief of the Securities and Exchange Commission, Amicus Curiae, *Texaco Inv. v. Pennzoil Inc.* (Tex. Sup. Ct. July 22, 1987).

[86] Order of Exemption from Provisions of Rules 10b–6 and 10b–13 Under the Securities Exchange Act of 1934 for Canadian Multijurisdictional Disclosure System, Securities Exchange Act Release No. 29355 (June 21, 1991).

[87] *Id.*

[88] *See, e.g.,* Incentive A.B. Offer for Gambro A.B. (February 1, 1996). Additionally, we have granted Rule 10b–13 exemptions to permit concurrent U.S. and offshore tender offers. *See, e.g.,* Pechiney Privatization (Dec. 6, 1995).

governing the offer.[89] Based on our experience in granting exemptions under Rule 10b–13 in the context of foreign tender offers, we believe that relief from Rule 10b–13 would be appropriate within the context of the two-tiered structure proposed in this release to accommodate cross-border offers.

We propose to amend Rule 10b–13 to include an exception for Tier I tender or exchange offers, subject to the conditions that:

(1) The U.S. offering documents disclose prominently the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases otherwise than pursuant to the terms of the tender or exchange offer;

(2) The bidder discloses information in the United States regarding such purchases in the United States in a manner comparable to disclosure made in the home jurisdiction; and

(3) The purchases comply with the applicable tender offer laws and regulations of the home jurisdiction.

This proposed limited exception under Rule 10b–13 for Tier I tender offers largely represents a codification of the conditions contained in the exemptions previously granted by the Commission. The exception, however, would be limited to offers where U.S. persons held of record 10 percent or less of the class of securities sought in the offer.

Unlike in the 1991 proposed exemption, we are not proposing to limit the exception to purchases that are made outside the United States. Under the new proposals, in Tier I offers bidders could purchase target securities, subject to the conditions noted above, in transactions in the United States that otherwise would be prohibited under Rule 10b–13.[90]

We are not proposing an exception to Rule 10b–13 for Tier II offers because of the greater U.S. interest in those offers. We believe that we should continue to review requests for relief from Rule 10b–13 for offers other than Tier I-eligible offers on a case-by-case basis.[91] In that context, we will consider factors such as proportional ownership of U.S. security holders of the target security in relation to the total number of shares outstanding and to the public float; whether the offer will be for ''any-and-all'' shares or will involve prorationing; whether the offered consideration will be cash or securities; whether the offer will be subject to a foreign jurisdiction's laws, rules, or principles governing the conduct of tender offers that provide protections comparable to Rule 10b–13; and whether the principal trading market for the target security is outside the United States. This approach would comport with the Commission's action in a recent cross-border offer involving a U.K. target company with substantial U.S. ownership.[92]

In our view, the proposed exception to Rule 10b–13 will simplify the procedural requirements for foreign tender or exchange offers and further promote the extension of such offers to U.S. security holders, without compromising the investor protections of Rule 10b–13.

Q16. We solicit comments on the proposed exemption for Tier I offers generally, and whether:

(1) As suggested in the 1991 proposal, relief from Rule 10b–13 should be granted only for purchases made outside the United States;

(2) The exception should be subject to an express requirement that either the governing tender offer statute or rules contain, or the offer itself provides for, a provision that if the price paid to security holders outside the offer is higher than the tender offer price, the higher price will be offered to all security holders;

(3) The exception should be limited to offers for all outstanding securities, on the basis that shares purchased outside a partial offer would not be subject to prorationing and therefore may be made on terms materially different from shares purchased in the offer;

(4) The exception should be limited to cash tender offers, on the basis that purchases outside an exchange offer would be made for a form of consideration that may be materially different from the offer's consideration; and

(5) The exception should be limited to offers for the securities of foreign private issuers with no more than 10% U.S. holders of record, or permit a higher percentage of U.S. record holders, *e.g.*, 20%, 30% or 40%. If the level of permissible U.S. ownership is increased, should the exception contain additional conditions, such as limiting its availability to all cash, any-and-all offers; requiring the offer to comply with foreign tender offer rules providing protections comparable to Rule 10b–13; and/or requiring that the principal market for the security be outside the United States?

We recently granted a limited class exemption under Rule 10b–13 to permit ''connected exempt market makers'' and ''connected exempt principal traders,'' as defined by the City Code, to continue their U.K. market making activities during a cross-border offer that is subject to the City Code.[93] Under the City Code, connected exempt market makers and connected exempt principal traders are market makers or principal traders that are affiliated with the bidder's advisors (Eligible Traders). Without Rule 10b–13 relief, Eligible Traders would be forced to withdraw from trading in U.K. target securities, with possible adverse consequences for the liquidity of those securities. This limited class exemption recognizes the information barrier and other requirements contained in the City Code that Eligible Traders must satisfy to be exempt from the City Code's ''acting in concert'' provisions.[94] To rely on this exemption, the Eligible Trader must comply with specified disclosure and recordkeeping requirements and is prohibited from making purchases in the United States, which are consistent with conditions contained in other Rule

[89] *See* comment letters and a summary of the comments in File No. S7–18–91 at our public reference room in Washington, D.C.

[90] Of course, broker-dealers that solicit tenders from U.S. persons would be required to register as broker-dealers under Section 15 of the Exchange Act, absent an available exemption.

[91] Rule 10b–13 exemption requests should be directed to the Office of Risk Management and Control in the Commission's Division of Market Regulation, at (202) 942–0772.

[92] *See* In the Matter of Trinity Acquisition PLC, Exchange Act Release No. 40246 (July 22, 1998). In that offer, U.S. record and beneficial ownership in the target's securities was estimated at 45.46%. Despite the high level of U.S. ownership, the Commission granted a Rule 10b–13 exemption based on the following factors: the transaction was governed by the City Code, which requires that the offer's consideration be increased to the level of any higher price that is paid for purchases of the target's securities outside the offer and does not permit the offer to be withdrawn, except in limited circumstances; the offer was an all cash, any-and-all offer, thus no risk of proration existed; and the principal trading market for the target securities clearly was the London Stock Exchange. Also, the time value of money must be considered in the Rule 10b–13 context because those shareholders paid outside the offer receive consideration sooner than those who tender. This transaction, however, did not involve a substantial difference in the time value of money for purchases outside the offer. Other Rule 10b–13 concerns were not an issue because of the above protections against such abuses in the City Code.

[93] *See Exemption under Rule 10b–13 for Certain Principal Trading and Market Making Activities*, dated June 29, 1998 (Eligible Trader Class Exemption). If the activities of Eligible Traders were in connection with a Tier I offer, where U.S. persons held of record 10 percent or less of the class of securities sought in the offer, the proposed Tier I exception to Rule 20b–13 also would be applicable. Prior to the issuance of the Eligible Trader Class Exemption, the Commission granted Rule 10b–13 relief to U.K. market markers or principal traders on a case-by-case basis. *See, e.g.*, SunGard Data Systems, Inc. Offer for Rolfe & Nolan PLC (March 4, 1998); Doncasters PLC Offer for Triplex Lloyd PLC (March 11, 1998).

[94] *See* City Code Rule 38; Panel Statement 1997/11 dated October 16, 1997.

10b–13 exemptions granted in the cross-border context.

We propose to codify this class exemption. The proposed Rule 10b–13 amendment for Eligible Traders would not be limited to offers where U.S. record ownership is 10 percent or less of the class of securities sought in the offer. It also applies to offers where U.S. record ownership exceeds 10 percent, but is not greater than 40 percent. The proposed amendment, however, would not provide relief under Rule 10b–13 to bidders or anyone acting on behalf of bidders (such as advisors and other nominees or brokers).

The proposed amendment for Eligible Traders is subject to the following conditions:

(1) The issuer of the target security is a ''foreign private issuer,'' as defined in Rule 3b–4(c) under the Exchange Act;

(2) The tender or exchange offer is subject to the City Code;

(3) The Eligible Trader is a ''connected exempt market maker'' or ''connected exempt principal trader,'' as those terms are used in the City Code;

(4) The Eligible Trader complies with the applicable provisions of the City Code; and

(5) The offering documents disclose the identity of the Eligible Trader and describe how U.S. security holders can obtain information regarding an Eligible Trader's market making or principal purchases to the extent such information is required to be made public under the City Code.

Q17. We solicit comments on the proposed exception for U.K. Eligible Traders, including whether this exception should be available during any offer for a U.K. target or limited, *e.g.,* to Tier I offers.

Q18. Is it necessary to include the condition requiring that U.S. holders be able to obtain information regarding Eligible Traders' purchases to the extent such information is required to be made public in the United Kingdom?

Q19. Additionally, we seek comments on whether it is appropriate to exclude from Rule 10b–13's application transactions by any market makers, including U.S. market makers, that are subject to restrictions similar to those imposed by the City Code. Should Rule 10b–13 incorporate the connected market maker concepts of the City Code and provide an exclusion where there is an information barrier between the dealer-manager and the affiliated market maker, and public disclosure is made during the offer of the total amount of shares purchased in market making transactions and of the highest price paid for those shares?

2. Regulation M

In December 1996, the Commission adopted Regulation M.[95] Regulation M imposes trading restrictions on issuers and broker-dealers participating in exchange offers or rights offerings that are ''distributions,'' generally from the day offering materials are disseminated until the end of the distribution.[96] At this time, we are not proposing an exemption to Regulation M for cross-border exchange offers, whether qualifying for the registration exemption under proposed Rule 802 or the proposed Tier I or Tier II exemptions from the U.S. tender offer provisions, or for cross-border rights offerings qualifying for the registration exemption under proposed Rule 801. We preliminarily believe we should evaluate the need for exemptions from Regulation M after we gain experience with the Regulation's operation in the context of those offerings. To date we have had very limited experience with the application of Regulation M to exchange offers for foreign equity securities or rights offerings involving foreign securities. The limited number of requests for relief in these contexts suggests that Regulation M may not be an impediment to these kinds of transactions and that exemptions from its provisions may be unnecessary.[97]

Q20. Are exemptions from various rules under Regulation M necessary to accommodate cross-border rights offerings or exchange offers conducted pursuant to proposed Rules 801 or 802? Commenters should provide reasons why such exemptions would be necessary and the scope of any conditions that should be imposed.

E. Exemption from the Securities Act for Exchange Offers, Business Combinations, and Rights Offerings

1. Summary

Today's proposals also provide exemptions from Securities Act registration requirements for securities issued to U.S. security holders of a foreign private issuer in exchange offers, business combinations, and rights offerings. These exemptions are being proposed as Rule 801 for rights offerings and Rule 802 for business combinations and exchange offers. The exemptions are available only if the target company (or the issuer in an issuer tender offer or rights offering) is a foreign private issuer and U.S. security holders hold of record no more than five percent of the subject securities. The exemptions proposed today differ from the 1991 proposals in that they no longer impose a dollar limitation on the amount of securities to be issued. In addition, there are no proposals to permit registration of such offerings based on home country disclosure.[98]

Since the issuance of the 1991 proposals, we have facilitated the inclusion of U.S. security holders in exchange offers, business combinations and rights offerings by reviewing registration statements concerning these transactions on an expedited basis and by permitting certain accommodations when necessary and prudent for the protection of U.S. security holders. Nevertheless, U.S. security holders continue to be excluded from these offerings.[99] An exemption from the registration requirements appears necessary to ensure that U.S. security holders can participate fully in these offers for foreign companies. An exemption is particularly necessary when the percentage of shares held in the United States is small.

Based on our experience in reviewing registered exchange offers, business combinations, and rights offerings involving foreign registrants, however, we have determined not to propose a home-country based registration system. The disclosure and accounting standards of foreign jurisdictions are not always consistent with the level of prospectus disclosure required in a registered offering under the Securities Act. Instead, we believe that any accommodation under the Securities Act should be limited to circumstances when the proportional U.S. interest in the transaction is insignificant, and U.S. participation is not essential to its success. In those situations, extending the transaction to U.S. security holders is unlikely to be an attempt to raise capital or develop a market for the offeror's securities in the United States.

[95] Anti-manipulation Rules Concerning Securities Offerings, Securities Exchange Act Release No. 38067 (January 3, 1997) [62 FR 520].

[96] The term ''distribution'' is defined in 17 CFR 242.100. Where the portion of an exchange offer or rights offering made in the United States does not constitute a ''distribution'' (*e.g.,* where it does not satisfy the ''magnitude of the offering'' or ''special selling efforts and selling methods'' prongs of the definition), it is not subject to Regulation M.

[97] For example, the trading restrictions in Rule 101 of Regulation M, which apply to underwriters and other broker-dealers, do not apply to actively traded securities, as defined in 17 CFR 242.100.

[98] The 1991 proposals provided a dual approach: (1) a registration exemption pursuant to Section 3(b) of the Securities Act for an issuer's securities offered with respect to the foreign target company's securities, provided that the aggregate dollar value of the securities offered in the United States did not exceed $5 million; and (2) registration on the basis of home jurisdiction disclosure documents, if U.S. residents held five percent or less of the foreign target company's securities before the offer commenced.

[99] *See* Notes 15, 24 and 25, *supra.*

Rather, U.S. investors would benefit by participating in what is otherwise an offshore transaction. Our preliminary view is that these exemptions would be appropriate and in the public interest, because they would promote including U.S. security holders in exchange offers, rights offerings and business combinations.

When the percentage of U.S. ownership is significant, registration of the exchange offer, business combination or rights offer under U.S. disclosure and accounting standards is both appropriate and, in virtually all instances, cost effective and feasible. When the percentage of U.S. ownership is not significant, it is appropriate to exempt these offers from the registration requirements, conditioned on satisfaction of minimal offeror and transactional requirements. Although companies conduct rights offerings to raise capital, full prospectus disclosure may be less necessary because the offerees should already be familiar with the issuer and the securities being offered. In any event, the fact that a company must offer the securities only to existing security holders on a pro rata basis and the requirement that the rights may not be transferred in the United States should ensure that the offering will not serve as a means to develop a U.S. market interest.

Q21. Comment is solicited as to whether these Securities Act exemptions are necessary and appropriate. Should the other proposals proceed without the proposed Securities Act exemptions?

The proposed exemptions are not available for any transaction or series of transactions that technically complies with the exemptions but is part of a plan or scheme to evade the registration provisions of the Securities Act.[100] For example, if the exchange offer or rights offering is a sham, the exemptions would not be available.

2. Eligibility Conditions

a. *Transactional eligibility requirements.* i. *Common requirements for exchange offers, business combinations and rights offerings.* (a) U.S. ownership limitation. Under today's proposals, exchange offers, business combinations, and rights offerings would be exempt from registration under the Securities Act, so long as U.S. security holders own of record five percent or less of the foreign company's securities that are the subject of the offer.[101] When U.S. security holders own five percent or less of the issuer, U.S. participation is generally not necessary for the success of the offer.

Q22. Comment is requested on whether five percent is the appropriate threshold. Would an exemption set at 10 percent or as low as one percent be appropriate and consistent with the protection of investors? Is the five percent threshold too low for small businesses whose offerings are small? Is it too high for large companies, whose offerings are correspondingly large?

Unlike the 1991 proposals, we have not based today's proposal on an absolute dollar limit. The $5 million threshold we proposed in 1991 reflected the maximum dollar offering that the Commission could exempt under Section 3(b) of the Securities Act. With the recent addition of general exemptive authority under Section 28 of the Securities Act, we have greater flexibility to base the exemptions on a higher dollar ceiling, the percentage of outstanding securities held in the United States, or other relevant factors.[102] A number of commenters on the 1991 proposals urged us to use any new authority to increase the permitted amount of securities offered under the proposal. They argued that $5 million was too low to make the proposed exemptions meaningful.

We are proposing not to limit the scope of the exemptions by a dollar amount because we believe limiting the exemptions to transactions with no more than five percent U.S. participation effectively eliminates the risk that the exemptions will be abused. Without a dollar limitation, however, the exemptions could result in a significant amount of securities entering the U.S. public markets and affecting a large number of investors without registration. The larger the target company, the greater the potential impact of such an offering on U.S. security holders. For these reasons, we are considering imposing a dollar limitation as well as the percentage limitation.

Q23. Should Rules 801 and 802 be limited by a dollar ceiling of $5, $10 or $20 million? Should an issuer be allowed to issue up to, for example, $5, $10 or $15 million regardless of the amount of U.S. holdings? Should the test be in the alternative, for example, $10 million or five percent U.S. holdings, whichever is higher? Or lower?

(b) Equal treatment. The terms and conditions of the offer must be the same for U.S. and foreign security holders, subject to certain exceptions similar to the Tier I exemption under the tender offer provisions.

(c) Transfer Restrictions. Proposed Rules 801 and 802 impose certain restrictions on the transferability of the securities that an acquiror may issue in exchange offers or business combinations or the equity securities that may be purchased pursuant to Rule 801 upon the exercise of the rights. We preliminarily believe that the securities that may be purchased upon the exercise of the rights should be restricted within the meaning of Rule 144.[103] This restriction will help ensure that foreign companies will not use rights offerings to create a market in the United States.

If the securities that are the subject of the transaction made pursuant to Rule 802 are ''restricted securities'' under Rule 144, then securities acquired in the transaction will be ''restricted securities.'' [104] Conversely, if the securities that are the subject of the transaction made pursuant to Rule 802 are unrestricted, then securities acquired in the transaction will be unrestricted. In the latter case, the securities would be freely tradable by non-affiliate security holders, so long as they are not participating in the offer under circumstances in which they could be deemed statutory underwriters. Particularly in the case of exchange offers, requiring unaffiliated U.S. security holders to accept restricted securities in exchange for their unrestricted securities, seems unjustified. The fact that no more than five percent of the subject company's securities may be held in the United States should minimize the potential that Rule 802 will be misused as a means to conduct distributions in the United States, and should eliminate the need to classify securities issued under Rule 802 as restricted securities.

Q24. We request comments on whether the potential for abuse, including an unregistered distribution of the acquiror's securities, should require that all securities issued under Rule 802 be deemed restricted securities

[100] *See* General Note 2 to proposed Rules 800, 801 and 802.

[101] A number of commenters on the 1991 proposals urged the Commission to adopt a higher percentage to broaden the offers that could be registered based on home country disclosure requirements. Under the current proposals, these offers would be conducted on an exempt, rather than a registered, basis. For that reason, we have determined not to propose a higher U.S. ownership threshold.

[102] *See* Note 27, *supra.*

[103] *See* General Note 9 to Proposed Rules 800–802.

[104] *See* General Note 9 to Proposed Rules 800–802.

for purposes of Rule 144 under the Securities Act.

Q25. Will making Rule 801 securities restricted impose monitoring and other procedural obligations that will deter reliance on the rule? For example, will the fact that the foreign issuer may have to establish a separate restricted American Depositary Receipt (''ADR'') facility and monitor withdrawals from that facility deter reliance on the exemption?

ii. *Additional requirements for rights offerings.* As with the 1991 proposals, Rule 801 as proposed today would be available only for rights offerings of equity securities made on a pro rata basis to existing security holders of the same class, including holders of ADRs evidencing those securities. Foreign companies generally make rights offerings only with respect to outstanding equity securities of the same class. We propose to limit Rule 801 to the offer of securities of the same class of securities as those held by the offerees, because the offerees already have made the decision to invest in that class.[105]

Proposed Rule 801 would be available only for all-cash transactions and would additionally require that the rights granted to U.S. security holders not be transferable except offshore in accordance with Regulation S.[106] The rights offering exemption being proposed today is not intended to permit foreign private issuers to extend offerings to new investors in the United States.

Q26. We request comments on whether this limitation on transferability is appropriate.

b. *Offeror eligibility requirements.* i. *Exchange offers/business combinations.* Like the 1991 proposals, Rule 802 as proposed does not contain any limitations based on the domicile or reporting status of the offeror. Any offeror can use proposed Rule 802 regardless of whether it is a U.S. company or a foreign private issuer and regardless of whether it is a reporting company. The target company, however, must be a foreign private issuer. Limiting the exemption to foreign private issuers would require a U.S. bidder for the securities of a foreign target to register the U.S. portion of an exchange offer. This would place a U.S. bidder, particularly a non-reporting U.S. company, at a competitive disadvantage to a foreign bidder for the same company.

Q27. Is it appropriate or necessary to allow U.S. companies, including reporting companies eligible to use the Form S–3 short form registration statement, to rely on the exemption? Should Rule 802 be available to a domestic company only when there is a competing bid for the target's securities?

We are considering adopting offeror eligibility requirements to address the concern that start-up companies would use Rule 802 to issue a significant amount of securities in the United States without complying with the registration requirements of the Securities Act.

Q28. Should an offeror seeking to rely on Rule 802 have to be a reporting company under Section 13(a) or 15(d) of the Exchange Act[107] at the time the exchange offer or business combination is first offered to U.S. security holders?

Q29. Should we impose a minimum reporting history, either as an Exchange Act reporting company or as a listed company on a recognized foreign securities exchange or market?

Q30. Should we require that either the target security, the security to be issued, or both, be listed on an established U.S. or foreign securities exchange and have a minimum public float such as $50 million, $100 million or $150 million? This may ensure U.S. security holders a degree of liquidity if they are unwilling to accept the consideration offered in the exchange offer or business combination and would prefer to sell the investment into the public markets.

ii. *Rights offerings.* Proposed Rule 801 requires that the offeror be a foreign private issuer. It does not impose any other issuer eligibility requirements. As originally proposed in 1991, Rule 801 contained additional offeror eligibility requirements, including that the offeror satisfy certain information and listing requirements.[108] The Commission intended those proposed offeror eligibility requirements, in part, to prevent start-up companies or insubstantial issuers from using the exemption to raise capital in the United States without complying with Securities Act registration requirements. The requirements also were intended to assure that information about the offeror would be publicly available to investors in the United States, including at a minimum, information the issuer makes public in its home country.

We believe that investor protection should be served by facilitating U.S. security holders' participation in a rights offering for securities of any foreign private issuer with which the investor is already familiar, without narrowing those offerings with additional offeror criteria. The anti-fraud and other civil liability provisions of the federal securities laws will apply and should provide protection with regard to the disclosure investors receive in such offerings.

Q31. We solicit comments on whether it is appropriate or necessary to retain any or all of the offeror eligibility requirements that the Commission originally proposed in 1991 in connection with Rule 801. If so, is it appropriate to provide for a size-of-issuer test as an alternative to requiring a three-year listing history on a designated foreign market for determining the eligibility of non-reporting issuers?

Q32. Should the alternative test be based on the offeror's public float, as previously proposed, or on its net assets, net worth, or on average daily trading volume?

Q33. Should the previously proposed minimum public float of $75 million be reduced, for instance, to $50 million, or be raised to $100 million or $150 million?

Q34. Is it appropriate or necessary to limit the exemption to reporting companies?

c. *Informational requirements.* Rules 801 and 802 would not mandate that specific information, including offering circulars, be sent to U.S. security holders. Instead, when any document, notice or other information is provided to offerers, copies (translated into English) must be provided to U.S. security holders. If, instead of delivering documents to offerees outside the United States, the offeror publishes information regarding the offering outside the United States, then the offeror may satisfy the information dissemination requirement by delivering written copies of the publication or advertisement (in English) to U.S. offerees. Because U.S. publication of the exempt offer creates the potential for stimulating a U.S. market interest in the offeree's

[105] Proposed Rule 800. As proposed, the term ''equity securities'' does not include convertible securities, warrants, rights, or options.

[106] 17 CFR 230.901 through 230.905.

[107] 15 U.S.C. 78m(a) and 79o(d).

[108] As proposed in 1991, Rule 801 would have been available to foreign private issuers filing reports with the Commission pursuant to Sections 13(a) or 15(d) of the Exchange Act which were current with respect to the filing obligations at the time of the offering. It also would have been available to foreign private issuers exempt from the requirements of Section 12(g) of the Exchange Act pursuant to Rule 12g3–2(b), if the offeror had a class of equity securities listed or quoted on at least one designated offshore securities market, was in compliance with the listing requirements applicable to those securities and, in addition, either (a) had maintained such listing or quotation continuously for 36 months immediately prior to the commencement date of the offering, or (b) had a public float in the listed securities of not less than $75 million. These same eligibility criteria applied to the proposed registration form.

securities, we are proposing to require actual delivery of the offering materials to U.S. holders in rights offerings. [109] Because it is a common practice in this country to publish exchange offers, however, we are requiring publication rather than actual delivery for transactions exempt under proposed Rule 802. Proposed Rules 801 and 802 both require that the offeror must provide the notice or offering document to U.S. security holders at the same time it provides the information to offshore offerees.

Q35. Should issuers relying on Rules 801 and 802 be required to prepare and physically deliver some form of prospectus or offering circular? In the absence of such a document, should the issuer be required to deliver its latest annual report containing audited financial statements?

To enable us to monitor the operation of the exemptions, Rules 801 and 802 as proposed also would require that an offeror submit a notification to the Commission on proposed new Form CB. The new form will include as an attachment a copy of any document, notice or other information mailed to U.S. offerees. A foreign company must contemporaneously file a Form F–X when it submits the Form CB.[110] The exemptions would also require that a legend be included in the offering document or notice stating that the offer is being conducted pursuant to home jurisdiction disclosure requirements, and that those requirements may differ from the U.S. disclosure requirements, including financial statement requirements.

Q36. Is this notification submission necessary, and, if so, should the notification, as proposed, attach a copy of any disclosure documents required to be filed or delivered pursuant to the home jurisdiction regulatory requirements?

Q37. Should bidders relying on the Tier I exemption for cash tender offers be required to include a legend on the offering materials similar to the legend proposed for rights offerings and exchange offers?

d. *Rule 802 Eligible Securities—Trust Indenture Act exemption.* We are not proposing any restrictions on the type of securities that an issuer could offer in reliance on proposed Rule 802.[111] Therefore, the rules proposed today will permit offerors to offer debt securities in an exchange offer or business combination for the subject company's equity or debt securities. The issuance of debt securities ordinarily requires qualification of an indenture under the Trust Indenture Act, unless the debt securities are exempt from the qualification requirements pursuant to Section 304 under that Act.[112]

Qualification of an indenture assures the debtholders of the services of an independent trustee having certain qualifications and lacking conflicts of interest. The Trust Indenture Act deems a qualified indenture to automatically include certain protective covenants.[113] These mandatory protective covenants give important rights to the debtholders. For example, debtholders have the right to sue individually for the payment of principal and interest.[114] Further, these provisions give certain powers to the trustee and prohibit certain actions by the trustee, including the preferential collection of certain claims owed to the trustee by the obligor in the event of default.[115] The rules under the Trust Indenture Act require the filing of a Form T–1, which is the statement of eligibility and qualification of the trustee, and the trust indenture itself.[116]

We are again proposing under Section 304(d) of the Trust Indenture Act [117] a new rule that would exempt any debt security issued pursuant to proposed Rule 802 under the Securities Act from having to comply with the provisions of the Trust Indenture Act. We believe that enforcing the statutory requirement that debt securities be issued pursuant to a qualified indenture under the Trust Indenture Act is unnecessary when 95 percent or more of the subject securities are outside the United States and many U.S. investors could lose the chance to participate in these offerings. Therefore, for the same reasons we believe it is appropriate to exempt exchange offers meeting the requirements of Rule 802 from the registration requirements of the Securities Act, we also believe that an exemption from the Trust Indenture Act is appropriate and consistent with investor protection.

The exchange of debt securities will not be integrated with any other offerings by the offeror. This means it would not affect the availability of the Trust Indenture Act exemption with regard to the issuance of other debt securities.

Q38. Is the proposed unconditional exemption from the requirements of the Trust Indenture Act for any debt security issued pursuant to Rule 802 necessary or appropriate in the public interest and consistent with investor protection and the purposes of that Act? Would it be more appropriate to exempt transactions from the procedural requirements of the Trust Indenture Act, such as filing the Form T–1, but still require that the debt securities be issued pursuant to an indenture containing some or all of the mandatory protective covenants discussed above? If so, which protective covenants should be preserved?

F. Effect of Reliance on Rule 801 or 802 on the Availability of Other Exemptions

The exemptions contemplated under proposed Rules 801 and 802 are non-exclusive.[118] An issuer making an offering in reliance on either of the proposed rules may claim any other available exemption under the Securities Act. Securities issued under Rule 801 or Rule 802 would not be integrated with any other exempt offerings by the issuer.[119] For example, security holders who are offered and sold securities in accordance with Rule 801 or Rule 802 would not be counted in the calculation of the number of purchasers in a subsequent Regulation D offering by the issuer.[120] Similarly, the amount of securities offered in the Rule 801 or Rule 802 transaction would not be included in the aggregate offering price of any subsequent Regulation D offerings by the offeror.[121] Also, information submitted to the Commission pursuant to the requirements of Rules 801 or Rule 802, or disseminated to investors under those rules would not constitute a ''general solicitation'' within the meaning of Regulation D or ''directed selling efforts'' within the meaning of Regulation S.

The proposed rules relate only to the application of Section 5 of the Securities

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[109] See Proposed Rule 801(a)(4)(iii).

[110] Form F–X is used by certain non-U.S. companies to appoint an agent for service of process in the United States.

[111] This is similar to the 1991 proposals.

[112] 15 U.S.C. 77ddd.

[113] Section 318(c) of the Trust Indenture Act, 15 U.S.C. 77rrr(c). Every qualified indenture is deemed to automatically include Sections 310 through 318(a) of the Trust Indenture Act.

[114] Section 316(b) of the Trust Indenture Act, 15 U.S.C. 77ppp(b).

[115] Section 311 of the Trust Indenture Act, 15 U.S.C. 77kkk.

[116] 17 CFR 260.5a–1.

[117] 115 U.S.C. 77ddd(d). Section 304(d) gives the Commission by rule or order, the authority to exempt conditionally or unconditionally any indenture from one or more provisions of the Trust Indenture Act. The Commission may employ this exemptive authority ''if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended'' by the Trust Indenture Act.

[118] *See* General Note 5 to proposed Rules 800–802.

[119] *See* Preliminary Note 7 to Regulation D, 17 CFR 230.501 through 230.508.

[120] *See* Regulation D, 17 CFR 230.505 through 230.506.

[121] *See* Regulation D, 17 CFR 230.504 through 230.505.

Act. They have no effect on the anti-fraud or anti-manipulation provisions of the federal securities laws or provisions of state law relating to the offer and sale of securities.[122] However, the civil liability provisions that relate only to registered offerings, such as Section 11 of the Securities Act,[123] would not apply to these transactions because they would be exempt from registration.

In addition, offerings exempt under proposed Rules 801 or 802 would not trigger a continuous reporting obligation under Section 15(d) of the Exchange Act. Nor would reliance on Rules 801 or 802 disqualify the issuer from the existing Rule 12g3–2(b)[124] exemption for foreign private issuers from the registration and reporting requirements of Section 12(g) of the Exchange Act, unless the acquired company was a reporting company.

Q39. We request comment on whether a foreign private issuer should be precluded from relying on the Rule 12g3–2(b) exemption following an offering under Rule 801 or 802, given that the Rule 12g3–2(b) exemption is intended for issuers that do not access the U.S. capital markets in any significant fashion. Should the issuer become ineligible for the Rule 12g3–2(b) exemption if the Rule 801 or 802 offering exceeds $10 million or some other dollar threshold? Should the same ineligibility result if the foreign private issuer has more than 500 holders of record in the United States after the Rule 801 or 802 offering is completed?

G. Unavailability of Rules 801 and 802 and the Tender Offer Exemptions for Investment Companies

Proposed Rules 801 and 802 would not be available for securities issued by an investment company, whether foreign or domestic, that is registered or required to be registered under the Investment Company Act of 1940 (the ''Investment Company Act'').[125] We have excluded foreign investment companies from the proposed exemptions because the Investment Company Act prohibits foreign investment companies from publicly offering securities in the United States or to U.S. persons.[126] We excluded domestic investment companies because, unlike other issuers, an investment company that is registered or required to be registered under the Investment Company Act generally must register the securities that it offers or sells outside the United States.[127]

Q40. Should Rule 802 be available to a closed-end investment company that is registered under the Investment Company Act?

We believe this exclusion is appropriate for some foreign private issuers that meet the definition of ''investment company'' contained in Section 3(a) of the Investment Company Act but have not registered with the Commission under that Act. Both foreign and domestic issuers that are excepted from the definition of ''investment company'' under the Investment Company Act, however, would be permitted to use the exemptions, so long as reliance on the exemptions is consistent with their unregistered status under the Investment Company Act.[128] For example, a foreign private issuer that can offer its securities publicly in the United States in reliance on a rule, such as Rule 3a–6 under the Investment Company Act, or pursuant to an individual exemptive order under the Investment Company Act, may use Rule 801 to make a rights offering in the United States or Rule 802 to make an exchange offer or enter into a business combination in the United States.[129]

Similar to Rules 801 and 802, the Tier I and Tier II tender offer exemptions will not be available if the target company is an investment company registered or required to be registered under the Investment Company Act. The Commission has not received requests for relief in connection with a tender offer for a foreign investment company. To keep the proposed exemptions as narrow as possible to address conflicts between U.S. and foreign law, the tender offer exemptions would not extend to tender offers for foreign investment companies.

Q41. Should these exemptions be available when the target company is a foreign investment company?

H. Determination of U.S. Ownership

1. Definition of U.S. Holder

The term U.S. holder is based on shareholder residence. The term is important under both the Tier I and II exemptions. It is also important in determining the availability of the proposed Securities Act exemptions for cross-border rights offerings and exchange offers under Rules 801 and 802. Relief in each case is conditioned, at least in part, on the percentage of the target company's securities held by U.S. security holders not exceeding a specified threshold.[130] The calculation of the target company's U.S. security holders would be made at the commencement of the tender offer, rights offering or exchange offer. In the case of a business combination such as a merger where the securities are issued by the acquiring company, the calculation will be based on U.S. ownership of the company to be acquired at the commencement of the solicitation for the merger. In business combinations such as an amalgamation, where the securities are issued by a successor company to all participating companies, the calculation would be

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[122] *See* General Notes 1, 3 and 4 to proposed Rules 800–802.

[123] 15 U.S.C. 77k.

[124] 17 CFR 240.12g3–2(b).

[125] 15 U.S.C. 80a–1 *et seq.* This is similar to the 1991 proposals.

[126] 15 U.S.C. 80a–7(d). Section 7(d) prohibits a foreign investment company from using U.S. jurisdictional means to offer its securities publicly, or to U.S. persons, unless the Commission issues an exemptive order permitting the company to register under the Investment Company Act. *Id.* A tender offer, exchange offer, business combination, or rights offering by a foreign investment company may constitute a public offering.

[127] *See* Offshore Offers and Sales, Securities Act Release No. 6779 (June 10, 1988) (53 FR 22661 (June 17, 1988)), at nn. 73–75 and accompanying text; Offshore Offers and Sales, Securities Act Release No. 6863 (April 24, 1990) (55 FR 18306 (May 2, 1990)), at nn. 151–53 and accompanying text. A closed-end investment company that is registered under the Investment Company Act, however, like other non-investment company issuers, may be able to issue securities abroad without registering those securities under the Securities Act. *See id.*

[128] Issuers relying on section 3(c)(1) or 3(c)(7) of the Investment Company Act (15 USC 80a–3(c)(1) and 15 U.S.C. 80a–3(c)(7)) for an exception from the definition of ''investment company'' may not offer securities publicly in the United States. Reliance on Rule 801 or 802 by these issuers thus would be inconsistent with their unregistered status under the Investment Company Act.

[129] Rule 3a–6, 17 CFR 270.3a–6, generally excepts foreign banks and insurance companies from the definition of ''investment company'' under the Investment Company Act. *See* Exception from the Definition of Investment Company for Foreign Banks and Foreign Insurance Companies, Investment Company Act Release No. 18381 (Oct. 29, 1991) [56 FR 56294] (adopting Rule 3a–6 and rescinding Rule 6c–9 under the Investment Company Act). The Rule permits these entities to sell their securities publicly in the United States without first registering as investment companies. Foreign banks and insurance companies relying on Rule 3a–6 to make a public offering of their securities in the United States, as well as certain of their holding companies and finance subsidiaries relying on Rules 3a–1 and 3a–5, respectively, generally are required by Rule 489 under the Securities Act to file a Form F–N with the Commission.

[130] In measuring the percentage of the class of securities held by U.S. holders, securities of that class underlying securities convertible into or exchangeable for securities of such class will be included in the calculation. *See* Rule 13d–3(d). Securities represented by ADRs, or other forms of depositary receipts, such as Global Depositary Receipts (''GDRs''), likewise, will be included. In calculating the percentage of outstanding securities of the class held in the United States, shares represented by ADRs will be included in both the numerator and the denominator, treating the ordinary shares held in the United States (represented by ADRs) and ordinary shares not represented by ADRs (wherever held) as a single class, as is currently the practice. American Depositary Receipts, Exchange Act Release No. 29226 (May 23, 1991) [56 FR 24420].

made as if measured immediately after completion of the business combination. In the latter situation, all participants in the business combination must be foreign private issuers.

The term U.S. holder was defined in the 1991 proposals as any person whose address appears on the records of the issuer of the subject securities, or of any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity on behalf of the issuer of the subject securities, as being located in the United States.[131] The proposed definition of U.S. holder was derived from the definition of ''foreign private issuer'' under the Exchange Act.[132] The definition of U.S. holder does not turn on the residence of the beneficial owner of the securities, nor is there a requirement to identify beneficial owners in order to determine their residence.

Q42. Given the potential significance of U.S. beneficial ownership, we solicit comments on whether a beneficial holder test should be included if the bidder or issuer knows the percentage of U.S. beneficial owners or can access that information without unreasonable effort or expense. For example, should an issuer be required to determine the amount held by a foreign broker-dealer as nominee for U.S. accounts?

Several commenters asked us to clarify the definition of U.S. holder with respect to depositaries and ADR and other depositary receipt facilities. For securities registered in the name of a nominee of a depositary maintaining a book entry system, such as Cede & Co., nominee for The Depository Trust Company, the issuer or third party may rely on how the participants' names appear on the records of the depositary. This approach would be consistent with the determination of ''record holder'' under Section 12(g) of the Exchange Act.[133] An ADR, Global Depositary Receipt (''GDR'') or other depositary facility likewise will not be treated as the record holder of the ADRs.[134] Shares deposited in an ADR depositary will be presumed to be held solely by U.S. residents in determining the percentage of shares held by U.S. security holders. If the issuer receives information to the contrary from the depositary, it may rely on that information in calculating U.S. security holders.[135]

Q43. Should we treat all holders of ADRs as U.S. residents of the underlying foreign securities only when the ADR facility is unsponsored?

A number of commenters also expressed concern as to the treatment of bearer securities in determining U.S. ownership. Since a U.S. residence will not appear on the records of the issuer for the holder of bearer securities, these securities will not be treated as being held by U.S. residents, unless the offeror knows or has reason to know that these securities are held by U.S. residents.

2. Exclusion of Foreign Security Holders Holding More Than 10 Percent

We are concerned that foreign private issuers could have a significant majority of their shares held by controlling non-U.S. shareholders. As a result, U.S. holders could represent a significantly greater percentage of the company's non-affiliated public float. For example, a foreign company with an 80 percent non-U.S. shareholder could have up to 25 percent of its non-affiliated public float owned by U.S. holders and still qualify under Rules 801 and 802 if the calculation were based upon the total amount of securities outstanding. For that reason, shares held by non-U.S. holders of more that 10 percent of the class are not included in the calculation of the U.S. ownership percentage. The exclusion is limited to non-U.S. affiliates to prevent reliance on the exemptive rules when the company is controlled by a U.S. holder with, for example, 80 percent of the shares.

Q44. Would it be appropriate to exclude affiliated shares, whether held outside the United States or in the United States, from both elements of the calculation, thus focusing only on the percent of the company's total world-wide non-affiliated float held in the United States? Is 10 percent the appropriate level of ownership for excluding a holder's shares from the calculation? Should shares held by an acquiror or by the issuer's senior management also be excluded? Are foreign companies with significant U.S. ownership by affiliates as likely to exclude U.S. holders from participation in exchange and rights offerings?

3. Determination of Eligibility by Persons Other Than the Issuer

The principal disadvantage of using a U.S. ownership threshold as a condition for the applicability of the Exchange Act tender offer exemptions and the Securities Act registration exemptions for exchange offers and business combinations is that it will be difficult for third-party bidders to ascertain whether the exemption is available without information on the subject company's U.S. ownership.[136]

The 1991 proposals permitted a bidder seeking to acquire securities of a foreign subject company that is a reporting company or furnishes information to the Commission under Rule 12g3–2(b) to rely upon the disclosure contained in the target company's filings regarding the extent to which their securities are held by U.S. security holders. We proposed this approach based on other proposed rules that would have required foreign private issuers to disclose their U.S. ownership on an annual basis.[137] Further, as originally proposed, if a foreign subject company was not a reporting company under the Exchange Act and did not submit reports pursuant to Rule 12g3–2(b), an offeror or issuer could presume that the U.S. ownership did not exceed the ceiling amount, unless it had actual knowledge to the contrary. Those rules were never adopted and are not being reproposed today.

Under the current proposals, a third-party bidder in a hostile tender offer will be entitled to a presumption that the percentage threshold requirements of the Tier I, Tier II and Rule 802 exemptions are not exceeded unless:

(1) the aggregate trading volume of the subject class of securities on national securities exchanges in the United States, on the Nasdaq Stock Market or on the OTC market, as reported to the NASD, exceeds 10 percent in the case of Tier I offers, 40 percent in the case of Tier II offers, or 5 percent in the case of Rule 802, of the worldwide aggregate trading volume of that class of securities over the 12-calendar-month period prior to commencement of the offer;

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[131] *See also* the Foreign Disclosure Proposing Release, *infra* Note 138, MJDS, *supra* Note 51, and Cross Border Rights Offer Release, *supra* Note 20, which used the same definition of U.S. holder.

[132] Rule 3b–4, 17 CFR 240.3b–4 (number of shareholders resident in the United States determined by looking to how a holder's address appears on the records of the issuer or depositary). *See also* Instruction A.2. to Schedule 14D–1F.

[133] *See, e.g.,* Techne Corp., SEC No-Action Letter (Sept. 20, 1988); CFAC REMIC Trust 1989–A, SEC No-Action Letter (Mar. 30, 1990). *See also* Rule 12g5–1, 17 CFR 240.12g5–1 (treating all accounts held by a particular broker-dealer, bank, or custodian as one record holder).

[134] *Cf.*, Rule 12g5–1(b), 17 CFR 240.12g5–1(b).

[135] Hostile bidders often will not be in a position to obtain residency information from a depositary transfer agent, or other persons acting on the issuer's behalf. We are proposing to provide third parties with certain presumptions based on trading volume to address this problem. *See* Section II.H.3. below.

[136] Exemptions for transactions like issuer tender offers or rights offerings do not pose this problem. An issuer can and must examine its own records and those of transfer agents and depositaries acting on its behalf to obtain the necessary information regarding U.S. ownership of its own securities.

[137] Proposed Amendment to Regulation S–K, Form 20–F, Proposed Form 40–F and Rule 12g3–2; Proposed New Forms for Furnishing Materials Pursuant to Rule 12g3–2(b), Securities Act Release No. 6898 (June 6, 1991) [56 FR 27612].

(2) the most recent annual report or other informational form filed or submitted by the issuer to securities regulators in its home jurisdiction or elsewhere (including with the Commission) indicates that U.S. holdings exceed the applicable threshold; or (3) the bidder knows or has reason to know from other sources that the level of U.S. ownership of the subject class exceeds the thresholds.[138] This presumption is not available in negotiated transactions, since the bidder in a negotiated transaction would be able to get this information from the target company.

As to whether the foreign subject company is a foreign private issuer, the bidder could rely on the exemptions if the issuer of the subject securities files reports with the Commission under the foreign integrated disclosure system [139] or has claimed an exemption from reporting under Exchange Act Rule 12g3–2(b), unless the bidder knows the foreign subject company is not a foreign private issuer.[140] Even if the above presumptions are not available, the bidder may nevertheless rely on the exemption if it can demonstrate that U.S. ownership is less than the relevant threshold.

Subsequent changes or movements in the number of shares held by U.S. security holders after the offer commences would be irrelevant to the availability of the exemptions proposed today. In addition, an issuer or a third-party bidder instituting a subsequent competing offer could use the same information as to U.S. holdings as the initial third-party bidder or issuer to calculate the percentage of securities held by U.S. security holders. An interim filing disclosing a disqualifying level of U.S. ownership in the United States would not disqualify the second offer.

Q45. Should the presumption be available in negotiated transactions? Should a bidder that has entered into a negotiated transaction with the issuer after a prior hostile bidder has commenced a tender offer be able to use the presumption?

[138] If U.S. ownership of more than 5 percent is reported in public filings with the Commissin, such as Schedule 13G, we would take the positio that the bidder has reason to know the level of U.S. ownership exceeds 5 percent.

[139] This includes Form 20–F and 6–K, which are available only to foreign private issuers. Conversely, if a foreign issuer is reporting on the Commission's forms for domestic issuers, the bidder would have reason to believe it is not a foreign private issuer.

[140] *See* General Instruction I.A.5 to Schedule 14D–1F, 17 CFR 240.14d–102.

III Cost-Benefit Analysis

U.S. residents holding stock in foreign private issuers are often excluded from tender offers [141] and rights offerings for the foreign private issuers' securities because of conflicts between U.S. and foreign regulation of these offers. As a result, U.S. security holders of foreign private issuers are unable to benefit from any premium offered in a tender offer [142] or are unable to purchase additional securities at a discount in a rights offering.

We know of numerous tender offers that have excluded U.S. security holders. For example, based on a random sample of 31 tender offers out of a total of 171 tender offer or merger proposals handled by the U.K. Takeover Panel (the entity that regulates tender offers in the U.K.) in 1997, when the U.S. ownership of the target was less than 15 percent (30 offers), bidders excluded U.S. security holders. When the U.S. ownership was significant, such as 38 percent (one offer), the bidder included U.S. security holders. Similarly, in rights offerings, foreign private issuers routinely issue cash in lieu of rights to U.S. security holders.[143]

The proposed rules and rule amendments would exempt from the tender offer and registration rules cross-border tender offers, exchange offers, rights offerings and business combinations when U.S. ownership of the foreign company is not significant (*i.e.*, 10 percent for tender offers (the ''Tier I exemption'') and five percent for exchange offers, rights offerings and business combinations). When the U.S. ownership in the foreign company exceeds 10 percent, but is not greater than 40 percent, the proposal also includes exemptions from certain of the Commission's tender offer rules (the ''Tier II exemption'').

The purpose of these exemptions is to facilitate including U.S. security holders of foreign companies in these types of transactions by removing regulatory barriers. The proposed rules and rule amendments are intended to reduce the registration requirements of cross-border transactions. We expect the exemptions to reduce the costs and burdens of extending these types of offers to U.S. security holders. U.S. security holders of foreign companies will benefit by being able to participate in these types of transactions.

Entities relying on the Tier I exemption would benefit from the proposed rules because they would not need to comply with the procedural and filing requirements of the tender offer rules. Specifically, an acquiror would not need to file Schedules 13E–4 or 14D–1. In lieu of these forms, an acquiror would submit to the Commission Form CB, which is significantly less burdensome.[144] Also, a non-U.S. acquiror would file a Form F–X contemporaneously with the Form CB.[145]

Similarly, entities relying on Rules 801 or 802 in connection with a rights offer or exchange offer would benefit from the proposed rules because they would not need to comply with the registration requirements of the federal securities laws. Specifically, an issuer would not need to file the registration forms, including Forms S–1, S–2, S–3, S–4, F–1, F–2, F–3 and F–4. Instead of these forms, an issuer would submit to the Commission Form CB and Form F–X (if the issuer is a non-U.S. entity), which, as discussed above, are significantly less burdensome.

Entities relying on the Tier I and Tier II exemptions would also benefit from the proposals because they would not need to comply with all of the procedural requirements of the Commission's tender offer rules.[146] For example, in the Tier I exemption, an acquiror would be exempt from all of the procedural requirements of the U.S. tender offer rules including those relating to the duration of the offer and withdrawal rights.

In the Tier II exemption, an acquiror would receive certain limited relief from the Commission's tender offer rules, including withdrawal rights. The Tier II exemption provides relief from the U.S. tender offer rules that are common impediments to extending offers to U.S. security holders. However, an acquiror relying on the Tier II exemption would have to comply with the remaining tender offer provisions. These provisions include, among others, the following: (1) Keeping the offer open 20

[141] The term ''tender offer'' includes both cash tender offers and exchange offers. The term ''exchange offer'' means a tender offer where securities are being issued as consideration.

[142] *See supra*, Note 24.

[143] Investors holding ADRs through Bank of New YOrk received cash in lieu of rights in 29 of the 37 rights offerings from 1994 to 1996. Investors holding ADRs through Morgan Guaranty Trust Company of New York also were frequently cashed out in rights offerings. In 1996, these investors received cash in lieu of rights in 23 of the 24 rights offers. In four of such cases, however, the proceeds were too small to distribute. Of the 23, six of the offers permitted qualified institutional buyers to participate in the rights offerings.

[144] *See* Section V., *infra*, for a description of the Form CB.

[145] Form F–X is used by certain non-U.S. entities to appoint an agent for service of process in the United States.

[146] We cannot quantify the cost savings that would result from not imposing the Commission's procedural requirements.

business days; (2) filing a Schedule 13E–4 or 14D–1, as applicable; (3) disseminating the offering documents; and (4) offering withdrawal rights until the offer goes wholly unconditional. Although complying with these additional requirements may impose additional costs to cross-border tender offers, compliance would still be less burdensome than satisfying all the U.S. tender offer requirements. Because each foreign country's laws are different, we do not know the extent to which these additional requirements may conflict with foreign law. Thus we are unable to estimate the incremental cost, if any, of complying with these requirements.

No specific data was provided in response to the Commission's original request in 1991 regarding the costs and benefits associated with the proposed amendments. We have information regarding several transactions that have excluded U.S. security holders. But since offerors do not file documents with the Commission when U.S. security holders are excluded, we do not have access to comprehensive data on the number of cross-border transactions that have excluded U.S. security holders. Further, if the transaction is a tender offer for securities that are not registered under Section 12 of the Exchange Act, and is subject only to Regulation 14E, there is no filing obligation. Therefore, we are unable to estimate the number of entities that will take advantage of the proposed exemptions. While we are unable to determine how many U.S. security holders will benefit from the proposed rules by being able to participate in cross-border tender, exchange and rights offerings, we believe that the proposed rules will benefit U.S. security holders by removing regulatory burdens to including U.S. security holders in these types of offers. To evaluate fully the benefits and costs associated with the proposed adoption of new Securities Act Rules 801 and 802, and Form CB, Trust Indenture Act Rule 4d–10, revisions to Securities Act Rule 144 and Form F–X, and revisions Exchange Act Rules 10b–13, 13e–4, 14d–1, 14e–1 and 14e–2, and Rule 30–1 of the Commission's Rules of Practice and Investigation, we request commenters to provide views and data as to the costs and benefits associated with these proposals. Specifically, we request data as to the number of entities who have excluded U.S. security holders due to conflicts between the U.S. and foreign regulation and how many entities would be eligible to take advantage of the exemptions. We ask that foreign regulators, foreign private issuers, their counsel and auditors provide views and data as to the costs and benefits associated with multijurisdictional tender offers under current law as compared to the costs and benefits under the proposed system.

Section 23(a) of the Exchange Act [147] requires us, in adopting rules under the Exchange Act, to consider the impact any rule would have on competition. We can not adopt any rule that would impose a burden on competition not necessary or appropriate in the public interest. Our preliminary view is that the proposed rules for cross-border rights offerings, exchange offers, and tender offers would not have any anticompetitive effects. In fact, we believe the proposed rules will facilitate a variety of cross border transactions, thereby enhancing the efficiency of global competition for capital. We seek information on the impact of increased competition for capital for domestic companies as a result of an increase in securities offered into the United States by foreign companies. Also, to what extent would the benefit to U.S. investors offset the cost of any such increased competition for capital? We request comment on whether the proposals, if adopted, would have an adverse effect on competition or would impose a burden on competition that is neither necessary nor appropriate in furthering the purposes of the Exchange Act.

IV. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with 5 U.S.C. 603 regarding the proposed rules. The IRFA notes that the proposed rules are intended primarily to facilitate tender and rights offerings for securities of foreign private issuers held by U.S. residents. The resulting reduction in the expense, time and effort of making such offerings will benefit U.S. security holders. These persons normally are excluded from such offerings. Entities that wish to extend these offers to U.S. security holders will also benefit. The IRFA discusses several alternatives to the proposed rules that we preliminary considered, including permitting registration of securities issued in rights offerings and exchange offers to be based on home country documents. However, as a preliminary matter, we believe that there is no less restrictive alternative to the proposed rule amendments that would serve the purpose of the tender offer and registration requirements of the federal securities laws. We did not identify alternatives to the proposed rules that are consistent with their objectives and our statutory authority. The proposed rules would not duplicate or conflict with any existing federal rule provisions.

The proposed rules are limited to tender offers and exchange offers for the securities of foreign private issuers. But both foreign and domestic bidders, whatever their size, are eligible to use these exemptions. Only foreign private issuers are eligible to use the exemption for rights offerings. Small entities could rely on the proposed tender and exchange offer exemptions on the same basis as larger entities, provided that they meet the conditions for relying on them.

We know of approximately 1,100 Exchange Act reporting companies, that are not investment companies, that currently satisfy the definition of ''small business'' under Rule 0–10. There are approximately 400 investment companies that satisfy the ''small business'' definition. We have no data to determine how many reporting or non-reporting small businesses may actually rely on the proposed rules, or may otherwise be impacted by the rule proposals. However, we believe that the proposed amendments will result in a substantial savings to entities (both small and large) that qualify for the exemptions. Qualifying entities will not have to comply with the tender offer and registration requirements of the U.S. securities laws.

The IRFA notes that the proposed amendments would eliminate certain existing reporting requirements for entities conducting an exempt tender or exchange offer. Specifically, an acquiror would not need to file Schedules 13E–4 or 14D–1. Further, in a rights or exchange offer, an acquiror would not need to register the securities being issued. In place of these filing obligations, an acquiror relying on the proposed exemptions would submit, rather than file, Form CB. Form CB is merely a cover sheet that incorporates the offering documents sent to security holders pursuant to the requirements of the country in which the issuer is incorporated. Also, a non-U.S. acquiror would file a Form F–X contemporaneously with the Form CB.[148] We believe Form CB and Form F–X are significantly less burdensome to prepare than the current reporting requirements for tender and exchange offers. In addition, we believe it takes a

[147] 15 U.S.C. 78w(a)(2).

[148] Form F–X is used by certain non-U.S. entities to appoint an agent for service of process in the United States.

lesser degree of professional skill, including that of securities lawyers and accountants, to prepare a Form CB and Form F–X than to prepare a Schedule 13E–4, 14D–1 or a registration statement. In some cases, the professional skills required would include the ability to translate from a foreign language into English. We estimate that Form CB and Form F–X would take substantially less time to prepare than Schedule 14D–1, Schedule 13E–4, or Forms S–1, S–2, S–3, S–4, F–1, F–2, F–3 and F–4.[149]

We encourage written comments on any aspect of the IRFA. We will consider any comments in preparing the Final Regulatory Flexibility Analysis if the proposed amendments are adopted. To obtain a copy of the IRFA, you may contact Laurie L. Green or Christina Chalk, in the Office of Mergers and Acquisitions, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549, at (202) 942–2920.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, we are also requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commenters should provide empirical data to support their views.

V. Paperwork Reduction Act

Some provisions of the proposed rules and rule amendments contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (the ''Act'') (44 U.S.C. 3501 *et seq.*). We have submitted our proposed revisions to the information collections required by these provisions to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507(a) and 5 CFR 1320.11. The title for the collection of information is ''Form CB'' and revised ''Form F–X''.

The proposed rules and rule amendments would exempt from the tender offer and registration rules cross-border tender offers, exchange offers, rights offerings and business combinations when U.S. ownership of the foreign company is not significant. The purpose of these exemptions is to facilitate including U.S. security holders of foreign companies in these types of transactions. The proposed rules and rule amendments are intended to reduce the regulations applicable to some cross-border transactions and therefore, are expected to reduce the existing collection of information requirements. The proposed amendments would eliminate certain existing reporting requirements for entities, including small entities, conducting an exempt tender or exchange offer. Specifically, an acquiror would not need to comply with Schedules 13E–4 or 14D–1. Further, in an exchange or rights offer, an acquiror would not need to file a registration statement registering the securities being issued.

Proposed Rule 14d–1(c)(2)(i) requires bidders to disseminate any informational documents to U.S. holders in English. This may require some bidders to translate documents and thus imposes a burden.

Proposed Rules 801(c)(4)(i) and 802(c)(3)(i) under the Securities Act and Rules 13e–4(h)(8)(2)(i), 14d–1(c)(2)(i) and 14e–2(d)(1) require that an entity conducting an exempt tender or rights offer in connection with a cross-border transaction pursuant to the proposed exemptions file Form CB. The collection of information would be necessary so that we can determine whether the transaction meets the eligibility requirements of the proposed exemptive rules. We also have to collect information to ensure that information about the transaction would be publicly available. Security holders would thus have the opportunity to make informed investment decisions, particularly since the transactions relate to potential changes in control.

Form CB is a cover sheet that incorporates the offering documents sent to security holders pursuant to the requirements of the country in which the issuer is incorporated. Form CB also requires disclosure of the identity of the entity conducting the tender or rights offer. Form CB must be submitted to the Commission on the business day following the date the offering documents are sent to security holders in the home jurisdiction.

Proposed Form CB also requires that a non-U.S. entity must file a consent to service of process on Form F–X. Form F–X is used by certain non-U.S. entities to appoint an agent for service of process in the United States. The proposed revisions to Form F–X would add non-U.S. entities submitting a Form CB to the list of entities currently required to file Form F–X. This collection of information is necessary to provide investors with information concerning the U.S. person designated as agent for service of process.

For the tender and exchange offer exemptions, domestic and foreign entities wishing to engage in cross-border transactions will likely be the respondents to the collection of information requirement. Also, the company that is the target of the tender offer will be required to respond to the collection of information requirements. With respect to rights offerings, the likely respondents would be foreign private issuers conducting rights offerings. We have no data to help us determine how many entities may actually rely on the proposed exemptions, since relying on the exemptions is voluntary. We estimate that 824 Forms CB would be filed each year if the proposals were adopted.[150] We estimate that it would impose an estimated burden of 2 hours[151] for a total burden of 1648 hours. We estimate that half of the entities submitting Form CB would be foreign entities that would be required to file Forms F–X (412) each year if the proposals were adopted. Form F–X currently is estimated to impose an estimated burden of 2 hours for a total burden of 824 hours.

The Commission believes that Forms CB and F–X would be significantly less burdensome to prepare than the current reporting requirements for tender and exchange offers. As discussed above, it is estimated that Forms CB and F–X would impose an estimated burden of two hours per Form. This contrasts with Schedule 14D–1 which has an estimated burden of 354 hours per form, Schedule 13E–4 which has an estimated burden of burden of 232 hours per form, and Forms S–1, S–2, S–3, S–4, F–1, F–2, F–3 and F–4 which have an estimated burden of 1,239, 470, 397, 1,233, 1,868, 1,397, 166, and 1,308 hours per form, respectively.

A bidder or issuer must respond to the described information collections in order to rely on the proposed exemptions. The information will not be kept confidential. Unless a currently valid OMB control number is displayed, an agency may not sponsor, conduct or require response to an information collection.

In accordance with 44 U.S.C. 3506(c)(2)(B), we solicit comments on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

[149] *See* Section V, *infra.*

[150] In 1997 there were 1,648 cross-border mergers and acquisitions. *See supra,* Note 23. We assume half those transactions would be eligible for the Tier I exemption and/or Rules 801 and 802 if extended to U.S. holders. Based on these assumptions, we estimate that Form CB will be filed 824 times.

[151] Since Form CB is substantially similar to Schedules 14D–1F and 13E–4F (the forms prescribed under the MJDS), the estimated burden hours is the same as the amount determined for those forms. This calculation does not include the potential time needed to translate the document into English.

(2) On the accuracy of the Commission's estimate of the burden of the proposed collection of information;

(3) On the quality, utility and clarity of the information to be collected; and

(4) whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized.

If you would like to submit comments on the collection of information requirements, please direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, with reference to File No. S7–29–98. The OMB must make a decision concerning the collection of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

VI. Request for Comments

If you would like to submit written comments on the proposals, to suggest additional changes, or to submit comments on other matters that might have an impact on the proposals, we encourage you to do so. Besides the specific questions we asked in this release, we also solicit comments on the usefulness of the proposals to foreign private issuers, foreign private issuers who are reporting companies with the Commission, registrants and the marketplace at large. We also encourage the submission of written comments on any aspect of the initial regulatory flexibility analysis. We will consider any written comments we receive in preparing the final regulatory flexibility analysis if the proposed rules are adopted.

We believe that the proposals, if adopted, would promote efficiency, competition, and capital formation. However, we solicit comments on whether the proposals would promote efficiency, competition, and capital formation.

Please send three copies of your comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. You may also submit your comments electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–29–98; this file number should be included in the subject line if E-mail is used. Comment letters can be inspected and copied in the public reference room at 450 Fifth Street, NW, Washington, DC. We will post electronically submitted comments on our Internet Web site (http://www.sec.gov).

VII. Statutory Basis of Proposals

We are proposing these revisions pursuant to Sections 3(b), 7, 8, 10, 19 and 28 of the Securities Act, Sections 12, 13, 14, 23 and 36 of the Exchange Act, and Section 304 of the Trust Indenture Act.

List of Subjects

17 CFR Part 200

Authority delegations (Government agencies).

17 CFR Parts 230, 239, 240, 249, and 260

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, we are proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200 continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. By amending § 200.30–1 by adding paragraph (e)(16) to read as follows:

§ 200.30–1 Delegation of authority to Director of Division of Corporation Finance.

* * * * *

(e) * * *

(16) To grant exemptions from:

(i) Tender offer provisions of Sections 13(e) and 14(d)(1) through 14(d)(7) of the Exchange Act (15 U.S.C. 78m(e) and 78n(d)(1) through 78n(d)(7)), Rule 13e–3 (§ 240.13e–3 of this chapter) and Rule 13e–4 (§ 240.13e–4 of this chapter), Regulation 14D (§§ 240.14d–1 through 240.14d–10 of this chapter) and Schedules 13E–3, 13E–4, 14D–1, 14D–9 (§§ 240.13e–100, 240.13e–101, 240.14d–100 and 240.14d–101 of this chapter) thereunder, pursuant to Sections 14(d)(5) and 14(d)(8)(C) of the Exchange Act (15 U.S.C. 78n(d)(5) and 78(d)(8)(C)), and Rule 14d–10(e) (§ 240.14d–10(e) of this chapter); and

(ii) The tender offer provisions of Rule 14e–1 and 14e–2 of Regulation 14E (§ 240.14e–1 and 240.14e–2 of this chapter) pursuant to Section 36(a) of the Exchange Act (15 U.S.C. 78mm(a)).

* * * * *

3. By amending § 200.30–3 to add paragraph (a)(65) to read as follows:

§ 200.30–3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(65) Pursuant to Section 36(a) of the Act, 15 U.S.C. 78mm(a), to grant exemptions from the tender offer provisions of Rule 14e–1 of Regulation 14E (§ 240.14e–1 of this chapter).

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

4. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

5. By amending § 230.144 to add paragraphs (a)(3)(vi) and (vii) to read as follows:

§ 230.144 Persons deemed not to be engaged in a distribution and therefore not underwriters.

* * * * *

(a) * * *

(3) * * *

(vi) Securities acquired in a transaction made in compliance with § 230.801; or

(vii) Securities acquired in a transaction made in compliance with § 230.802 if the securities that are tendered or surrendered in the § 230.802 transaction are ''restricted securities'' within the meaning of this § 230.144(a)(3).

* * * * *

6. By adding §§ 230.800 through 230.802 and an undesignated center heading to read as follows:

Exemptions for Cross-Border Rights Offerings, Exchange Offerings, and Business Combinations

GENERAL NOTES TO §§ 230.800, 230.801 AND 230.802

1. Sections 230.801 and 230.802 relate only to the applicability of the Act (15 U.S.C. 77e) and not to the applicability of the anti-fraud, civil liability or other provisions of the federal securities laws.

2. The exemptions provided by § 230.801 and § 230.802 are not available for any securities transaction or series of transactions that technically complies with § 230.801 and § 230.802 but are part of a plan or scheme to evade the registration provisions of the Act. In those cases, the issuer must register the offer and sale of the securities.

3. An issuer who relies on § 230.801 or an offeror who relies on § 230.802 must still comply with the securities registration or broker-dealer registration requirements of the Securities Exchange Act of 1934 (15 U.S.C.

78a *et seq.*) and any other applicable provisions of the federal securities laws.

4. An issuer who relies on § 230.801 or an offeror who relies on § 230.802 must still comply with any applicable state laws relating to the offer and sale of securities.

5. Attempted compliance with § 230.801 or § 230.802 does not act as an exclusive election; an issuer making an offer or sale of securities in reliance on § 230.801 or § 230.802 may also rely on any other applicable exemption from the registration requirements of the Act.

6. Section 230.801 and § 230.802 provide exemptions only for the issuer of the securities and not for any affiliate of that issuer or for any other person for resales of the issuer's securities. These sections provide exemptions only for the transaction in which the issuer or other person offers or sells the securities, not for the securities themselves. Securities acquired in a § 230.801 or § 230.802 transaction may be resold in the United States only if they are registered under the Act or an exemption from registration is available.

7. Section 230.801 does not apply to a rights offering by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*). Section 230.802 does not apply to exchange offers or business combinations by an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

8. Unregistered offers and sales made outside the United States will not affect contemporaneous offers and sales made in compliance with § 230.801 or § 230.802. A transaction that complies with § 230.801 or § 230.802 will not be integrated with offerings exempt under other provisions of the Act, even if both transactions occur at the same time.

9. Securities acquired in a rights offering under § 230.801 are ''restricted securities'' within the meaning of § 230.144(a)(3). If the securities that are the subject of the exchange offer or business combination are restricted securities, securities issued in a transaction under § 230.802 are also restricted securities.

§ 230.800 Definitions for §§ 230.800, 230.801 and 230.802.

The following definitions apply in §§ 230.800, 230.801 and 230.802.

Business combination. *Business combination* means a statutory amalgamation, merger, arrangement or other reorganization requiring the vote of shareholders of one or more of the participating companies. It also includes a statutory short form merger that does not require a vote of shareholders.

Commencement. *Commencement* means the same as in § 240.14d–2(a) of this chapter.

Equity security. *Equity security* means the same as in § 240.3a11–1 of this chapter, but does not include:

(1) Any debt security that is convertible into an equity security, with or without consideration; or

(2) Any debt security that includes a warrant or right to subscribe to or purchase an equity security; or

(3) Any such warrant or right; or

(4) Any put, call, straddle, or other option or privilege that gives the holder the option of buying or selling a security but does not require the holder to do so.

Exchange offer. *Exchange offer* means a tender offer in which securities are issued as consideration.

Foreign private issuer. *Foreign private issuer* means the same as in § 230.405 of Regulation C.

Foreign target company. *Foreign target company* means any foreign private issuer whose securities are the subject of the exchange offer or business combination.

Home jurisdiction. *Home jurisdiction* means both the jurisdiction of the issuer's incorporation, organization or chartering and the principal foreign market where the foreign private issuer's securities are listed or quoted.

Rights offering. *Rights offering* means offers and sales for cash of equity securities where:

(1) The issuer grants the existing security holders of a particular class of equity securities (including holders of depositary receipts evidencing those securities) the right to purchase or subscribe for additional securities of that class; and

(2) The number of additional shares an existing security holder may purchase initially is in proportion to the number of securities he or she holds of record on the record date for the rights offering. If an existing security holder holds depositary receipts, the proportion must be calculated as if the underlying securities were held directly.

U.S. holder. *U.S. holder* means any person whose address appears on the records of the issuer of the subject securities, or any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity as being located in the United States. Unless information provided by the depositary demonstrates otherwise, holders of American Depositary Receipts shall be counted as U.S. holders of the underlying securities for the purposes of this section.

§ 230.801 Exemption in connection with a rights offering.

A rights offering is exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e), provided that the following conditions are satisfied:

(a) **Conditions—**(1) **Eligibility of issuer.** The issuer is a foreign private issuer on the date the securities are first offered to U.S. holders.

(2) **Limitation on U.S. ownership.** U.S. holders hold no more than five percent of the outstanding class of securities that is the subject of the rights offering on the date the securities are first offered to U.S. holders. For purposes of calculating the percentage of outstanding securities held by U.S. holders, exclude from the total number of shares outstanding shares held by non-U.S. persons who hold more than 10 percent of the subject securities.

(3) **Equal treatment.** The issuer permits U.S. holders to participate in the rights offering on terms at least as favorable as those offered the other holders of the securities that are the subject of the offer.

(4) **Informational documents.** (i) If the issuer publishes or otherwise disseminates an informational document to the holders of the securities in connection with the rights offering, the issuer must provide that informational document to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination.

(ii) The issuer must disseminate by mail any informational document to U.S. holders, in English, that is published or provided to security holders in the issuer's home jurisdiction.

(5) **Eligibility of securities.** The securities offered in the rights offering are equity securities of the same class as the securities held by the offerees in the United States.

(6) **Limitation on transferability of rights.** The terms of the rights prohibit transfers by U.S. holders except in accordance with Regulation S (§ 230.901 through § 230.905).

(b) **Legends.** The following legend is included on the cover page of any informational document the issuer disseminates to U.S. holders:

This rights offering is made for the securities of a foreign company. The offer is subject to the disclosure requirements of a foreign country that are different from those of the United States. Financial statements included in the document, if any, have been prepared in accordance with foreign accounting standards that may not be comparable to the financial statements of United States companies.

It may be difficult for you to enforce your rights and any claim you may have arising under the federal securities laws, since the issuer is located in a foreign country, and some or all of its officers and directors may be residents of a foreign country. You may not be able to sue the foreign company or its officers or directors in a foreign court for violations of the U.S. securities laws. It may be difficult to compel a foreign company and its affiliates to subject themselves to a U.S. court's judgment.

§ 230.802 Exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers.

Offers and sales in any exchange offer for a class of securities of a foreign private issuer, or any exchange of securities for the securities of a foreign private issuer in any business combination are exempt from the provisions of Section 5 of the Act (15 U.S.C. 77e) if they satisfy the following conditions:

(a) **Conditions to be met.** (1) **Limitation on U.S. ownership.** (i) U.S. holders of the foreign target company must hold no more than five percent of the securities that are the subject of the transaction as of the commencement of the exchange offer or solicitation for a business combination.

(ii) In the case of a business combination in which the securities are to be issued by a successor registrant, U.S. holders will hold no more than five percent of the class of securities of the successor registrant, as if measured immediately after completion of the business combination.

(iii) For purposes of calculating the percentage of outstanding securities held by U.S. holders, exclude from the total number of shares outstanding shares held by non-U.S. persons who hold more than 10 percent of the subject securities.

(2) **Equal treatment.** The issuer must permit U.S. holders to participate in the exchange offer or business combination on terms at least as favorable as those offered any other holder of the subject securities; provided:

(i) **Blue sky registration.** If a U.S. state or jurisdiction requires registration or qualification of the offer or sale of securities in connection with the exchange offer or business combination, and the issuer does not so register or qualify the offer and sale, the issuer may offer security holders in such state or jurisdiction a cash alternative. If the issuer does not include a cash-only alternative in any other jurisdiction, it need not extend the offer in any state or jurisdiction that requires registration or qualification.

(ii) **Disparate tax treatment.** If the issuer offers ''loan notes'' to offer sellers tax advantages not available in the United States and these notes are not listed on any organized securities market or registered under the Securities Act, the loan notes need not be offered to U.S. holders.

(3) **Informational documents.** (i) If the issuer publishes or otherwise disseminates an informational document to the holders of the securities in connection with the exchange offer or business combination, the issuer must provide that informational document to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination.

(ii) The issuer must disseminate any informational document to U.S. holders, in English, on a comparable basis as provided to security holders in the issuer's home jurisdiction.

(iii) If the issuer disseminates solely by publication in its home jurisdiction, the issuer must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(b) **Legends.** The following legend must be included on the cover page of any informational document the issuer publishes or disseminates to U.S. holders:

> This exchange offer or business combination is made for the securities of a foreign company. The offer is subject to disclosure requirements of a foreign country that are different from those of the United States. Financial statements included in the document, if any, have been prepared in accordance with foreign accounting standards that may not be comparable to the financial statements of United States companies.
>
> It may be difficult for you to enforce your rights and any claim you may have arising under the federal securities laws, since the issuer is located in a foreign country, and some or all of its officers and directors may be residents of a foreign country. You may not be able to sue a foreign company or its officers or directors in a foreign court for violations of the U.S. securities laws. It may be difficult to compel a foreign company and its affiliates to subject themselves to a U.S. court's judgment.
>
> You should be aware that the issuer may purchase securities otherwise than pursuant to the exchange offer, such as open market or privately negotiated purchases.

(c) For exchange offers conducted by third parties without the cooperation of the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold five percent or less of the outstanding subject securities, unless:

(1) The aggregate trading volume of the subject class on national securities exchanges in the United States, on the Nasdaq market or on the OTC market, as reported to the NASD, exceeds five percent of the worldwide aggregate trading volume of the subject securities over the 12-calendar-month period before commencement of the offer (or if commenced in response to a prior offer, over the 12-calendar-month period prior to the commencement of the initial offer);

(2) The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission indicates that U.S. holders hold more than five percent of the outstanding subject class of securities; or

(3) The offeror knows, or has reason to know, that U.S. ownership exceeds five percent of such securities.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

8. By amending Form F–X (referenced in § 239.42) General Instruction 1 to add paragraph (g) and to revise Item II.F(b) to read as follows:

[**Note:** Form F–X does not and this amendment will not appear in the Code of Federal Regulations.]

Form F–X

General Instructions

1. Form F–X shall be filed with the Commission:

* * * * *

(g) by any non-U.S. issuer providing Form CB to the Commission in connection with a tender offer, rights offering or business combination.

* * * * *

II. * * *

F. * * *

(b) the use of Form F–8, Form F–80 or Form CB stipulates and agrees to appoint a successor agent for service of process and file an amended Form F–X if the Filer discharges the Agent or the Agent is unwilling or unable to accept service on behalf of the Filer;

* * * * *

9. By adding § 239.800 and Form CB to read as follows:

§ 239.800 Form CB, report of sales of securities in connection with an exchange offer or a rights offering.

This Form shall be used to report sales of securities in connection with a rights offering in reliance upon § 230.801 of this chapter and to report sales of securities in connection with an exchange offer or business combination in reliance upon § 230.802 of this chapter.

[**Note:** Form CB does not appear in the Code of Federal Regulations. Form CB is attached as Appendix A.]

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78*l*, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78*ll*(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

11. By amending § 240.10b–13 to redesignate paragraph (d) as paragraph (f) and to add new paragraphs (d) and (e) to read as follows:

§ 240.10b–13 Prohibiting other purchases during tender offer or exchange offer.

* * * * *

(d) The provisions of this section shall not apply to the purchase, or arrangement to purchase, of a security of the same class as that which is the subject of a cash tender offer or exchange offer (or of any other security which is immediately convertible into or exchangeable for such security) if the following conditions are satisfied:

(1) The cash tender offer or exchange offer is exempt under § 240.13e–4(h)(8) or § 240.14d–1(c);

(2) The offering documents furnished to U.S. holders prominently disclose the possibility of any purchases, or arrangements to purchase, or the intent to make such purchases;

(3) The bidder discloses information in the United States about any such purchases in a manner comparable to the disclosure made in the home jurisdiction, as defined in § 240.13e–4(i)(3); and

(4) The purchases comply with the applicable tender offer laws and regulations of the home jurisdiction.

(e) The provisions of this section shall not apply to the purchase, or arrangement to purchase, of a security of the same class as that which is the subject of a cash tender offer or exchange offer (or of any other security which is immediately convertible into or exchangeable for such security) if the following conditions are satisfied:

(1) The issuer of the subject security is a foreign private issuer, as defined in § 240.3b–4(c);

(2) The offer is subject to the United Kingdom's City Code on Takeovers and Mergers;

(3) The purchase or arrangement to purchase is effected by a connected exempt market maker or a connected exempt principal trader, as those terms are used in the United Kingdom's City Code on Takeovers and Mergers;

(4) The connected exempt market maker or the connected exempt principal trader complies with the applicable provisions of the United Kingdom's City Code on Takeovers and Mergers; and

(5) The offer documents disclose the identity of the connected exempt market maker or the connected exempt principal trader and describe how U.S. security holders can obtain, upon request, information regarding market making or principal purchases by such market maker or principal trader to the extent that this information is required to be made public in the United Kingdom.

* * * * *

12. By amending § 240.13e–3 to add paragraph (g)(6) to read as follows:

§ 240.13e–3 Going private transactions by certain issuers or their affiliates.

* * * * *

(g) *Exceptions.* * * *

* * * * *

(6) Any tender offer or business combination made in compliance with § 230.802 of this chapter, § 240.13e–4(h) or § 240.14d–1(c).

13. By amending § 240.13e–4 to redesignate paragraph (h)(8) as (h)(9) and to add new paragraphs (h)(8) and (i) to read as follows:

§ 240.13e–4 Tender offers by issuers.

* * * * *

(h) * * *

(8) **Cross-border tender offers.** Any issuer tender offer (including any exchange offer) by a foreign private issuer, if 10 percent or less of the outstanding class of securities that is the subject of the tender offer are held of record by U.S. holders and the following additional conditions are satisfied. For purposes of calculating the percentage of outstanding securities held by U.S. holders, exclude from the total number of shares outstanding shares held by non-U.S. persons who hold more than 10 percent of the subject securities:

(i) The issuer must permit U.S. holders to participate in the offer on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the offer, however:

(A) **Registered exchange offers.** If the issuer offers securities registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and a cash-only alternative, the issuer must offer only the cash alternative to security holders in any state or jurisdiction that prohibits the offer and sale of the securities after the issuer has made a good faith effort to register or qualify the offer and sale of securities in that state or jurisdiction. If the issuer does not include a cash-only alternative in any other jurisdiction, the issuer need not extend the offer to security holders in those states or jurisdictions that prohibits the offer and sale of the securities.

(B) **Exempt exchange offers.** If the issuer offers securities exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and a cash-only alternative, the issuer must offer only the cash alternative to security holders in any state in which the statutes or regulations do not provide a corresponding exemption from registration or qualification. When a cash-only alternative is not offered to security holders in any other state or jurisdiction, the issuer need not extend the offer to security holders in those states or jurisdictions that require registration or qualification.

(C) **Disparate tax treatment.** If the issuer offers ''loan notes'' solely to offer sellers tax advantages not available in the United States and these notes are not listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders.

(ii) **Dissemination and filing.** (A) If the issuer publishes or otherwise disseminates an informational document, the issuer must provide that informational document to the Commission on Form CB (§ 249.480 of this chapter). Form CB must be provided to the Commission no later than the next business day after publication or dissemination.

(B) The issuer must disseminate any informational document to U.S. holders, in English, on a comparable basis as provided to security holders in the home jurisdiction.

(C) If the issuer disseminates solely by publication in its home jurisdiction, the issuer must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(iii) For purposes of this paragraph (h)(8):

(A) The issuer must include securities underlying American Depositary Shares that are exchangeable or convertible for such securities in determining the amount of securities outstanding of the class that is the subject of the offer, as well as, the percentage of the subject class of securities held of record by U.S. holders.

(B) If an issuer submits Form CB (§ 249.480 of this chapter) during an ongoing tender or exchange offer for securities of the class subject to the offer, the issuer must calculate the percentage of the class held by U.S.

holders as of the same date used by the initial offeror.

(C) *Home jurisdiction* means both the jurisdiction of the issuer's incorporation, organization or chartering and the principal foreign market where the issuer's securities are listed or quoted.

(D) *U.S. holder* means any person whose address appears on the records of the issuer of the subject securities, or any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity as being located in the United States. Unless information provided by the depositary demonstrates otherwise, holders of American Depositary Receipts shall be counted as U.S. holders of the underlying securities for the purposes of this section.

(iv) An investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*) may not use this paragraph (h)(8).

* * * * *

(i) **Cross-border tender offers.** Any issuer tender offer that meets the conditions in paragraph (i)(1) of this section shall be entitled to the exemptive relief specified in paragraph (i)(2) of this section:

(1) **Conditions.** (i) The issuer is a foreign private issuer as defined in § 240.3b-4 and is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*);

(ii) U.S. security holders do not hold of record more than 40 percent of the class of securities sought in the offer. For purposes of calculating the percentage of outstanding securities held by U.S. holders, exclude from the total number of shares outstanding shares held by non-U.S. affiliates who hold more than 10 percent of the subject securities; and

(iii) The issuer complies with all applicable U.S. tender offer laws and regulations, other than those for which an exemption has been provided in paragraph (i)(2) of this section.

(2) **Exemptions.** (i) **Withdrawal rights.** Any issuer tender offer meeting the conditions of paragraph (i)(1) of this section is exempt from the provisions of paragraph (f)(2) of this section. Withdrawal rights may terminate before the expiration of the offer if the offer is for all shares and, if:

(A) All conditions to the offer have been satisfied or waived before the termination of withdrawal rights; except that, if it is impracticable to determine whether the minimum condition to the offer has been met at the expiration of the offer because of the home jurisdiction practice of tendering to multiple depositaries, the issuer may terminate withdrawal rights while determining whether the minimum condition has been satisfied. If the issuer determines that the minimum condition has not been satisfied and extends the offer instead of returning the tendered shares, withdrawal rights must be extended during that additional offering period;

(B) All minimum time periods required by this section and § 240.14e-1 through § 240.14e-7 (Regulation 14E) have been satisfied;

(C) The issuer extends withdrawal rights during all minimum time periods required by this section and § 240.14e-1 through § 240.14e-7 (Regulation 14E);

(D) When withdrawal rights terminate, the issuer immediately accepts and promptly pays for all securities previously tendered upon termination of withdrawal rights; and

(E) The issuer immediately accepts and promptly pays for all securities tendered after the termination of withdrawal rights.

(ii) **Equal treatment—loan notes.** If the issuer offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are not listed on any organized securities market nor registered under the Securities Act (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders, notwithstanding paragraphs (f)(8) and (h)(9) of this section.

(iii) **Equal treatment—separate U.S. and foreign offers.** Notwithstanding the provisions of paragraphs (f)(8) and (h)(9) of this section, an issuer conducting an issuer tender offer meeting the conditions of paragraph (i)(1) of this section may separate the offer into two offers: one offer made only to U.S. holders and another offer made only to non-U.S. holders. The offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offer.

(3) For purposes of this paragraph (i):

(i) The issuer must include securities underlying American Depositary Shares that are exchangeable or convertible for such securities in determining the amount of securities outstanding of the class that is the subject of the offer, as well as, the percentage of the subject class of securities held of record by U.S. holders.

(ii) If an issuer commences an issuer tender offer during an ongoing tender or exchange offer for securities of the same class subject to the offer, the issuer must calculate the percentage of the class held by U.S. holders as of the same date used by the initial offeror.

(iii) *Home jurisdiction* means both the jurisdiction of the issuer's incorporation, organization or chartering and the principal foreign market where the issuer's securities are listed or quoted.

(iv) *U.S. holder* means any person whose address appears on the records of the issuer of the subject securities, or any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity as being located in the United States. Unless information provided by the depositary demonstrates otherwise, holders of American Depositary Receipts shall be counted as U.S. holders of the underlying securities for the purposes of this section.

14. By amending § 240.14d-1 to redesignate paragraphs (c), (d), (e), and (f) as paragraphs (e), (f), (g) and (h), and to add new paragraphs (c) and (d) and Notes thereto to read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(c) Any tender offer for the securities of a foreign private issuer as defined in § 240.3b-4 shall be exempt from the requirements of Sections 14(d)(1) through 14(d)(7) of the Act (15 U.S.C. 78n(d)(1) through 78n(d)(7)), Regulation 14D (§ 240.14d-1 through § 240.14d-10) and Schedules 14D–1 (§ 240.14d-100) and 14D–9 (§ 240.14d-101) thereunder, and § 240.14e-1 and § 240.14e-2 of Regulation 14E under the Act, if U.S. holders own of record 10 percent or less of the outstanding class of securities that is the subject of the tender offer and the following additional conditions are satisfied. For purposes of calculating the percentage of outstanding securities held by U.S. holders, exclude from the total number of shares outstanding shares held by non-U.S. persons who hold more than 10 percent of the subject securities.

(1) **Equal treatment.** The bidder must permit U.S. holders to participate in the offer on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offer, however:

(i) **Registered exchange offers.** If the bidder offers securities registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and a cash-only alternative, the bidder must offer only the cash alternative to security holders in any state or jurisdiction that prohibits the sale of securities after the bidder has made a good faith effort to register or qualify the offer and sale of securities in

that state or jurisdiction. When a cash-only alternative is not offered to security holders in any other jurisdiction, the issuer need not extend the offer to security holders in those states or jurisdictions that prohibit the offer and sale of the securities.

(ii) **Exempt exchange offers.** If the bidder offers securities exempt from registration under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) and a cash-only alternative, the bidder must offer only the cash alternative to security holders in any state or jurisdiction in which the statutes or regulations do not provide a corresponding exemption from registration or qualification. When a cash-only alternative is not offered to security holders in any other jurisdiction, the bidder need not extend the offer to security holders in those states or jurisdictions that require registration or qualification.

(iii) **Disparate tax treatment.** If the bidder offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are not listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders, notwithstanding § 240.14d-10.

(2) **Informational documents.** (i) The bidder shall disseminate any informational document to U.S. holders, in English, on a comparable basis as provided to security holders in the home jurisdiction.

(ii) If the bidder disseminates solely by publication in its home jurisdiction, the bidder shall publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

(iii) In the case of tender offers for securities described in Section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)), the bidder shall furnish to the Commission on Form CB (§ 249.480 of this chapter) any informational document it publishes or otherwise disseminates to holders of the outstanding class of securities. The bidder shall provide the Form CB to the Commission no later than the next business day after publication or dissemination.

(3) **Investment companies.** The issuer of the securities that are the subject of the tender offer is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a-1 *et seq.*).

(d) A person conducting a tender offer that meets the conditions in paragraph (d)(1) of this section shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section:

(1) **Conditions.** (i) The subject company is a foreign private issuer as defined in § 2403b–4 and is not an investment company registered or required to be registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*);

(ii) U.S. security holders do not hold of record more than 40 percent of the class of securities sought in the offer. For purposes of calculating the percentage of outstanding securities held by U.S. holders, exclude from the total number of shares outstanding shares held by non-U.S. persons who hold more than 10 percent of the subject securities; and

(iii) The bidder complies with all applicable U.S. tender offer laws and regulations, other than those pursuant to which an exemption has been provided for in paragraph (d)(2) of this section.

(2) **Exemptions—**(i) **Withdrawal rights.** Notwithstanding the provisions of Section 14(d)(5) of the Act (15 U.S. C 78n(d)(5)) and § 240.14d–7, a bidder in a tender offer meeting the conditions of paragraph (d)(1) of this section may terminate withdrawal rights before the expiration of the offer, if the offer is for all outstanding shares and:

(A) All conditions to the offer are satisfied or waived before withdrawal rights terminate; except that, if it is impracticable to determine whether the minimum condition to the offer has been met at the expiration of the offer due to the home jurisdiction practice of tendering to multiple depositaries, the bidder may terminate withdrawal rights while determining whether the minimum condition has been satisfied. If the bidder determines that the minimum condition is not satisfied and extends the offer instead of returning the tendered shares, withdrawal rights must be extended during such additional offering period;

(B) All minimum time periods required by § 240.14d–1 through

§ 240.14d–10 (Regulation 14D) and § 240.14e–1 through § 240.14e–7 (Regulation 14E) are satisfied;

(C) The bidder extends withdrawal rights during all minimum time periods required by Regulation 14D and Regulation 14E;

(D) All securities previously tendered are immediately accepted and promptly paid for upon termination of withdrawal rights; and

(E) All securities tendered after the termination of withdrawal rights are immediately accepted and promptly paid for.

(ii) **Equal treatment—loan notes.** If the bidder offers loan notes solely to offer sellers tax advantages not available in the United States and these notes are not listed on any organized securities market nor registered under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), the loan notes need not be offered to U.S. holders, notwithstanding § 240.14d–10.

(iii) **Equal treatment—separate U.S. and foreign offers.** Notwithstanding the provisions of § 240.14d–10, a bidder conducting a tender offer meeting the conditions of paragraph (d)(1) of this section may separate the offer into two offers: one offer made only to U.S. holders and another offer made only to non-U.S. holders. The offer to U.S. holders must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers.

(iv) **Commencement**. A public announcement of a tender offer meeting the conditions of paragraph (d)(1) of this section will not trigger the commencement requirements under § 240.14d–2(b), if:

(A) The announcement is required by home jurisdiction law or practice;

(B) The announcement contains no information beyond the requirements of the home jurisdiction law or practice;

(C) The announcement, when disseminated in written form in the United States, contains a legend noting that the offer will not commence until the informational documents are mailed to shareholders, which mailing may not occur until permitted by the home jurisdiction; and

(D) The bidder mails the informational documents within 30 days after the announcement or makes a public announcement if it decides not to commence an offer.

Note to Paragraph (d)(2)(iv). If the tender offer meets these conditions, the tender offer will commence only upon mailing or publishing the offer. Further, the Schedule 14D–1 need not be filed with the Commission pursuant to § 240.14d–3 until the offer is mailed or published. In addition, making an announcement meeting these conditions would not constitute a solicitation or recommendation with respect to the offer within the meaning of § 240.14d–9.

(v) **Notice of extensions.** Notice of extensions made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e–1(d).

(vi) **Prompt payment.** Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e–1(c).

General Notes to paragraphs (c) and paragraphs (d):

1. If a bidder believes it requires exemptive relief beyond that provided for in Section

14d–1(d)(2), the bidder should submit a written application requesting relief along with an analysis of the basis for such relief. The bidder should submit the application to the Director of the Division of Corporation Finance.

2. The bidder should include securities underlying American Depositary Shares convertible or exchangeable into the securities that are the subject of the tender offer when calculating the number of target securities outstanding, as well as the number held of record by U.S. holders.

3. *Home jurisdiction* means both the jurisdiction of the target company's incorporation, organization or chartering and the principal foreign market where the target company's securities are listed or quoted.

4. *U.S. holder* means any person whose address appears on the records of the issuer of the subject securities, or any voting trustee, depositary, share transfer agent, or any person acting in a similar capacity as being located in the United States. Unless information provided by the depositary demonstrates otherwise, holders of American Depositary Receipts shall be counted as U.S. holders of the underlying securities for the purposes of §§ 240.14d–1(c) and (d).

5. For purposes of § 240.14d–1(c), with respect to a tender offer conducted without the cooperation of the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 10 percent or less of such outstanding securities, unless:

(a) The aggregate trading volume of that class of securities on all national securities exchanges in the United States, on the Nasdaq market, or on the OTC market, as reported to the NASD, exceeds 10 percent of the worldwide aggregate trading volume of that class of securities over the 12 calendar month period prior to commencement of the offer;

(b) The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission indicates that U.S. holders hold more than 10 percent of the outstanding subject class of securities; or

(c) The bidder knows or has reason to know that the level of U.S. ownership exceeds 10 percent of such securities.

6. For purposes of § 240.14d–1(d), with respect to a tender offer conducted without the cooperation of the issuer of the subject securities, the issuer of the subject securities will be presumed to be a foreign private issuer and U.S. holders will be presumed to hold 40 percent or less of the outstanding securities, unless:

(a) The aggregate trading volume of that class of securities on all national securities exchanges in the United States and on the Nasdaq market exceeds 40 percent of the worldwide aggregate trading volume of that class of securities over the 12 calendar month period prior to commencement of the offer;

(b) The most recent annual report or annual information filed or submitted by the target company with securities regulators of the home jurisdiction or with the Commission indicates that U.S. holders hold more than 40 percent of the outstanding subject class of securities; or

(c) The bidder knows, or has reason to know, that the level of U.S. ownership exceeds 40 percent of such securities.

7. If a bidder commences a tender offer during an ongoing tender or exchange offer for securities of the same class subject to its offer, the bidder should calculate the percentage of target securities held by U.S. holders as of the same date used by the initial bidder.

15. By amending § 240.14e–2 to add paragraph (d) to read as follows:

§ 240.14e–2 Position of subject company with respect to a tender offer.

* * * * *

(d) **Exemption for cross-border tender offers.** Any issuer of a class of securities that is the subject of a tender offer conducted in reliance upon and in conformity with § 240.14d–1(c), or any other person subject to § 240.14d–9, shall be exempt from §§ 240.14e–2 and 240.14d–9 if:

(1) The issuer, or any other person subject to § 240.14d–9, furnishes to the Commission on Form CB (§ 249.480 of this chapter) the entire informational document it publishes or otherwise disseminates to holders of the class of securities in connection with the tender offer no later than the next business day after publication or dissemination;

(2) The issuer, or any other person subject to § 240.14d–9, disseminates any informational document to U.S. holders, in English, on a comparable basis as provided to security holders in the issuer's home jurisdiction; and

(3) If the issuer, or any other person subject to § 240.14d–9, disseminates solely by publication in its home jurisdiction, such person shall publish the information in the United States in a manner reasonably calculated to inform U.S. security holders of the offer.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

16. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

17. By adding Subpart E, § 249.480 and Form CB to read as follows:

Subpart E—Forms for Statements Made in Connection with Exempt Tender Offers

§ 249.480 Form CB, tender offer statement in connection with a tender offer for a foreign private issuer.

This form shall be used to report an issuer tender offer conducted in compliance with § 240.13e–4(h)(8) of this chapter and a third-party tender offer conducted in compliance with § 240.14d–1(c) of this chapter. This report shall also be used by a target company pursuant to § 240.14e–2(d)(1) of this chapter.

[Note: Form CB does not appear in the Code of Federal Regulations. Form CB is attached as Appendix A.]

PART 260—GENERAL RULES AND REGULATIONS, TRUST INDENTURE ACT OF 1939

18. The authority citation for Part 260 continues to read as follows:

Authority: 15 U.S.C. 77eee, 77ggg, 77nnn, 77sss, 78*ll*(d), 80b–3, 80b–4, and 80b–11.

19. By adding § 260.4d–10 to read as follows:

§ 260.4d–10 Exemption for securities issued pursuant to § 230.802 of this chapter.

Any debt security, whether or not issued under an indenture, shall be exempt from the operation of the Act if made in compliance with § 230.802 of this chapter.

Dated: November 13, 1998.

By the Commission.

Jonathan G. Katz,

Secretary.

Appendix A

Note: Form CB does not appear in the Code of Federal Regulations.

FORM CB

OMB APPROVAL

OMB Number: xxxx–xxxx
Expires: Approval Pending
Estimated average burdens hours per response: 2.0

U.S. Securities and Exchange Commission

Washington, D.C. 20549

Form CB

TENDER OFFER/RIGHTS OFFERING NOTIFICATION FORM

(AMENDMENT NO. _____)

Please place an X in the box(es) to designate the appropriate rule provision(s) relied upon to file this Form:
Securities Act Rule 801 (Rights Offering) ☐
Securities Act Rule 802 (Exchange Offer) ☐
Exchange Act Rule 13e–4(h)(8) (Issuer Tender Offer) ☐
Exchange Act Rule 14d–1(c) (Third Party Tender Offer) ☐
Exchange Act Rule 14e–2(d)(1) (Target Response) ☐

_____

(Name of Subject Company)

_____

(Translation of Subject Company's Name into English (if applicable))

_____

(Jurisdiction of Subject Company's Incorporation or Organization)

_____

(Name of Person(s) Furnishing Form)

(Title of Class of Securities)

(CUSIP Number of Class of Securities (if applicable))

(Name, Address (including zip code) and Telephone Number (including area code) of Person(s) Authorized to Receive Notices and Communications on Behalf of Subject Company)

(Date Tender Offer/Rights Offering Commenced)

* 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. Any member of the public may direct to the Commission any comments concerning the accuracy of this burden estimate and any suggestions for reducing this burden. This collection of information has been reviewed by OMB in accordance with the clearance requirements of 44 U.S.C. 3507.

General Instructions

I. Eligibility Requirements for Use of Form CB

A. Use this Form to furnish information pursuant to Rules 13e–4(h)(8), 14d–1(c) and 14e–2(d)(1) under the Securities Exchange Act of 1934 (''Exchange Act''), and Rules 801 and 802 under the Securities Act of 1933 (''Securities Act'').

Instructions

1. For the purposes of this Form, the term ''subject company'' means the issuer of the securities in a rights offering and the company whose securities are sought in a tender offer.

2. For the purposes of this Form, the term ''tender offer'' includes both cash and stock tender offers.

B. The information and documents furnished on this Form are not deemed ''filed'' with the Commission or otherwise subject to the liabilities of Section 18 of the Exchange Act.

II. Instructions for Submitting Form

A. You must furnish five copies of this Form and any amendment to the Form (see Part I, Item 1.(b)), including all exhibits and any other paper or document furnished as part of the Form, to the Commission at its principal office. Each copy shall be bound, stapled or otherwise compiled in one or more parts, without stiff covers. The binding shall be made on the side or stitching margin in such manner as to leave the reading matter legible.

B. The persons specified in Part IV must manually sign the original and at least one copy of this Form and any amendments. You must conform any unsigned copies.

C. You must furnish this Form to the Commission no later than the next business day after the disclosure documents submitted with this Form are published or otherwise disseminated in the subject company's home jurisdiction.

D. In addition to any internal numbering you may include, sequentially number the manually signed original of the Form and any amendments by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of the document and any exhibits or attachments thereto. Further, you must set forth the total number of pages contained in a numbered original on the first page of the document.

III. Special Instructions for Complying with Form CB

Under Sections 3(b), 7, 8, 10, 19 and 28 of the Securities Act of 1933, and Sections 12, 13, 14, 23 and 36 of the Exchange Act of 1934 and the rules and regulations adopted under those Sections, the Commission is authorized to solicit the information required to be supplied by this form by certain entities conducting a tender offer, rights offer or business combination for the securities of certain issuers.

Disclosure of the information specified in this form is mandatory. We will use the information for the primary purposes of ensuring that the offeror is entitled to use the Form and that investors have information about the transaction to enable them to make informed investment decisions. We will make this Form a matter of public record. Therefore, any information given will be available for inspection by any member of the public.

Because of the public nature of the information, the Commission can utilize it for a variety of purposes. These purposes include referral to other governmental authorities or securities self-regulatory organizations for investigatory purposes or in connection with litigation involving the Federal securities laws or other civil, criminal or regulatory statutes or provisions.

PART I—INFORMATION SENT TO SHAREHOLDERS

Item 1. *Home Jurisdiction Documents*

(a) You must attach to this Form the entire disclosure document or documents you have delivered to holders of securities in the home jurisdiction. The Form need not include any documents incorporated by reference into those disclosure document(s) and not distributed to holders of securities. If any part of the document or documents to be sent to U.S. shareholders is in a foreign language, include an English translation.

(b) Furnish any amendment to a home jurisdiction document or documents to the Commission under cover of this Form. Indicate on the cover page the number of the amendment.

Item 2. *Informational Legends*

You may need to include legends on the outside cover page of any offering document(s) used in the transaction. *See* Rules 801(d) and 802(d).

Note to Item 2. If you deliver the home jurisdiction document(s) through an electronic medium, the required legends must be presented in a manner reasonably calculated to draw attention to them.

PART II—INFORMATION NOT REQUIRED TO BE SENT TO SHAREHOLDERS

The exhibits specified below shall be furnished as part of the Form, but need not be sent to shareholders unless sent to shareholders in the home jurisdiction. Letter or number all exhibits for convenient reference.

(1) Furnish to the Commission any reports or information that, in accordance with the requirements of the home jurisdiction, must be made publicly available in connection with the transaction but need not be disseminated to shareholders.

(2) Furnish copies of any documents incorporated by reference into the home jurisdiction document(s).

(3) If any name is signed to this Form pursuant to a power of attorney, furnish manually signed copies of the power of attorney.

PART III—CONSENT TO SERVICE OF PROCESS

(1) When this Form is furnished to the Commission, the person furnishing this Form (if a non-U.S. person) shall also file with the Commission a written irrevocable consent and power of attorney on Form F–X.

(2) Promptly communicate any change in the name or address of an agent for service to the Commission by amendment of the Form F–X.

PART IV—SIGNATURES

(1) Each person (or its authorized representative) on whose behalf the Form is submitted must sign the Form. If a person's authorized representative signs, and the authorized representative is someone other than an executive officer or general partner), provide evidence of the representative's authority with the Form.

(2) Type or print the name and any title of each person who signs the Form beneath his or her signature.

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

(Signature) _____

(Name and Title) _____

(Date) _____

[FR Doc. 98–31007 Filed 12–14–98; 8:45 am]

BILLING CODE 8010–01–U

Federal Register

Tuesday
December 15, 1998

Part III

Environmental Protection Agency

40 CFR Part 302

Reportable Quantities: Removal of Caprolactam From the List of CERCLA Hazardous Substances; Rule and Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[FRL–6202–4]

RIN 2050–AE48

Reportable Quantities: Removal of Caprolactam From the List of CERCLA Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending regulations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, to remove caprolactam (CAS No. 105–60–2) from the list of CERCLA hazardous substances. CERCLA section 101(14) defines the term hazardous substance by referring to those substances listed under several other environmental statutes, including section 112(b) of the Clean Air Act (CAA), as well as substances designated by EPA as hazardous under CERCLA section 102(a). Today's action follows the removal of caprolactam from the list of hazardous air pollutants under section 112(b)(1) of the Clean Air Act Amendments of 1990. The effect of today's action is that caprolactam is no longer a CERCLA hazardous substance. Persons in charge of vessels or facilities from which caprolactam is released are no longer required to immediately notify the National Response Center of the release under CERCLA section 103, and are not subject to the liability provisions under CERCLA section 107. Unless EPA receives adverse written comments during the review and comment period provided in this direct final rule, the decision to remove caprolactam from the list of CERCLA hazardous substances will take effect without further notice as provided in the **DATES** section of this **Federal Register**. If EPA receives adverse comment, EPA will withdraw this rule before its effective date by publishing a document in the **Federal Register** informing the public that the rule will not take effect.

DATES: This final rule is effective on February 16, 1999 unless the Agency receives adverse comments by January 14, 1999. Should the Agency receive such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Mail written comments referring to Docket Number (102RQ–CAP) to Lynn Beasley, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Phone: (703) 603–9086. You can examine copies of public comments and other materials supporting EPA's decision to remove caprolactam from the Clean Air Act and CERCLA lists of hazardous substances at the U.S. Environmental Protection Agency Superfund Docket and Document Center, 1235 Jefferson Davis Highway (1st floor), Arlington, Virginia 22202. Docket hours are 9:00 a.m. to 4:00 p.m., Monday through Friday. Please call (703) 603–9232 for an appointment. The public may copy a maximum of 100 pages from any regulatory docket at no charge; additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this final rule, contact Lynn Beasley by mail at Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 603–9086, or by Internet e-mail at beasley.lynn@epa.gov.

SUPPLEMENTARY INFORMATION:

Outline of Today's Rule

I. Authority

This document is issued under the authority of section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9602.

II. Background

Section 101(14) of CERCLA defines the term hazardous substance as those substances listed under several other environmental statutes and those substances designated by EPA as hazardous under CERCLA section 102(a). In particular, CERCLA section 101(14)(E) incorporates by reference the list of hazardous air pollutants listed in section 112(b)(1) of the Clean Air Act. CERCLA section 102(a) authorizes EPA to designate as hazardous those substances that, when released into the environment, may present substantial danger to the public health or welfare or the environment, and to establish the reportable quantity for all CERCLA hazardous substances. A list of CERCLA hazardous substances with their corresponding reportable quantities is provided in Table 302.4 at 40 CFR part 302. CERCLA section 103 requires any person who releases a CERCLA hazardous substance in an amount equal to or greater than its reportable quantity to report the release immediately to the Federal government.

In 1990, amendments to section 112(b)(1) of the Clean Air Act added the substance caprolactam (CAS No. 105–60–2) to the list of hazardous air pollutants. Because the CERCLA definition of hazardous substance includes CAA hazardous air pollutants, caprolactam immediately became a CERCLA hazardous substance. On June 12, 1995, EPA updated Table 302.4 to include caprolactam and established a reportable quantity of 5,000 pounds for the substance (see 60 *FR* 30926). In July 1993, EPA received a petition to remove caprolactam from CAA section 112(b)(1). Following a review of the petition, EPA determined that there was adequate data on the health and environmental effects of caprolactam to indicate that emissions, ambient concentrations, bioaccumulation, or deposition of the substance would not cause adverse human health or environmental effects. Based on this determination, the Agency proposed to remove caprolactam from the list of CAA hazardous air pollutants at section 112(b)(1), and after taking comment, removed caprolactam from the list on June 18, 1996 (see 61 *FR* 30816). Parties had an opportunity to comment on the effect of removing caprolactam as a hazardous air pollutant prior to that final rule.

Today, the Agency is taking action to remove caprolactam from the list of CERCLA hazardous substances. The Agency does not have independent basis upon which to retain caprolactam as a CERCLA hazardous substance. The Agency's designation of caprolactam under section 102(a) was based solely upon its inclusion as a hazardous substance under section 101(14)(E) of CERCLA.

This rule will be effective February 16, 1999 without further notice unless the Agency receives adverse comments by January 14, 1999. If EPA receives adverse comments, the Agency will publish a notice informing the public that the rule will not take effect prior to the effective date. A companion rule is in the Proposed Rule section of today's **Federal Register**. Should the Agency receive any adverse comments, this final

rule will be withdrawn and the Agency will proceed with the proposed rule. All public comments received will be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this rule. Parties interested in commenting on this rule should do so at this time. If no adverse comments are received, the public is advised that this rule will be effective on February 16, 1999 and no further action will be taken on the proposed rule. In general, adverse comments are comments that suggest that the rule should not be adopted, that offer contrary facts or that dispute the factual basis of the rulemaking. If you are interested in commenting you should do so in accordance with the time frame provided in today's **Federal Register**. Provide any written comments on this rule to the address indicated in the **ADDRESSES** section above.

The Agency is removing caprolactam from the list of hazardous substances through direct final rule because it does not expect any adverse comments and as stated above, parties had an opportunity to coment on the effect of removing caprolactam from the hazardous air pollutant list prior to that final rule (61 *FR* 30816). Because regulating caprolactam under CERCLA presents an unnecessary burden to industry, EPA believes that the public's interest is best served by immediately removing caprolactam from the list of CERCLA hazardous substances.

III. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 *FR* 51735, October 4, 1993) the Agency must determine whether the regulatory action 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 or communities;

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

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

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

EPA has determined that this rule is not a ''significant regulatory action'' under the terms of E.O. 12866 and is therefore not subject to OMB review.

B. Executive Order 12875

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.'' Today's rule does not create a mandate on State, local or tribal governments and it does not impose any enforceable duties on these entities. Accordingly, the requirements of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.'' This rule is not subject to this Executive Order because it does not impose substantial direct compliance cost on tribal communities and it does not significantly or uniquely affect those communities.

D. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be ''economically significant'' as defined under E.O. 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 rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. The following discussion explains EPA's determination. Because the action being taken by the Agency in today's notice reduces regulatory requirements, the Administrator certifies pursuant to U.S.C. 605(b) that

this rule will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

F. Paperwork Reduction Act

This final rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

G. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under 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, and 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 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.

Further, 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 rule contains no Federal mandates (under the regulatory provisions of Title II of UMRA) for State, local, or tribal governments or the private sector. This rule is deregulatory in nature and does not impose any enforceable duty. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. As to section 203, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., 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 Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective February 16, 1999.

List of Subjects in 40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Hazardous materials, Hazardous wastes, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control.

Dated: December 9, 1998.

Carol Browner,

Administrator.

40 CFR Part 302 is amended as follows:

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

1. The authority citation for Part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603 and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

2. Amend § 302.4 by removing the entry for ''Caprolactam'' from Table 302.4.

[FR Doc. 98–33213 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 302

[FRL–6202–5]

RIN 2050–AE48

Reportable Quantities: Removal of Caprolactam From the List of CERCLA Hazardous Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to amend regulations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, to remove caprolactam (CAS No. 105–60–2) from the list of CERCLA hazardous substances. Today's action follows the removal of caprolactam from the list of hazardous air pollutants (HAPs) under section 112(b)(1) of the Clean Air Act Amendments of 1990.

In the Rules and Regulations section of today's **Federal Register**, EPA is approving this action as a direct final rule without a prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. The rationale for approving this action is set forth in the direct final rule. If no adverse written comments are received in response to the direct final rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse written comments, EPA will withdraw the direct final rule before its effective date by publishing a timely withdrawal in the **Federal Register**. All public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before January 14, 1999.

ADDRESSES: Written comments referring to Docket Number (102RQ–CAP) may be mailed to Lynn Beasley, Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, Phone: (703) 603–9086. Copies of public comments and other materials supporting EPA's decision to remove caprolactam from the Clean Air Act and CERCLA lists of hazardous substances may be examined at the U.S. Environmental Protection Agency Superfund Docket and Document Center, 1235 Jefferson Davis Highway (1st floor), Arlington, Virginia 22202. Docket hours are 9:00 a.m. to 4:00 p.m., Monday through Friday. Please call (703) 603–9232 for an appointment. The public may copy a maximum of 100 pages from any regulatory docket at no charge; additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For information on specific aspects of this final rule, contact Lynn Beasley by mail at Office of Emergency and Remedial Response (5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460, by phone at (703) 603–9086, or by Internet e-mail at beasley.lynn@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information, see the direct final rule published in the final rules section of today's **Federal Register**.

Dated: December 9, 1998.

Carol Browner,

Administrator.

[FR Doc. 98–33214 Filed 12–14–98; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Tuesday
December 15, 1998

Part IV

The President

Federal Register
Vol. 63, No. 240
Tuesday, December 15, 1998

Presidential Documents

Title 3—

The President

Proclamation 7159 of December 11, 1998

National Children's Memorial Day, 1998

By the President of the United States of America

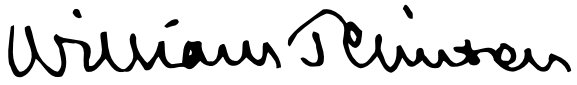
A Proclamation

There is nothing more devastating to a family than the death of a child. Each year, thousands of America's families face this tragedy, losing their children to illness, injury, or accident. Our whole society experiences this loss as well, for we are all diminished by the death of every one of our young people, whose love, laughter, talents, and achievements bring so much joy to our lives and so much promise to our future.

The holiday season is an especially painful time for parents who have lost a child, so it is fitting that we set aside a special day during this month to acknowledge the grief of these families and to pay tribute to the lives and memories of their children. On National Children's Memorial Day, let us all reach out, whether as individuals or as members of caring communities, to offer bereaved families the compassion, support, and understanding they need to begin the process of healing.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim December 13, 1998, as National Children's Memorial Day. I call upon the American people to observe this day with appropriate programs and activities in remembrance of the infants, children, teenagers, and young adults who have died and to bring comfort to their families.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of December, 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.



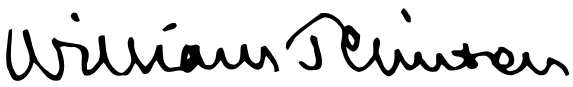
[FR Doc. 98–33381
Filed 12–14–98; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 13108 of December 11, 1998

Further Amendment to Executive Order 13037, Commission To Study Capital Budgeting

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to extend the reporting deadline for, and the expiration date of, the Commission to Study Capital Budgeting, it is hereby ordered that Executive Order 13037, as amended, is further amended by deleting in section 3 of that order ''within 1 year from its first meeting'' and inserting in lieu thereof ''by February 1, 1999'' and by deleting in section 5 of that order ''30 days after submitting its report'' and inserting in lieu thereof ''on September 30, 1999''.



THE WHITE HOUSE,
December 11, 1998.

[FR Doc. 98–33382
Filed 12–14–98; 8:45 am]
Billing code 3195–01–P

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Federal Register

Vol. 63, No. 240

Tuesday, December 15, 1998

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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- E-mail/Internet addresses on contracts and modifications; published 12-15-98
- Electronic signature of receiving reports; published 12-15-98
- Short form research contract; published 12-15-98
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- California; comments due by 12-22-98; published 10-23-98

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