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Friday
January 22, 1999

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
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Presidential Documents

Title 3—

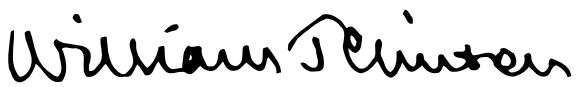
The President

Notice of January 20, 1999

Continuation of Emergency Regarding Terrorists Who Threaten To Disrupt the Middle East Peace Process

On January 23, 1995, by Executive Order 12947, I declared a national emergency to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by grave acts of violence committed by foreign terrorists that disrupt the Middle East peace process. By Executive Order 12947 of January 23, 1995, I blocked the assets in the United States, or in the control of United States persons, of foreign terrorists who threaten to disrupt the Middle East peace process. I also prohibited transactions or dealings by United States persons in such property. On August 20, 1998, by Executive Order 13099, I identified four additional persons, including Usama bin Ladin, that threaten to disrupt the Middle East peace process. I have annually transmitted notices of the continuation of this national emergency to the Congress and the **Federal Register**. Last year's notice of continuation was published in the **Federal Register** on January 22, 1998. Because terrorist activities continue to threaten the Middle East peace process and vital interests of the United States in the Middle East, the national emergency declared on January 23, 1995, and the measures that took effect on January 24, 1995, to deal with that emergency must continue in effect beyond January 23, 1999. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency with respect to foreign terrorists who threaten to disrupt the Middle East peace process.

This notice shall be published in the **Federal Register** and transmitted to the Congress.



THE WHITE HOUSE,
January 20, 1999.

[FR Doc. 99–1643
Filed 1–21–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

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

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

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0560–AF55

Fee Schedule; Aerial Photographic Reproductions

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture issued a proposed rule and is now issuing a final rule regarding the revision of fees charged for some aerial photographic reproductions in order to reflect changes in the costs for some reproductions and to discontinue some reproductions due to low demand. However, these revisions do not affect accessibility under the Freedom of Information Act.

EFFECTIVE DATE: February 1, 1999.

FOR FURTHER INFORMATION CONTACT: Linda McDonald, United States Department of Agriculture, Farm Service Agency, Aerial Photography Field Office, 2222 West 2300 South, Salt Lake City, Utah 84119–2020; telephone (801) 975–3500, Ext. 235.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule is an administrative action not subject to Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

USDA certifies that this rule would not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Executive Order 12988

The rule has been reviewed in accordance with Executive order 12988, Civil Justice Reform.

The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule and does not require administrative proceedings before parties may file in court challenging this rule.

Paperwork Reduction Act

The authority of the United States Department of Agriculture (USDA) FSA Aerial Photography Field Office to coordinate aerial photography and remote sensing programs and for aerial photography is Section 387 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1387).

Reproductions of photographs are available at cost to any customer. All receipts from the sale of aerial photography reproductions and services are deposited and sent to the U.S. Treasury.

Background

A pricing study of all products and services provided by the Aerial Photography Field Office was conducted. The study determined that due to increased costs of photographic reproduction, it would be necessary to increase fees charged for some reproductions. Fees would be reduced or left unchanged for some reproductions. Some reproductions would be discontinued, due to the small number of reproductions ordered. Accordingly, USDA will revise the fees charged for some reproductions, discontinue others and make minor administrative changes regarding Agency names and other clarifications to amend the appendix to 7 CFR part 1, subpart A. While issued as a proposed rule, the USDA Aerial Photography Field Office received one comment regarding this rule. The comment was to add the cost of Black and White 38x38 Film Positive Reproductions to the fee schedule. This item has been added to the fee schedule in this final rule.

List of Subjects in 7 CFR Part 1

Appeals, Fees, Public access and records.

For the reasons set out in the preamble, 7 CFR part 1 subpart A, Appendix A is amended to read as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Appendix A to Subpart A—Fee Schedule

1. The authority citation for subpart A is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 312a; 31 U.S.C. 9701; 7 U.S.C. 1387; and 7 CFR 2.28 (b)(7)(viii).

2. Section 12 of Appendix A to subpart A is revised and in section 17, paragraph (d) is removed and reserved and (c) is revised to read as follows:

Appendix A to Subpart A—Fee Schedule

* * * * *

§ 12. Agencies which furnish photographic reproductions.

(a) Aerial Photographic reproductions. The following agency of the Department furnishes aerial photographic reproductions:

Farm Service Agency (FSA), Aerial Photography Field Office (APFO), USDA, 2222 West 2300 South, Salt Lake City, Utah 84119–2020.

(b) Other photographic reproductions. Other types of reproductions may be obtained from the following agency of the Department:

National Agricultural Library, Agricultural Research Service, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, MD 20705.

* * * * *

§ 17. Reproduction prices

* * * * *

(c) *General aerial photographic reproductions.* The prices for various types of aerial photographic reproductions are set forth in this paragraph. Size measurements refer to the approximate size in inches of the paper required to produce the reproduction.

Size	Price
Black and White Reproductions	
10×10 Paper	$5.00
10×10 Film Positive	10.00
10×10 Film Positive AT	10.00
10×10 Film Positive Scan	15.00
10×10 Film Duplicate Negative	3.00
10×10 Film Internegative	4.50
12×12 Paper	12.00
17×17 Paper	13.00
17×17 Film Positive	25.00
24×24 Paper	16.00
24×24 Film Positive	40.00
38×38 Paper	50.00
38×38 Film Positive	55.00
20×24 Paper Photo Index	20.00
Paper Line Index	15.00
Mylar Line Index	35.00
Microfilm (Photo Indexes): Aperture Cards	10.00
Microfilm (Photo Indexes): Microfiche	10.00
Color Negative Reproductions	
10×10 Paper Quantities:	
1–50	$7.00
51–1000	5.00
1001 & Over	2.50
10×10 Film Positive	33.00
20×20 Paper	40.00
24×24 Paper	55.00
38×38 Paper	70.00
Color Infrared Positive Reproductions	
10×10 Paper	$12.00
10×10 Film Positive	15.00
10×10 Film Positive AT	15.00
10×10 Film Positive Scan	20.00
20×20 Paper	32.00
24×24 Paper	40.00
38×38 Paper	70.00

* * * * *

Signed at Washington, D.C., on January 15, 1999.

Dan Glickman

Secretary.

[FR Doc. 99–1451 Filed 1–21–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–44]

Amendment to Class D Airspace and Class E Airspace; Binghamton, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revises the legal description of the Class D airspace and Class E airspace extensions at Binghamton Regional/Edwin A. Link Field Airport (BGM), Binghamton, NY. The air traffic control tower at BGM has reduced their operating hours. The need for Class D airspace and the Class E airspace extensions during the specified hours of reduced operation no longer exists. This action will result in the airspace reverting to Class G airspace during those specific hours.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building #111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 4, 1998, a proposal to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the legal description of the Class D airspace and associated Class E airspace extensions at Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY, was published in the **Federal Register** (63 FR 67014).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations for airspace extending upward from the surface are published in paragraph 5000 and Class E airspace areas designated as an extension to a Class D surface area are published in paragraph 6004 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) revises Class D airspace and the Class E airspace extensions at Binghamton, NY to accommodate the reduced hours of operation at the airport. These areas will revert to Class G airspace during the specified hours of reduced operation.

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

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[Amended]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

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

§ 71.1 [Amended]

The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AEA NY D Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N., long. 75°58′47″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 4.1-miles radius of the Binghamton Regional/Edwin A. Link Field Airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

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

* * * * *

AEA NY E–4 Binghamton, NY [Revised]

Binghamton Regional/Edwin A. Link Field Airport, Binghamton, NY
(Lat. 42°12′31″ N., long. 75°58′47″ W.
Binghamton VORTAC
(Lat. 42°09′27″ N., long. 76°08′11″ W
SMITE LOM
(Lat. 42°06′17″ N., long 75°53′28″ W.
Binghamton Regional/Edwin A. Link Field Airport ILS Runway 34 Localizer (Lat. 42°13′12″ N., long. 75°59′15″ W.)

That airspace extending upward from the surface within 1.8 miles each side of the Binghamton VORTAC 067° radial extending from the 4.1-mile radius of the Binghamton Regional/Edwin A. Link Field Airport to the VORTAC and within 1.8 miles each side of the Binghamton Regional/Edwin A. Link Field Airport ILS Localizer SE course extending from the 4.1-mile radius of the airport to 1.8 miles SE of the SMITE LOM. This Class E airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Jamaica, New York on January 12, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–1500 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AEA–43]

Amendment to Class E Airspace; Laurel, DE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace extending upward from 700 feet Above Ground Level (AGL) at Laurel, DE. The development of a Standard Instrument Approach Procedure (SIAP) based on the Global Positioning System (GPS) at Laurel Airport has made this action necessary. This action is intended to provide adequate Class E airspace for instrument flight rules (IFR) operations by aircraft executing the GPS A SIAP to Laurel Airport.

EFFECTIVE DATE: 0901 UTC, March 25, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Francis Jordan, Airspace Specialist, Airspace Branch, AEA–520, Air Traffic Division, Eastern Region, Federal Aviation Administration, Federal Building # 111, John F. Kennedy International Airport, Jamaica, New York 11430, telephone: (718) 553–4521.

SUPPLEMENTARY INFORMATION:

History

On December 4, 1998, a notice proposing to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Class E airspace at Milton, WV, was published in the **Federal Register** (63 FR 67016). The development of the GPS A SIAP for Laurel Airport requires the amendment of the Class E airspace at Laurel, DE. The notice proposed to amend controlled airspace extending upward from 700 fee AGL to contain IFR operations in controlled airspace during portions of the terminal operation and while transitioning between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments to the proposal were received. The rule is adopted as proposed.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designations for airspace extending upward from 700 feet AGL are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) amends Class E airspace at Laurel, DE, to provide controlled airspace extending upward from 700 feet AGL for aircraft executing the GPS A SIAP to Laurel Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3)

does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation it is certified that this rule will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

PART 71—[AMENDED]

1. The authority citation for 14 CFR Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9505,3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

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

* * * * *

AEA DE E5 Laurel, DE [Revised]

Laurel Airport, DE

(Lat. 38°32′28″ N., long. 75°35′34″ W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Laurel Airport, excluding the portion that coincides with the Salisbury, MD, Class E airspace area.

* * * * *

Issued in Jamaica, New York on January 12, 1999.

Franklin D. Hatfield,

Manager, Air Traffic Division, Eastern Region.

[FR Doc. 99–1501 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8810]

RIN 1545–AW77

Notice and Opportunity for Hearing upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of the filing of a notice of federal tax lien (NFTL). The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property and rights to property the IRS files a NFTL. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These regulations are effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6320 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

These temporary regulations implement the provisions of section 6320 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of the filing of a NFTL on or after January 19, 1999, the right to a hearing before the IRS Office of Appeals (Appeals) with respect to the filing of a NFTL, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not request a hearing under section 6320 within the 30-day period that commences the day after the five business day notification period. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide guidance to taxpayers for purposes of section 6320. Pursuant to section 6320, for NFTLs filed on or after January 19, 1999, the IRS must provide written notification of the filing of the NFTL to the taxpayer named in the NFTL. The notification under section 6320 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail to the taxpayer's last known address not more than five business days after the day the NFTL is filed. The notification must state the amount of unpaid tax, inform the taxpayer of the right to request a hearing during the 30-day period that commences the day after the end of the five business day notification period, inform the taxpayer of the administrative appeals available with respect to such lien and the procedures related to such appeals, and inform the taxpayer of the provisions and procedures relating to the release of liens. Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a hearing, Appeals will hold one collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the CDP hearing notice (CDP Notice). The taxpayer is entitled to have a CDP hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. The taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing. If a taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecutions, and relating to suits are suspended. If the taxpayer has a hearing with Appeals, the suspension of the applicable periods of limitation continues until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court. If the taxpayer has withdrawn the request for a hearing with Appeals, the suspension of the applicable periods of limitation ends as a result of that withdrawal.

The temporary regulations discuss the procedures for CDP hearings under section 6320, including the requirement that the Appeals officer obtain verification that all legal and administrative requirements for the filing of the NFTL have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the CDP hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous CDP hearing under section 6330 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provide rules and procedures with respect to the administrative hearing (referred to as an ''equivalent hearing'') the IRS will provide to taxpayers who do not timely request a hearing under section 6320.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. 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 this regulation is Jerome D. Sekula, Office of the Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its 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 301.6320–1T is added under the undesignated centerheading ''Lien for Taxes'' to read as follows:

§ 301.6320–1T Notice and opportunity for hearing upon filing of notice of Federal tax lien (temporary).

(a) *Notification*— (1) *In general.* For a notice of federal tax lien (NFTL) filed on or after January 19, 1999, district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to notify the person described in section 6321 of the filing of a NFTL not more than five business days after the date of any such filing. The Collection Due Process Hearing Notice (CDP Notice) and other notices given under this section must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail to such person's last known address, not more than five business days after the day the NFTL was filed.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the ''person'' entitled to notice under section 6320?

A–A1. Under section 6320(a)(1), notification of the filing of a NFTL on or after January 19, 1999, is only required to be given to the person described in section 6321 who is named on the NFTL that is filed. The person described in section 6321 is the person liable to pay the tax due after notice and demand who refuses or neglects to pay the tax due (hereinafter, referred to as the taxpayer).

Q–A2. When will the IRS provide the notice required under section 6320?

A–A2. The IRS will provide this notice within five business days after the filing of the NFTL.

Q–A3. Will the IRS give notification to the taxpayer for each tax period listed in a NFTL filed on or after January 19, 1999?

A–A3. Yes. Under section 6323(f), a NFTL can be filed for more than one tax period. The notification of the filing of a NFTL will specify each tax and tax period listed in the NFTL.

Q–A4. Will the IRS give notification to the taxpayer of any filing of a NFTL for the same tax period or periods at another place of filing?

A–A4. Yes. The IRS will notify a taxpayer when a NFTL is filed on or after January 19, 1999, for a tax period or periods at any recording office.

Q–A5. Will the IRS give notification to the taxpayer if a NFTL is filed on or after January 19, 1999, for a tax period or periods for which a NFTL was filed in another recording office prior to that date?

A–A5. Yes. The IRS will notify a taxpayer when each NFTL is filed on or after January 19, 1999, for a tax period or periods, at any location.

Q–A6. Will the IRS give notification to the taxpayer when a NFTL is refiled on or after January 19, 1999?

A–A6. No. Section 6320(a)(1) does not require the IRS to notify the taxpayer of the refiling of a NFTL. A taxpayer may, however, seek reconsideration by the IRS office that is collecting the tax or filing the NFTL, an administrative hearing before Appeals, or assistance from the National Taxpayer Advocate.

Q–A7. Will the IRS give notification to a known nominee of, or person holding property of, the taxpayer of the filing of the NFTL?

A–A7. No. Such person is not the person described in section 6321 and is, therefore, not entitled to notice, but such persons have other remedies. See A–B5 of paragraph (b) of this section.

Q–A8. Will the IRS give notification to the taxpayer when a subsequent NFTL is filed for the same period or periods?

A–A8. Yes. If the IRS files an additional NFTL with respect to the

same tax period or periods for which an original NFTL was filed, the IRS will notify the taxpayer when the subsequent NFTL is filed. Not all such notices will, however, give rise to a right to a CDP hearing (see paragraph (b) of this section).

Q–A9. How will notification under section 6320 be accomplished?

A–A9. The IRS will notify the taxpayer by letter. Included with this letter will be the additional information the IRS is required to provide taxpayers as well as, when appropriate, a Form 12153, Request for a Due Process Hearing. The IRS may effect delivery of the letter (and accompanying materials) in one of three ways: by delivering the notice personally to the taxpayer; by leaving the notice at the taxpayer's dwelling or usual place of business; or by mailing the notice to the taxpayer at his last known address by certified or registered mail.

Q–A10. What must a CDP Notice given under section 6320 include?

A–A10. These notices must include, in simple and nontechnical terms:

(i) The amount of unpaid tax.

(ii) A statement concerning the taxpayer's right to request a CDP hearing during the 30-day period that commences the day after the end of the five-day period described in section 6320(a)(2).

(iii) The administrative appeals available to the taxpayer with respect to the NFTL and the procedures relating to such appeals.

(iv) The statutory provisions and the procedures relating to the release of liens on property.

Q–A11. What are the consequences if the taxpayer does not receive or accept a CDP Notice that is properly left at the taxpayer's dwelling or usual place of business, or sent by certified or registered mail to the taxpayer's last known address?

A–A11. A CDP Notice properly sent by certified or registered mail to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period that commences the day after the end of the five business day notification period within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q–A12. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the end of the five business day notification period?

A–A12. A NFTL becomes effective upon filing. The validity and priority of a NFTL is not conditioned on notification to the taxpayer pursuant to section 6320. Therefore, the failure to notify the taxpayer concerning the filing of a NFTL does not affect the validity or priority of the NFTL. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and an opportunity to request a CDP hearing.

(3) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W will each be notified of the filing of the NFTL.

Example 2. Employment taxes for 1997 are assessed against ABC Corporation. A NFTL is filed against ABC Corporation for the 1997 liability in County X on June 5, 1998. A NFTL is filed against ABC Corporation for the 1997 liability in County Y on June 17, 1999. The IRS will notify the ABC Corporation with respect to the filing of the NFTL in County Y.

Example 3. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will notify D of the filing of the NFTL in both County X and County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the NFTL filed in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(b) *Entitlement to a Collection Due Process hearing (CDP hearing)*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the first filing of a NFTL (on or after January 19, 1999) for a given tax period or periods with respect to the amount of unpaid tax shown on the NFTL if the taxpayer timely requests such a hearing. The taxpayer must request such a hearing during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with notice of the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is a taxpayer entitled to a CDP hearing with respect to the filing of a NFTL for a tax and tax period previously subject to a CDP Notice in a different location?

A–B1. No. Although the taxpayer will receive notice of each filing of the NFTL, under section 6320(b)(2), the taxpayer is entitled to only one CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL that occurs on or after January 19, 1999, with respect to an amount of unpaid tax. Accordingly, if the taxpayer does not timely request a CDP hearing with respect to the first filing of a NFTL on or after January 19, 1999, for a given tax period or periods with respect to an amount of unpaid tax, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination as to the NFTL. Under such circumstances, a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q–B2. Is the taxpayer entitled to a CDP hearing where a NFTL for a tax and tax period is filed on or after January 19, 1999, in one recording office and a NFTL was previously filed in another recording office prior to that date?

A–B2. Yes. Under section 6320(b)(2), the taxpayer is entitled to a CDP hearing under section 6320 for each tax period with respect to the first filing of a NFTL on or after January 19, 1999, with respect to an amount of unpaid tax, whether or not a NFTL was filed prior to January 19, 1999, for the same tax and tax period or periods.

Q–B3. When the IRS provides the taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is he entitled to a CDP hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6320 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6320 CDP Notice was previously sent, is the taxpayer entitled to a second section 6320 CDP hearing?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6320 for a tax and tax period set forth in a NFTL with respect to the first filing of a NFTL that occurs on or after January 19, 1999.

Q–B5. Is a nominee of, or a person holding property of, the taxpayer entitled to a CDP hearing or an equivalent hearing?

A–B5. No. Such person is not the person described in section 6321 and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax or filing the NFTL, an administrative hearing before Appeals under its Collection Appeals Program, or assistance from the National Taxpayer Advocate. However, any such administrative hearing would not be a CDP hearing under section 6320 and any determination or decision resulting from the hearing would not be subject to judicial review. Such person may also avail himself of the administrative procedure included in section 6325(b)(4) of the Internal Revenue Code or of any other procedures to which he is entitled.

(3) *Examples.* The following examples illustrate the principles of this paragraph (b):

Example 1. H and W are jointly and severally liable with respect to a jointly filed income tax return for 1996. The IRS files a NFTL with respect to H and W in County X on January 26, 1999. This is the first NFTL filed on or after January 19, 1999, for their 1996 liability. H and W are each entitled to a CDP hearing with respect to the NFTL filed in County X.

Example 2. Federal income tax liability for 1997 is assessed against individual D. D buys an asset and puts it in individual E's name. A NFTL is filed against D in County X on June 5, 1999, for D's federal income tax liability for 1997. On June 17, 1999, a NFTL for the same tax liability is filed in County Y against E, as nominee of D. The IRS will give D a CDP Notice with respect to the NFTL filed in County X. It will give D notification of the NFTL filed in County Y. The IRS will not notify E of the NFTL filed in County X. The IRS is not required to notify E of the filing of the NFTL in County Y. Although E is named on the NFTL filed in County Y, E is not the person described in section 6321 (the taxpayer) who is named on the NFTL.

(c) *Requesting a CDP hearing*—(1) *In general.* Where a taxpayer is entitled to a CDP hearing under section 6320, such a hearing must be requested during the 30-day period that commences the day after the end of the five business day period within which the IRS is required to provide the taxpayer with a CDP notice with respect to the filing of the NFTL.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. The taxpayer must make a request in writing for a CDP hearing. A written request in any form, which requests a CDP hearing, will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information: the taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN); the type of tax involved; the tax period at issue; a statement that the taxpayer requests a hearing with Appeals concerning the filing of the NFTL; and the reason or reasons why the taxpayer disagrees with the filing of the NFTL. Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6320?

A–C3. A taxpayer must submit a written request for a CDP hearing within the 30-day period that commences the day after the end of the five business day period following the filing of the NFTL. Any request filed during the five business day period (before the beginning of the 30-day period) will be deemed to be filed on the first day of the 30-day period. The period for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6320 is slightly different from the period taxpayers are allowed for submitting a written request for a CDP hearing with respect to a CDP Notice issued under section 6330. For a CDP Notice issued under section 6330, the taxpayer must request a CDP hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules under section 7502 and the regulations under that section and section 7503 and the regulations under that section will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6320 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6320 must request such a hearing within the 30-day period that commences the day after the end of the five business day notification period.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q–C7. What will happen if the taxpayer does not request a section 6320 CDP hearing in writing within the 30-day period that commences the day after

the end of the five business day notification period?

A–C7. If the taxpayer does not request a CDP hearing in writing within the 30-day period that commences on the day after the end of the five business day notification period, the taxpayer will forego the right to a CDP hearing under section 6320 with respect to the tax and tax period or periods shown on the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the NFTL with an officer or employee of the IRS office collecting the tax or filing the NFTL either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period that commences the day after the end of the five business day notification period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax or filing the NFTL, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(3) *Examples.* The following examples illustrate the principles of this paragraph (c):

Example 1. A NFTL for a 1997 income tax liability assessed against individual A is filed in County X on June 17, 1999. The IRS mails a CDP Notice to individual A's last known address on June 18, 1999. Individual A has until July 26, 1999, a Monday, to request a CDP hearing. The five business day period within which the IRS is required to notify individual A of the filing of the NFTL in County X expires on June 24, 1999. The 30-day period within which individual A may request a CDP hearing begins on June 25, 1999. Because the 30-day period expires on July 24, 1999, a Saturday, individual A's written request for a CDP hearing will be considered timely if it is properly transmitted and addressed to the IRS in accordance with section 7502 and the regulations thereunder no later than July 26, 1999.

Example 2. Same facts as in *Example 1,* except that individual A is on vacation, outside the United States, or otherwise does not receive or read the CDP Notice until July 19, 1999. As in (i), individual A has until July 26, 1999, to request a CDP hearing. If individual A does not request a CDP hearing, individual A may request an equivalent hearing as to the NFTL at a later time. The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 3. Same facts as in *Example 2,* except that individual A does not receive or read the CDP Notice until after July 26, 1999, and does not request a hearing by July 26, 1999. Individual A is not entitled to a CDP hearing. Individual A may request an equivalent hearing as to the NFTL at a later time.

The taxpayer should make a request for an equivalent hearing at the earliest possible time.

Example 4. Same facts as in *Example 1,* except the IRS determines that the CDP Notice mailed on June 18, 1999, was not mailed to individual A's last known address. As soon as practicable after making this determination, the IRS will mail a substitute CDP Notice to individual A at individual A's last known address, hand deliver the substitute CDP Notice to individual A, or leave the substitute CDP Notice at individual A's dwelling or usual place of business. Individual A will have 30 days commencing on the day after the date of the substitute CDP Notice within which to request a CDP hearing.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6320(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing for a tax and tax period set forth in a NFTL under section 6320 with respect to the first filing of a NFTL on or after January 19, 1999. To the extent practicable, the CDP hearing requested under section 6320 will be held in conjunction with any CDP hearing the taxpayer requests under section 6330. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a hearing with respect to one tax period shown on the NFTL will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the NFTL.

Q–D3. Will a CDP hearing under section 6320 be combined with a CDP hearing under section 6330?

A–D3. To the extent practicable, a CDP hearing under section 6320 will be held in conjunction with a CDP hearing under section 6330.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may have had with respect to the tax and tax period or periods shown on the NFTL.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with respect to the tax and tax period or periods involved in the CDP hearing?

A–D5. The taxpayer must sign a written waiver.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to the issuance of a determinaton, the hearing officer is required to obtain verification from the IRS office collecting the tax or filing the

NFTL that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability specified on the CDP Notice for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6330 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the NFTL filing.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q–E5. What collection alternatives are available to the taxpayer?

A–E5. Collection alternatives would include, for example, withdrawal of the NFTL in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E6. What issues may a taxpayer raise in a CDP hearing under section 6320 if he previously received a notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the NFTL filing, and offers of collection alternatives. The existence or amount of the tax liability for the tax and tax period specified in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6330 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the tax liability.

Q–E7. How will Appeals issue its determination?

A–E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's findings and decisions. It will state whether the IRS met the requirements of any applicable law or administrative procedure; it will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax; it will include a decision on any appropriate spousal defenses raised by the taxpayer; it will include a decision on any challenges made by the taxpayer to the appropriateness of the NFTL filing; it will respond to any offers by the taxpayer for collection alternatives; and it will address whether the continued existence of the filed NFTL represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary. The Notice of Determination will also set forth any agreements Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(ii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals consideration. Unless as a result of these discussions, the taxpayer agrees to withdraw in writing the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination. The taxpayer can, however, waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A–E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q–E9. Why is the Notice of Determination and its date important?

A–E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3).

The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the taxable year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the opportunity for a conference at which the taxpayer would have the opportunity to dispute the liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing in writing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2, the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal the determination by Appeals to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015 (b) or (c), but also of relief requested with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only seeks Tax Court review of Appeals's denial of relief under section 6015 (b) or (c), the taxpayer should request Tax Court review, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6320, then only the taxpayer's section 6015 (b) or (c) claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability specified in the CDP Notice arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only request that the court consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning the filing of a NFTL?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which the IRS receives the taxpayer's written withdrawal of the request that Appeals conduct a CDP hearing or there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6320 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under sections 6502, 6531, and 6532 be suspended if the taxpayer does not request a CDP hearing concerning the filing of a NFTL, or the taxpayer requests a CDP hearing, but his request is not timely?

A-G2. Under either of these circumstances, section 6320 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the NFTL will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502

would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1,* except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6320 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding the NFTL and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A–H1. No. Under section 6320(b)(2), a taxpayer is entitled to only one section 6320 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a retained jurisdiction hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one section 6320 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences on the day after the end of the five business day period following the filing of the NFTL, that is, CDP hearings.

Q–I3. Will collection action, including the filing of additional NFTLs, be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6320 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals's determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any filing of a NFTL on or after January 19, 1999, and before January 21, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 13, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–1414 Filed 1–19–99; 10:56 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 8809]

RIN 1545–AW76

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the provision of notice to taxpayers of a right to a hearing before levy. The regulations implement certain changes made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998. They affect taxpayers against whose property the IRS intends to levy. The text of these regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: This regulation is effective January 19, 1999.

FOR FURTHER INFORMATION CONTACT: Jerome D. Sekula (202) 622–3610 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) that reflect the addition of section 6330 to the Internal Revenue Code made by section 3401 of the Internal Revenue Service Restructuring and Reform Act of 1998 (RRA).

Prior to January 1, 1983, the IRS was only required to notify a taxpayer of its intention to levy in the case of proposed levies on salary or wages. Section 6331(d) was amended as a part of the Tax Equity and Fiscal Responsibility

Act of 1982 (TEFRA). The TEFRA amendment required the IRS to give a taxpayer a notice of its intention to levy, in non-jeopardy situations, before any levy was made upon the salary, wages, or other property of the taxpayer. The legislative history of the TEFRA amendment recognized that, although a single notice of intent to levy relating to all property would be sufficient, the IRS was not precluded from sending multiple notices of intention to levy.

Under section 6331(a), the IRS may levy upon a taxpayer's property and rights to property if a taxpayer fails to pay a tax liability. Exemptions from levy are provided for certain property under section 6334(a). The first step toward levy generally occurs when the IRS provides a taxpayer with a written notice and demand for payment. Under section 6303, a notice and demand is a notice which states that the tax has been assessed and demands that payment be made. If, in non-jeopardy situations, the taxpayer fails to pay the tax within 10 days after notice and demand, the IRS may seize a taxpayer's property or rights to property 30 days after sending the taxpayer a notice required under section 6331(d), called a Notice of Intent to Levy. Although the notice and demand and the Notice of Intent to Levy may be combined and sent at the same time under Treas. Reg. § 301.6331–2(a)(1), under current practice these two notices are usually sent separately. Generally, the notice and demand is sent first and, as the second step in the levy process, the Notice of Intent to Levy is sent at a later time. The IRS is permitted to proceed with immediate seizure of a taxpayer's property or rights to property without regard to the 10-day waiting period if it determines that the collection of the tax is in jeopardy.

Under section 6331(d), the Notice of Intent to Levy must contain a brief statement, in simple, nontechnical terms, that sets forth (A) the statutory provisions relating to the levy and sale of property, (B) the procedures applicable to the levy and sale of property, (C) the administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals, (D) the alternatives available to taxpayers that could prevent levy on the property (including installment agreements), (E) the statutory provisions relating to redemption of property and the release of liens on property, and (F) the procedures applicable to the redemption of property and the release of a lien on property. The Notice of Intent to Levy must be given in person, left at the taxpayer's dwelling or usual place of business, or sent by registered or certified mail to the taxpayer's last known address.

Prior to January 19, 1999, the IRS generally complied with the requirements of section 6331(d) by giving the taxpayer a Final Notice of Intent to Levy, and enclosing certain IRS publications which explain the law, IRS levy and redemption procedures, administrative appeal processes and procedures, and various collection alternatives.

Section 6330 provides that, except when the Secretary finds that collection of the tax is in jeopardy or a levy is issued to collect State tax refunds due to the taxpayer, no levy may be made on or after January 19, 1999, unless the Secretary notifies the taxpayer in writing of a right to a hearing before the IRS Office of Appeals (Appeals) with respect to the unpaid tax for the tax period. When the Secretary has found jeopardy exists and in cases where a levy is made on a State tax refund, the taxpayer will be given notice of a right to, and the opportunity for, a hearing within a reasonable time after the levy action has actually occurred.

Except when it determines that collection of the tax is in jeopardy or it levies on State tax refunds, the IRS is prohibited from levying upon the taxpayer's property or rights to property until 30 days after providing the taxpayer with the notice of a right to a hearing before Appeals. If the taxpayer requests such a hearing, the IRS is, in the absence of jeopardy, prohibited from levying upon the taxpayer's property until the determination reached by Appeals becomes final.

In order to implement the provisions of section 6330, the IRS is going to modify the procedures it follows leading up to the issuance of a levy. In the absence of a determination that collection of the taxes is in jeopardy, the IRS will continue to provide a number of notices to a taxpayer before levying upon the taxpayer's property.

Under the procedures the IRS is adopting to implement section 6330, the levy process will continue to begin with issuance to the taxpayer of a written notice and demand for payment. Absent a jeopardy determination, a taxpayer who fails to pay the tax specified in the notice and demand within 10 days after notice and demand may, in addition to other notices such as the annual notice of tax delinquency required under section 7524, be sent an Urgent Notice. The Urgent Notice will inform the taxpayer that the IRS may levy upon a taxpayer's State tax refund after 30 days from the date of that notice. This Urgent Notice will include all information required under section 6331(d) and will constitute the notice required under that section. Accordingly, the Urgent Notice will also begin the ten-day period leading to an increase in the failure to pay penalty prescribed by section 6651(d).

These temporary regulations implement the provisions of section 6330 and thus set forth the procedures the IRS will follow regarding notice to taxpayers of a right to a hearing before Appeals, the procedures that will be followed at those hearings, judicial review of the determinations reached at the hearings, and the suspensions of various periods of limitation as a result of a timely request for a hearing. The legislative history accompanying RRA also explains that Congress intended the IRS to grant an equivalent hearing to taxpayers who do not request a hearing under section 6330 within the 30-day period following the date of notification. H. Conf. Rep. No. 599, 105th Cong., 2d Sess. 266 (1998). These temporary regulations set forth the procedural requirements and rules that will govern the conduct of such an equivalent hearing.

Explanation of Provisions

The temporary regulations provide that, except in the case of jeopardy levies or levies on State tax refunds, the IRS must notify the taxpayer of its intention to levy prior to issuing a levy. The notification under section 6330 may be given in person, left at the taxpayer's dwelling or usual place of business, or sent to the taxpayer by certified or registered mail, return receipt requested, to the taxpayer's last known address at least 30 days prior to the first proposed levy action with respect to the amount of the unpaid tax for the tax period. The temporary regulations also provide procedures to be followed in the event the notification, if mailed, is not mailed to the taxpayer's last known address. In jeopardy situations and in cases where a levy is made on a State tax refund, notification to the taxpayer of a right to a hearing is not required to be given until the levy action has actually occurred. The temporary regulations set forth the procedures to be followed for making the required pre-levy and post-levy notifications.

Both such notifications must (A) set forth the amount of unpaid tax, (B) notify the taxpayer of the right to request a hearing within the 30-day period that commences the day after the date of notification, (C) indicate, as appropriate, that the IRS has levied or plans to levy, and (D) describe the rights of the taxpayer with respect to such action, including a brief statement which explains (1) the provisions of the

Internal Revenue Code (Code) relating to levy and sale of property, (2) the procedures applicable to the levy and sale of property under the Code, (3) the administrative appeals available to the taxpayer with respect to such levy and sale and the procedures relating to such appeals, (4) the alternatives available to taxpayers which might forestall future levies on property (including installment agreements under section 6159), and (5) the provisions of the Code and procedures relating to redemption of property and release of liens on property.

Unless the taxpayer withdraws the request that Appeals conduct a hearing when the taxpayer has made a timely request for a collection due process hearing, Appeals will hold one section 6330 collection due process hearing (CDP hearing) with respect to the tax and tax period or periods specified in the collection due process notice (CDP Notice). The taxpayer is entitled to have a hearing conducted by an Appeals officer who has had no prior involvement with the unpaid tax that is the subject of the hearing. This requirement, however, can be waived by the taxpayer in writing. A taxpayer may seek judicial review of an Appeals determination issued with respect to a CDP hearing. Hearings with respect to levies may be held in conjunction with hearings under section 6320, involving liens.

If the taxpayer timely requests a CDP hearing, the periods of limitation relating to collection after assessment, relating to criminal prosecution, and relating to suits are suspended until the suspension ends as a result of the taxpayer's withdrawal of the request for a CDP hearing or until the determination reached at the CDP hearing becomes final by the expiration of the time for seeking review or reconsideration before the appropriate court. Prior to issuance of the Appeals determination, the Appeals officer must verify that all legal and administrative requirements pertaining to the proposed levy have been met. The temporary regulations further discuss the types of issues that may or may not be raised at the CDP hearing. The types of issues that may be raised at the hearing include appropriate spousal defenses; challenges to the appropriateness of collection actions; collection alternatives; and challenges to the existence or amount of the liability specified in the CDP Notice. An issue may not be raised at the CDP hearing if the issue was raised and considered at a previous hearing under section 6320 or any other previous administrative or judicial proceeding in which the taxpayer meaningfully participated. Challenges to the existence or amount of the tax liability specified in the CDP Notice may be raised only if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability.

Following the CDP hearing, the Appeals officer will issue a Notice of Determination, which can be appealed to the United States Tax Court or a district court of the United States by filing an appropriate pleading with the court that has jurisdiction over the type of tax involved within 30 days of the date of the determination. The temporary regulations discuss the content of the Notice of Determination and the rules for obtaining judicial review. The temporary regulations also provide guidance as to the extent to which the Appeals officer will retain jurisdiction with respect to the determination.

Lastly, the temporary regulations provides rules and procedures with respect to the administrative hearing (referred to as an ''equivalent hearing'') the IRS will provide to taxpayers who do not timely request a hearing under section 6330.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553 (b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) refer to the Special Analyses section of the preamble to the cross reference notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. 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 this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). However, other personnel from the IRS and Treasury Department participated in its 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 301.6330–1T is added under the undesignated centerheading ''Seizure of Property for collection of Taxes'' under the undesignated centerheading ''Seizure of Property for Collection of Taxes'' to read as follows:

§ 301.6330–1T Notice and opportunity for hearing prior to levy (temporary).

(a) *Notification*—(1) *In general.* Except as specified in paragraph (a)(2) of this section, the district directors, directors of service centers, and the Assistant Commissioner (International), or their successors, are required to provide persons upon whose property or rights to property the IRS intends to levy on or after January 19, 1999, notice of that intention and to give them the right to, and the opportunity for, a pre-levy Collection Due Process hearing (CDP hearing) with the Internal Revenue Service Office of Appeals (Appeals). This Collection Due Process Hearing Notice (CDP Notice) must be given in person, left at the dwelling or usual place of business of such person, or sent by certified or registered mail, return receipt requested, to such person's last known address.

(2) *Exceptions*—(i) *State tax refunds.* Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to a CDP hearing prior to issuing a levy to collect State tax refunds owing to the taxpayer. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to give notice of the right to, and the opportunity for, a CDP hearing with Appeals with respect to the tax liability for the tax period for which the levy on the State tax refund was made on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a levy on a State tax refund is referred to as a post-levy CDP Notice.

(ii) *Jeopardy.* Section 6330 does not require the IRS to provide the taxpayer a notification of the taxpayer's right to

a CDP hearing prior to levy when there has been a determination that collection of the tax is in jeopardy. However, the district director, the service center director, and the Assistant Commissioner (International), or their successors, are required to provide notice of the right to, and the opportunity for, a CDP hearing with Appeals to the taxpayer with respect to any such levy issued on or after January 19, 1999, within a reasonable time after the levy has occurred. The notification required to be given following a jeopardy levy is also referred to as post-levy CDP Notice.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (a) as follows:

Q–A1. Who is the ''person'' to be notified under section 6330? A–A1. Under section 6330(a)(1), a pre-levy or post-levy CDP Notice is only required to be given to the person whose property or right to property is intended to be levied upon, or, in the case of a levy made on a State tax refund or in the case of a jeopardy levy, the person whose property or right to property was levied upon. The person described in section 6330(a)(1) is the same person described in section 6331(a). Pursuant to section 6331(a), notice is to be given to the person liable to pay the tax due after notice and demand who refuses or neglects to pay (hereinafter referred to as the taxpayer).

Q–A2. Will the IRS notify a known nominee of, a person holding property of, or a person who holds property subject to a lien with respect to the taxpayer of its intention to issue a levy?

A–A2. No. Such a person is not the person described in section 6331(a), but such persons have other remedies. See A–B5 of this paragraph (a)(3).

Q–A3. Will the IRS give notification for each tax and tax period it intends to include or has included in a levy issued on or after January 19, 1999?

A–A3. Yes. The notification of intent to levy or of the issuance of a jeopardy or State tax refund levy will specify each tax and tax period that will be or was included in the levy.

Q–A4. Will the IRS give notification to a taxpayer with respect to levies for a tax and tax period issued on or after January 19, 1999, even though the IRS had issued a levy prior to January 19, 1999, with respect to the same tax and tax period?

A–A4. Yes. The IRS will provide appropriate pre-levy or post-levy notification to a taxpayer regarding the first levy it intends to issue or has issued on or after January 19, 1999, with respect to a tax and tax period, even though it had issued a levy with respect to that same tax and tax period prior to January 19, 1999.

Q–A5. When will the IRS provide this notice?

A–A5. Pursuant to section 6330(a)(1), beginning January 19, 1999, the IRS will give a pre-levy CDP Notice to the taxpayer of its intent to levy on property or rights to property, other than State tax refunds and in jeopardy levy situations, at least 30 days prior to the first such levy with respect to a tax and tax period. If the taxpayer has not received a pre-levy CDP Notice and the IRS levies on a State tax refund or issues a jeopardy levy on or after January 19, 1999, the IRS will provide a post-levy CDP Notice to the taxpayer within a reasonable time after that levy.

Q–A6. What must the pre-levy CDP Notice include?

A–A6. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS intends to levy.

(iv) The taxpayers's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedure applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent levy on the property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q–A7. What must the post-levy CDP Notice include?

A–A7. Pursuant to section 6330(a)(3), the notification must include, in simple and nontechnical terms:

(i) The amount of the unpaid tax.

(ii) Notification of the right to a hearing.

(iii) A statement that the IRS has levied upon the taxpayer's State tax refund or has made a jeopardy levy on property or rights to property of the taxpayer, as appropriate.

(iv) The taxpayer's rights with respect to the levy action, including a brief statement that sets forth—

(A) The statutory provisions relating to the levy and sale of property;

(B) The procedures applicable to the levy and sale of property;

(C) The administrative appeals available to the taxpayer with respect to levy and sale and the procedures relating to those appeals;

(D) The alternatives available to taxpayers that could prevent any further levies on the taxpayer's property (including installment agreements);

(E) The statutory provisions relating to redemption of property and the release of liens on property; and

(F) The procedures applicable to the redemption of property and the release of liens on property.

Q–A8. How will this pre-levy or post-levy notification be accomplished?

A–A8. (i) The IRS will notify the taxpayer by means of a pre-levy CDP Notice or a post-levy CDP Notice, as appropriate. The additional information IRS is required to provide, together with Form 12153, Request for a Collection Due Process Hearing, will be included with that Notice. The IRS may effect delivery of a pre-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail, return receipt requested.

(ii) The IRS may effect delivery of a post-levy CDP Notice (and accompanying materials) in one of three ways:

(A) By delivering the notice personally to the taxpayer.

(B) By leaving the notice at the taxpayer's dwelling or usual place of business.

(C) By mailing the notice to the taxpayer at the taxpayer's last known address by certified or registered mail.

Q–A9. What are the consequences if the taxpayer does not receive or accept the notification which was properly left at the taxpayer's dwelling or usual place of business, or properly sent by certified or registered mail, return receipt requested, to the taxpayer's last known address?

A–A9. Notification properly sent to the taxpayer's last known address or left at the taxpayer's dwelling or usual place of business is sufficient to start the 30-day period within which the taxpayer may request a CDP hearing. Actual receipt is not a prerequisite to the validity of the notice.

Q–A10. What if the taxpayer does not receive the CDP Notice because the IRS did not send that notice by certified or

registered mail to the taxpayer's last known address, or failed to leave it at the dwelling or usual place of business of the taxpayer, and the taxpayer fails to request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice?

A–A10. When the IRS determines that it failed properly to provide a taxpayer with a CDP Notice, it will promptly provide the taxpayer with a substitute CDP Notice and provide the taxpayer with an opportunity to request a CDP hearing.

(4) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Prior to January 19, 1999, the IRS issues a continuous levy on a taxpayer's wages and a levy on that taxpayer's fixed right to future payments. The IRS is not required to release either levy on or after January 19, 1999, until the requirements of section 6343(a)(1) are met. The taxpayer is not entitled to a CDP Notice or a CDP hearing under section 6330 with respect to either levy because both levy actions were initiated prior to January 19, 1999.

Example 2. The same facts as in *Example 1,* except the IRS intends to levy upon a taxpayer's bank account on or after January 19, 1999. The taxpayer is entitled to a pre-levy CDP Notice with respect to this proposed new levy.

(b) *Entitlement to a CDP hearing*—(1) *In general.* A taxpayer is entitled to one CDP hearing with respect to the tax and tax period covered by the pre-levy or post-levy CDP Notice provided the taxpayer. The taxpayer must request such a hearing within the 30-day period commencing on the day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (b) as follows:

Q–B1. Is the taxpayer entitled to a CDP hearing where a levy for State tax refunds is served on or after January 19, 1999, even though the IRS had previously served other levies prior to January 19, 1999, seeking to collect the taxes owed for the same period?

A–B1. Yes. The taxpayer is entitled to a CDP hearing under section 6330 for the tax and tax period set forth in such a levy issued on or after January 19, 1999.

Q–B2. Is the taxpayer entitled to a CDP hearing when the IRS, more than 30 days after issuance of a CDP Notice with respect to a tax period, provides subsequent notice to that taxpayer that it intends to levy on property or rights to property of the taxpayer for the same tax and tax period shown on the CDP Notice?

A–B2. No. Under section 6330, only the first pre-levy or post-levy Notice with respect to liabilities for a tax and tax period constitutes a CDP Notice. If the taxpayer does not timely request a CDP hearing with Appeals following that first notification, the taxpayer foregoes the right to a CDP hearing with Appeals and judicial review of Appeals's determination with respect to collection activity relating to that tax and tax period. The IRS generally provides additional notices or reminders (reminder notifications) to the taxpayer of its intent to levy when no collection action has occurred within 180 days of a proposed levy. Under such circumstances a taxpayer, however, may request an equivalent hearing as described in paragraph (i) of this section.

Q–B3. When the IRS provides a taxpayer with a substitute CDP Notice and the taxpayer timely requests a CDP hearing, is the taxpayer entitled to a CDP Hearing before Appeals?

A–B3. Yes. Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, the taxpayer is entitled to a CDP hearing before Appeals. Following the hearing, Appeals will issue a Notice of Determination, and the taxpayer is entitled to seek judicial review of that Notice of Determination.

Q–B4. If the IRS sends a second CDP Notice under section 6330 (other than a substitute CDP Notice) for a tax period and with respect to an amount of unpaid tax for which a section 6330 CDP Notice was previously sent, is the taxpayer entitled to a second section 6330 CDP hearing?

A–B4. No. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period. The taxpayer must request the CDP hearing within 30 days of the date of the first CDP Notice provided for that tax and tax period.

Q–B5. Will the IRS give pre-levy or post-levy CDP Notices to known nominees of, persons holding property of, or persons holding property subject to a lien with respect to the taxpayer?

A–B5. No. Such person is not the person described in section 6331(a) and is, therefore, not entitled to a CDP hearing or an equivalent hearing (as discussed in paragraph (i) of this section). Such person, however, may seek reconsideration by the IRS office collecting the tax, assistance from the National Taxpayer Advocate, or an administrative hearing before Appeals under its Collection Appeals Program. However, any such administrative hearing would not be a CDP hearing under section 6330 and any determination or decision resulting from the hearing would not be subject to judicial review.

(c) *Requesting a CDP hearing*—(1) *In general.* Where a taxpayer is entitled to a CDP hearing under section 6330, such a hearing must be requested during the 30-day period that commences that day after the date of the CDP Notice.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (c) as follows:

Q–C1. What must a taxpayer do to obtain a CDP hearing?

A–C1. (i) The taxpayer must make a request in writing for a CDP hearing. A written request in any form which requests a CDP hearing will be acceptable. The request must include the taxpayer's name, address, and daytime telephone number, and must be signed by the taxpayer or the taxpayer's authorized representative and dated. Included with the CDP Notice will be a Form 12153, Request for a Collection Due Process Hearing, that can be used by the taxpayer in requesting a CDP hearing. The Form 12153 requests the following information:

(A) The taxpayer's name, address, daytime telephone number, and taxpayer identification number (SSN or TIN).

(B) The type of tax involved.

(C) The tax period at issue.

(D) A statement that the taxpayer requests a hearing with Appeals concerning the proposed collection activity.

(E) The reason or reasons why the taxpayer disagrees with the proposed collection action.

(ii) Taxpayers are encouraged to use a Form 12153 in requesting a CDP hearing so that such a request can be readily identified and forwarded to Appeals. Taxpayers may obtain a copy of Form 12153 by contacting the IRS office that issued the CDP Notice or by calling, toll free, 1–800–829–3676.

Q–C2. Must the request for the CDP hearing be in writing?

A–C2. Yes. There are several reasons why the request for a CDP hearing must be in writing. First, the filing of a timely request for a CDP hearing is the first step in what may result in a court proceeding. A written request will provide proof that the CDP hearing was requested and thus permit the court to verify that it has jurisdiction over any subsequent appeal of the Notice of Determination issued by Appeals. In addition, the receipt of the written request will establish the date on which the periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section

6532 (relating to suits) are suspended as a result of the CDP hearing and any judicial appeal. Moreover, because the IRS anticipates that taxpayers will contact the IRS office that issued the CDP Notice for further information, for help in filling out Form 12153, or in an attempt to resolve their liabilities prior to going through the CDP hearing process, the requirement of a written request should help to prevent any misunderstanding as to whether a CDP hearing has been requested. If the information requested on Form 12153 is furnished by the taxpayer, the written request will also help to establish the issues for which the taxpayer seeks a determination by Appeals.

Q–C3. When must a taxpayer request a CDP hearing with respect to a CDP Notice issued under section 6330?

A–C3. A taxpayer must submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6330 within the 30-day period commencing the day after the date of the CDP Notice. This period is slightly different from the period allowed taxpayers to submit a written request for a CDP hearing with respect to a CDP Notice issued under section 6320. For a CDP Notice issued under section 6320, a taxpayer must submit a written request for a CDP hearing within the 30-day period commencing the day after the end of the five business day period following the filing of the notice of federal tax lien (NFTL).

Q–C4. How will the timeliness of a taxpayer's written request for a CDP hearing be determined?

A–C4. The rules under section 7502 and the regulations thereunder and section 7503 and the regulations thereunder will apply to determine the timeliness of the taxpayer's request for a CDP hearing, if properly transmitted and addressed as provided in A–C6 of this paragraph (c)(2).

Q–C5. Is the 30-day period within which a taxpayer must make a request for a CDP hearing extended because the taxpayer resides outside the United States?

A–C5. No. Section 6330 does not make provision for such a circumstance. Accordingly, all taxpayers who want a CDP hearing under section 6330 must request such a hearing within the 30-day period commencing the day after the date of the CDP Notice.

Q–C6. Where should the written request for a CDP hearing be sent?

A–C6. The written request for a CDP hearing should be filed with the IRS office that issued the CDP Notice at the address indicated on the CDP Notice. If the address of that office is not known, the request may be sent to the District Director serving the district of the taxpayer's residence or principal place of business. If the taxpayer does not have a residence or principal place of business in the United States, the request may be sent to the Director, Philadelphia Service Center.

Q–C7. What will happen if the taxpayer does not request a section 6330 CDP hearing in writing within the 30-day period commencing on the day after the date of the CDP Notice?

A–C7. If the taxpayer does not request a CDP hearing with Appeals within the 30-day period commencing the day after the date of the CDP Notice, the taxpayer will forego the right to a CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. In addition, the IRS will be free to pursue collection action at the conclusion of the 30-day period following the date of the CDP Notice. The taxpayer may, however, request an equivalent hearing. See paragraph (i) of this section.

Q–C8. When must a taxpayer request a CDP hearing with respect to a substitute CDP Notice?

A–C8. A CDP hearing with respect to a substitute CDP Notice must be requested in writing by the taxpayer prior to the end of the 30-day period commencing the day after the date of the substitute CDP Notice.

Q–C9. Can taxpayers attempt to resolve the matter of the proposed levy with an officer or employee of the IRS office collecting the tax liability stated on the CDP Notice either before or after requesting a CDP hearing?

A–C9. Yes. Taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax, either before or after they request a CDP hearing. If such a discussion occurs before a request is made for a CDP hearing, the matter may be resolved without the need for Appeals consideration. However, these discussions do not suspend the running of the 30-day period within which the taxpayer is required to request a CDP hearing, nor do they extend that 30-day period. If discussions occur after the request for a CDP hearing is filed and the taxpayer resolves the matter with the IRS office collecting the tax, the taxpayer may withdraw in writing the request that a CDP hearing be conducted by Appeals. The taxpayer can also waive in writing some or all of the requirements regarding the contents of the Notice of Determination.

(d) *Conduct of CDP hearing*—(1) *In general.* If a taxpayer requests a CDP hearing under section 6330(a)(3)(B) (and does not withdraw that request), the CDP hearing will be held with Appeals. The taxpayer is entitled to only one CDP hearing under section 6330 with respect to the tax and tax period or periods shown on the CDP Notice. To the extent practicable, the CDP hearing requested under section 6330 will be held in conjunction with any CDP hearing the taxpayer requests under section 6320. A CDP hearing will be conducted by an employee or officer of Appeals who has had no involvement with respect to the tax for the tax period or periods covered by the hearing prior to the first CDP hearing under section 6320 or section 6330, unless the taxpayer waives that requirement.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (d) as follows:

Q–D1. Under what circumstances can a taxpayer receive more than one CDP hearing with respect to a tax period?

A–D1. The taxpayer may receive more than one CDP hearing with respect to a tax period where the tax involved is a different type of tax (for example, an employment tax liability, where the original CDP hearing for the tax period involved an income tax liability), or where the same type of tax for the same period is involved, but where the amount of the tax has changed as a result of an additional assessment of tax for that period or an additional accuracy-related or filing delinquency penalty has been assessed. The taxpayer is not entitled to another CDP hearing if the additional assessment represents accruals of interest or accruals of penalties.

Q–D2. Will a CDP hearing with respect to one tax period be combined with a CDP hearing with respect to another tax period?

A–D2. To the extent practicable, a hearing with respect to one tax period shown on a CDP Notice will be combined with any and all other hearings to which the taxpayer may be entitled with respect to other tax periods shown on the CDP Notice.

Q–D3. Will a CDP hearing under section 6330 be combined with a CDP hearing under section 6320?

A–D3. To the extent it is practicable, a CDP hearing under section 6330 will be held in conjunction with a CDP hearing under section 6320.

Q–D4. What is considered to be prior involvement by an employee or officer of Appeals with respect to the tax and tax period or periods involved in the hearing?

A–D4. Prior involvement by an employee or officer of Appeals includes participation or involvement in an Appeals hearing (other than a CDP hearing held under either section 6320 or section 6330) that the taxpayer may

have had with respect to the tax and tax period shown on the CDP Notice.

Q–D5. How can a taxpayer waive the requirement that the officer or employee of Appeals had no prior involvement with respect to the tax and tax period or periods?

A–D5. The taxpayer must sign a written waiver.

(e) *Matters considered at CDP hearing*—(1) *In general.* Appeals has the authority to determine the validity, sufficiency, and timeliness of any CDP Notice given by the IRS and of any request for a CDP hearing that is made by a taxpayer. Prior to issuance of a determination, the hearing officer is required to obtain verification from the IRS office collecting the tax that the requirements of any applicable law or administrative procedure have been met. The taxpayer may raise any relevant issue relating to the unpaid tax at the hearing, including appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The taxpayer also may raise challenges to the existence or amount of the tax liability for any tax period shown on the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for that tax liability or did not otherwise have an opportunity to dispute that tax liability. Finally, the taxpayer may not raise an issue that was raised and considered at a previous CDP hearing under section 6320 or in any other previous administrative or judicial proceeding if the taxpayer participated meaningfully in such hearing or proceeding. Taxpayers will be expected to provide all relevant information requested by Appeals, including financial statements, for its consideration of the facts and issues involved in the hearing.

(2) *Spousal defenses.* A taxpayer may raise any appropriate spousal defenses at a CDP hearing. To claim a spousal defense under section 6015, the taxpayer must do so in writing according to rules prescribed by the Secretary. Spousal defenses raised under section 6015 in a CDP hearing are governed in all respects by the provisions of section 6015 and the procedures prescribed by the Secretary thereunder.

(3) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (e) as follows:

Q–E1. What factors will Appeals consider in making its determination?

A–E1. Appeals will consider the following matters in making its determination:

(i) Whether the IRS met the requirements of any applicable law or administrative procedure.

(ii) Any issues appropriately raised by the taxpayer relating to the unpaid tax.

(iii) Any appropriate spousal defenses raised by the taxpayer.

(iv) Any challenges made by the taxpayer to the appropriateness of the proposed collection action.

(v) Any offers by the taxpayer for collection alternatives.

(vi) Whether the proposed collection action balances the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

Q–E2. When is a taxpayer entitled to challenge the existence or amount of the tax liability specified in the CDP Notice?

A–E2. A taxpayer is entitled to challenge the existence or amount of the tax liability specified in the CDP Notice if the taxpayer did not receive a statutory notice of deficiency for such liability or did not otherwise have an opportunity to dispute such liability. Receipt of a statutory notice of deficiency for this purpose means receipt in time to petition the Tax Court for a redetermination of the deficiency asserted in the notice of deficiency. An opportunity to dispute a liability includes a prior opportunity for a conference with Appeals that was offered either before or after the assessment of the liability.

Q–E3. Are spousal defenses subject to the limitations imposed under section 6330(c)(2)(B) on a taxpayer's right to challenge the tax liability specified in the CDP Notice at a CDP hearing?

A–E3. No. The limitations imposed under section 6330(c)(2)(B) do not apply to spousal defenses. A spousal defense raised under section 6015 is governed by that section; therefore any limitations under section 6015 will apply.

Q–E4. May a taxpayer raise at a CDP hearing a spousal defense under section 6015 if that defense was raised and considered in a prior judicial proceeding that has become final?

A–E4. No. A taxpayer is precluded by limitations under section 6015 from raising a spousal defense under section 6015 in a CDP hearing under these circumstances.

Q–E5. What collection alternatives are available to the taxpayer?

A–E5. Collection alternatives would include, for example, a proposal to withhold the proposed or future collection action in circumstances that will facilitate the collection of the tax liability, an installment agreement, an offer-in-compromise, the posting of a bond, or the substitution of other assets.

Q–E6. What issues may a taxpayer raise in a CDP hearing under section 6330 if he previously received a notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that notice?

A–E6. The taxpayer may raise appropriate spousal defenses, challenges to the appropriateness of the proposed collection action, and offers of collection alternatives. The existence or amount of the tax liability for the tax for the tax period shown in the CDP Notice may be challenged only if the taxpayer did not already have an opportunity to dispute that tax liability. Where the taxpayer previously received a CDP Notice under section 6320 with respect to the same tax and tax period and did not request a CDP hearing with respect to that earlier CDP Notice, the taxpayer already had an opportunity to dispute the existence or amount of the underlying tax liability.

Q–E7. How will Appeals issue its determination?

A–E7. (i) Taxpayers will be sent a dated Notice of Determination by certified or registered mail. The Notice of Determination will set forth Appeals's findings and decisions:

(A) It will state whether the IRS met the requirements of any applicable law or administrative procedure.

(B) It will resolve any issues appropriately raised by the taxpayer relating to the unpaid tax.

(C) It will include a decision on any appropriate spousal defenses raised by the taxpayer.

(D) It will include a decision on any challenges made by the taxpayer to the appropriateness of the collection action.

(E) It will respond to any offers by the taxpayer for collection alternatives.

(F) It will address whether the proposed collection action represents a balance between the need for the efficient collection of taxes and the legitimate concern of the taxpayer that any collection action be no more intrusive than necessary.

(ii) The Notice of Determination will also set forth any agreements that Appeals reached with the taxpayer, any relief given the taxpayer, and any actions the taxpayer and/or the IRS are required to take. Lastly, the Notice of Determination will advise the taxpayer of his right to seek judicial review within 30 days of the date of the Notice of Determination.

(iii) Because taxpayers are encouraged to discuss their concerns with the IRS office collecting the tax or filing the NFTL, certain matters that might have been raised at a CDP hearing may be resolved without the need for Appeals

consideration. Unless as a result of these discussions, the taxpayer agrees in writing to withdraw the request that Appeals conduct a CDP hearing, Appeals will still issue a Notice of Determination, but the taxpayer can waive in writing Appeals's consideration of some or all of the matters it would otherwise consider in making its determination.

Q–E8. Is there a time limit on the CDP hearings or on when Appeals must issue a Notice of Determination?

A–E8. No. Appeals will, however, attempt to conduct CDP hearings as expeditiously as possible.

Q–E9. Why is the Notice of Determination and its date important?

A–E9. The Notice of Determination will set forth Appeals's findings and decisions with respect to the matters set forth in A–E1 of this paragraph (e)(3). The date of the Notice of Determination establishes the beginning date of the 30-day period within which the taxpayer is permitted to seek judicial review of Appeals's determination.

(4) *Examples.* The following examples illustrate the principles of this paragraph (e).

Example 1. The IRS sends a statutory notice of deficiency to the taxpayer at his last known address asserting a deficiency for the tax year 1995. The taxpayer receives the notice of deficiency in time to petition the Tax Court for a redetermination of the asserted deficiency. The taxpayer does not timely file a petition with the Tax Court. The taxpayer is therefore precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 2. Same facts as in *Example 1*, except the taxpayer does not receive the notice of deficiency in time to petition the Tax Court. The taxpayer is not, therefore, precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

Example 3. The IRS properly assesses a trust fund recovery penalty against the taxpayer. The IRS offers the taxpayer the opportunity for a conference at which the taxpayer would have the opportunity to dispute the assessed liability. The taxpayer declines the opportunity to participate in such a conference. The taxpayer is precluded from challenging the existence or amount of the tax liability in a subsequent CDP hearing.

(f) *Judicial review of Notice of Determination*—(1) *In general.* Unless the taxpayer provides the IRS a written withdrawal of the request that Appeals conduct a CDP hearing, Appeals is required to issue a Notice of Determination in all cases where a taxpayer has timely requested a CDP hearing. The taxpayer may appeal such determinations made by Appeals within 30 days after the date of the Notice of Determination to the Tax Court or a district court of the United States, as appropriate.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (f) as follows:

Q–F1. What must a taxpayer do to obtain judicial review of a Notice of Determination?

A–F1. Subject to the jurisdictional limitations described in A–F2 of this paragraph (f)(2), the taxpayer must, within the 30-day period commencing the day after the date of the Notice of Determination, appeal Appeals's determination to the Tax Court or to a district court of the United States.

Q–F2. With respect to the relief available to the taxpayer under section 6015(b) or (c), what is the time frame within which a taxpayer may seek Tax Court review of Appeals's determination following a CDP hearing?

A–F2. If the taxpayer seeks Tax Court review not only of Appeals's denial of relief under section 6015(b) or (c), but also of relief with respect to other issues raised in the CDP hearing, the taxpayer should request Tax Court review within the 30-day period commencing the day after the date of the Notice of Determination. If the taxpayer only wants Tax Court review of Appeals's denial of relief under section 6015(b) or (c), the taxpayer should request review by the Tax Court, as provided by section 6015(e), within 90 days of Appeals's determination. If a request for Tax Court review is filed after the 30-day period for seeking judicial review under section 6330, then only the taxpayer's section 6015(b) or (c) claims may be reviewable by the Tax Court.

Q–F3. Where should a taxpayer direct a request for judicial review of a Notice of Determination?

A–F3. If the Tax Court would have jurisdiction over the type of tax specified in the CDP Notice (for example, income and estate taxes), then the taxpayer must seek judicial review by the Tax Court. If the tax liability arises from a type of tax over which the Tax Court would not have jurisdiction, then the taxpayer must seek judicial review by a district court of the United States in accordance with Title 28 of the United States Code.

Q–F4. What happens if the taxpayer timely appeals Appeals's determination to the incorrect court?

A–F4. If the court to which the taxpayer directed a timely appeal of the Notice of Determination determines that the appeal was to the incorrect court (because of jurisdictional, venue or other reasons), the taxpayer will have 30 days after the court's determination to that effect within which to file an appeal to the correct court.

Q–F5. What issue or issues may the taxpayer raise before the Tax Court or before a district court if the taxpayer disagrees with the Notice of Determination?

A–F5. In seeking Tax Court or district court review of Appeals's Notice of Determination, the taxpayer can only ask the court to consider an issue that was raised in the taxpayer's CDP hearing.

(g) *Effect of request for CDP hearing and judicial review on periods of limitation*—(1) *In general.* The periods of limitation under section 6502 (relating to collection after assessment), section 6531 (relating to criminal prosecutions), and section 6532 (relating to suits) are suspended until the date the IRS receives the taxpayer's written withdrawal of the request for a CDP hearing by Appeals or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the date on which the determination with respect to such hearing becomes final upon expiration of the time for seeking review or reconsideration.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (g) as follows:

Q–G1. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 remain suspended if the taxpayer timely requests a CDP hearing concerning a pre-levy or post-levy CDP Notice?

A–G1. The suspension period commences on the date the IRS receives the taxpayer's written request for a CDP hearing. The suspension period continues until the IRS receives a written withdrawal by the taxpayer of the request for a CDP hearing or the determination resulting from the CDP hearing becomes final by expiration of the time for seeking its review or reconsideration. In no event shall any of these periods of limitation expire before the 90th day after the day on which there is a final determination with respect to such hearing. The periods of limitation that are suspended under section 6330 are those which apply to the taxes and the tax period or periods to which the CDP Notice relates.

Q–G2. For what period of time will the periods of limitation under section 6502, section 6531, and section 6532 be suspended if the taxpayer does not request a CDP hearing concerning the CDP Notice, or the taxpayer requests a

CDP hearing, but his request is not timely?

A–G2. Under either of these circumstances, section 6330 does not provide for a suspension of the periods of limitation.

(3) *Examples.* The following examples illustrate the principles of this paragraph (g).

Example 1. The period of limitation under section 6502 with respect to the taxpayer's tax period listed in the CDP Notice will expire on August 1, 1999. The IRS sent a CDP Notice to the taxpayer on April 30, 1999. The taxpayer timely requested a CDP hearing. The IRS received this request on May 15, 1999. Appeals sends the taxpayer its determination on June 15, 1999. The taxpayer timely seeks judicial review of that determination. The period of limitation under section 6502 would be suspended from May 15, 1999, until the determination resulting from that hearing becomes final by expiration of the time for seeking review or reconsideration before the appropriate court, plus 90 days.

Example 2. Same facts as in *Example 1,* except the taxpayer does not seek judicial review of Appeals's determination. Because the taxpayer requested the CDP hearing when fewer than 90 days remained on the period of limitation, the period of limitation will be extended to October 13, 1999 (90 days from July 15, 1999).

(h) *Retained jurisdiction of Appeals*—(1) *In general.* The Appeals office that makes a determination under section 6330 retains jurisdiction over that determination, including any subsequent administrative hearings that may be requested by the taxpayer regarding levies and any collection actions taken or proposed with respect to Appeals's determination. Once a taxpayer has exhausted his other remedies, Appeals's retained jurisdiction permits it to consider whether a change in the taxpayer's circumstances affects its original determination. Where a taxpayer alleges a change in circumstances that affects Appeals's original determination, Appeals may consider whether changed circumstances warrant a change in its earlier determination.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (h) as follows:

Q–H1. Are the periods of limitation suspended during the course of any subsequent Appeals consideration of the matters raised by a taxpayer when the taxpayer invokes the retained jurisdiction of Appeals under section 6330(d)(2)(A) or (d)(2)(B)?

A–H1. No. Under section 6330(b)(2), a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods to which the unpaid tax relates. Any subsequent consideration by Appeals pursuant to its retained jurisdiction is not a continuation of the original CDP hearing and does not suspend the periods of limitation.

Q–H2. Is a decision of Appeals resulting from a subsequent hearing appealable to the Tax Court or a district court?

A–H2. No. As discussed in A–H1, a taxpayer is entitled to only one section 6330 CDP hearing with respect to the tax and tax period or periods specified in the CDP Notice. Only determinations resulting from CDP hearings are appealable to the Tax Court or a district court.

(i) *Equivalent hearing*—(1) *In general.* A taxpayer who fails to make a timely request for a CDP hearing is not entitled to a CDP hearing. Such a taxpayer may nevertheless request an administrative hearing with Appeals, which is referred to herein as an ''equivalent hearing.'' The equivalent hearing will be held by Appeals and will generally follow Appeals procedures for a CDP hearing. Appeals will not, however, issue a Notice of Determination. Under such circumstances, Appeals will issue a Decision Letter.

(2) *Questions and answers.* The questions and answers illustrate the provisions of this paragraph (i) as follows:

Q–I1. What issues will Appeals consider at an equivalent hearing?

A–I1. In an equivalent hearing, Appeals will consider the same issues that it would have considered at a CDP hearing on the same matter.

Q–I2. Are the periods of limitation under sections 6502, 6531, and 6532 suspended if the taxpayer does not timely request a CDP hearing and is subsequently given an equivalent hearing?

A–I2. No. The suspension period provided for in section 6330(e) relates only to hearings requested within the 30-day period that commences the day following the date of the pre-levy or post-levy CDP Notice, that is, CDP hearings.

Q–I3. Will collection action be suspended if a taxpayer requests and receives an equivalent hearing?

A–I3. Collection action is not required to be suspended. Accordingly, the decision to take collection action during the pendency of an equivalent hearing will be determined on a case-by-case basis. Appeals may request the IRS office with responsibility for collecting the taxes to suspend all or some collection action or to take other appropriate action if it determines that such action is appropriate or necessary under the circumstances.

Q–I4. What will the Decision Letter state?

A–I4. The Decision Letter will generally contain the same information as a Notice of Determination.

Q–I5. Will a taxpayer be able to obtain court review of a decision made by Appeals with respect to an equivalent hearing?

A–I5. Section 6330 does not authorize a taxpayer to appeal the decision of Appeals with respect to an equivalent hearing. A taxpayer may under certain circumstances be able to seek Tax Court review of Appeals's denial of relief under section 6015(b) or (c). Such review must be sought within 90 days of the issuance of Appeals' determination on those issues, as provided by section 6015(e).

(j) *Effective date.* This section is applicable with respect to any levy which occurs on or after January 19, 1999, and before January 21, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: January 13, 1999.

Donald C. Lubick,

Assistant Secretary of the Treasury.

[FR Doc. 99–1412 Filed 1–19–99; 10:56 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 913

[SPATS No. IL–093–FOR]

Illinois Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Illinois abandoned mine land reclamation plan (Illinois plan) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Illinois proposed revisions and additions to the Illinois plan relating to agency reorganization, legal opinion, definitions, project priorities, utilities and other facilities, eligible coal lands and water, eligible non-coal lands and water, project selection, annual grant process, liens, rights of entry, public participation, bidding requirements and conditions, contracts, and contractor responsibility. The amendment is intended to revise the Illinois plan to be consistent with the corresponding

Federal regulations and SMCRA and improve operational efficiency.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew R. Gilmore, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, Room 301, Indianapolis, Indiana 46204–1521, Telephone (317) 226–6700.

SUPPLEMENTARY INFORMATION:

I. Background on the Illinois Plan

On June 1, 1982, the Secretary of the Interior approved the Illinois plan. You can find background information on the Illinois plan, including the Secretary's findings, the disposition of comments, and the approval of the plan in the June 1, 1982, **Federal Register** (47 FR 23886). You can find later actions concerning the Illinois plan and amendments to the plan at 30 CFR 913.25.

II. Submission of the Proposed Amendment

By letter dated October 22, 1998 (Administrative Record No. IL–5022), Illinois submitted a proposed amendment to its plan under SMCRA. The amendment consisted of new and revised narrative discussions and implementing regulations. Illinois sent the amendment in response to a letter dated September 26, 1994 (Administrative Record No. IL–700-AML), that we sent to Illinois under 30 CFR 884.15(d). The amendment also includes changes made at Illinois' own initiative.

We announced receipt of the proposed amendment in the November 11, 1998, **Federal Register** (63 FR 63630). In the same document, we opened the public comment period and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period closed on December 16, 1998.

During our review of the amendment, we identified concerns relating to nonsubstantive editorial errors in Personnel (30 CFR 884.13(d)(2)); Procurement (30 CFR 884.13(d)(3)); 62 IAC 2501.10, Eligible Coal Lands and Water; 62 IAC 2501.11, Eligible Non-coal Lands and Water; 62 IAC 2501.16, Final Selection and Project Deferment; 62 IAC 2501.19, Annual Grant Process; 62 IAC 2501.25, Reclamation on Private Lands; 44 IAC 1150.40, Severability; 44 IAC 1150.200, Bidding Requirements and Conditions; 44 IAC 1150.300, Awards and Execution of Contract; and 44 IAC 1150.1300, Contract Negotiations. We notified Illinois of these concerns by letter dated December 16, 1998 (Administrative Record No. IL–5034). However, because the editorial errors were nonsubstantive, we are proceeding with this final rule.

III. Director's Findings

Set forth below, under SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, are our findings concerning the proposed amendment.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

1. General Changes

a. Illinois made the following reference changes throughout its narrative and implementing regulations: all references to the ''Abandoned Mined Lands Reclamation Council'' and ''Council'' have been changed to the ''Illinois Department of Natural Resources'' or ''Department''; all references to the ''Executive Director'' have been changed to the ''Director of the Office of Mines and Mineral,'' ''Director of the Department,'' or ''Director,'' as appropriate; all references to ''Soil Conservation Service'' have been changed to ''Natural Resources Conservation Service''; and all references to ''him'' have been revised to ''him/her'' or some other gender neutral reference.

Illinois also made the following statutory reference changes throughout 62 IAC 2501: Ill. Rev. Stat. 1991, ch 96½, pars. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1985, ch. 96½, par. 8001.03(a)(7) was changed to 20 ILCS 1920/1.03(5); Ill. Rev. Stat. 1985, ch. 96½, par. 8001.01 *et seq.* was changed to 20 ILCS 1920; Ill. Rev. Stat. 1991, ch. 127, par. 1001–1 *et seq.* was changed to 5 ILCS 100; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.02(a) was changed to 20 ILCS 1920/1.02; Ill. Rev. Stat. 1989, ch. 96½, par. 8001.03(a) was changed to 20 ILCS 1920/2.03(a); Ill. Rev. Stat. 1985, ch. 96½, par. 8003.05 was changed to 20 ILCS 1920/3.05; Ill. Rev. Stat. 1989, ch. 96½, par. 8002.09(b) was changed to 20 ILCS 1920/2.09; Ill. Rev. Stat. 1983, ch. 96½, par. 800.04(d) was changed to 20 ILCS 1920/2.04(d); and Ill. Rev. Stat. 1985, ch. 127, pars.133b1 *et seq.* was changed to 30 ILCS 605.

Finally, Illinois made the following statutory reference changes throughout 44 IAC 1150: Ill. Rev. Stat. 1985, ch. 96½, pars. 8001.01 *et seq.* and Ill. Rev. Stat. 1991, ch. 127, par. 1005–75 were changed to 20 ILCS 1920 and 5 ILCS 100/5–75, respectively.

We approve the above revisions because they do not alter the substance of the Illinois plan.

b. *62 IAC 2501.1, Scope.* Illinois revised the scope of this section to reflect the creation of the IDNR. We approve the revision because it merely reflects agency reorganization.

c. *62 IAC 2501.4, Definitions.* Illinois removed the definition of ''council'' and added the definition of ''department'' to reflect the creation of the IDNR. We approve the removal and addition of these definitions because they merely reflect agency reorganization.

Illinois also expanded the definition of ''Federal Office'' to refer to ''OSM.'' We approve the revised definition because it merely clarifies the existing approved definition.

2. Plan Narrative: Introduction

Illinois revised this section of its plan narrative to describe the history of the Illinois Abandoned Mined Lands Reclamation Program, the creation of the Department of Natural Resources, and the requirements of Title V of the Surface Mining Control and Reclamation Act of 1977. We approve Illinois' revised narrative because it does not alter the substance of the Illinois plan.

3. Eligible Coal Lands and Water

Eligible Coal Lands and Water, (30 CFR 874.12(e)). Illinois added this new section to its plan narrative to state that the provisions of 62 IAC 2501.10 detail the eligibility of coal lands and waters for reclamation and abatement. We approve the addition of this section to the Illinois plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

Section 2501.10, Eligible Coal Lands and Water. Illinois added new paragraphs (d) through (h) to its implementing regulations at 62 IAC 2501.10 to read as follows:

(d) Notwithstanding subsections (a), (b) and (c) of this section, coal lands and waters damaged and abandoned after August 3, 1997 by coal mining processes are also eligible if the Department, with the concurrence of OSM, finds in writing that:

(1) They were mined for coal or affected by coal mining processes; and

(A) The mining occurred and the site was left in either an unreclaimed or inadequately reclaimed condition between August 4, 1977 and June 1, 1982, and any funds for reclamation or abatement that are available pursuant to a bond or other form of financial guarantee or from any other source are not

sufficient to provide for adequate reclamation or abatement at the site, or

(B) The mining occurred between August 4, 1977 and November 5, 1990 and the surety of the mining operator became insolvent during that period, and as of November 5, 1990, funds immediately available from proceedings relating to insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement at the site; and

(2) The site qualifies as a priority 1 or 2 site under Section 2501.7(c) and (e) of this Part.

(e) The Department may expend funds available under subsections 402(g)(1) and (5) of the Surface Mining Control and Reclamation Act for reclamation and abatement of any site eligible under Subsection (d) above, if the Department, with concurrence of OSM, makes the findings required in subsection (d) above and the Department determines that the reclamation priority of the site is the same or more urgent that the reclamation priority for the lands and water eligible pursuant to subsections (a), (b) or (c) above that quality as a priority 1 or 2 site under Section 403(a) of the Surface Mining Control and Reclamation Act (30 U.S.C. 1233(a)).

(f) With respect to lands and waters eligible pursuant to subsection (d) or (e) above, monies available from sources outside the Abandoned Mine Reclamation Federal Trust Fund or that are ultimately recovered from responsible parties shall either be used to offset the cost of the reclamation or transferred to the Abandoned Mine Reclamation Federal Trust Fund if not required for further reclamation activities at the permitted site.

(g) If reclamation of a site covered by an interim or permanent program permit is carried out under the AML program, the permittee of the site shall reimburse the AML Fund for the cost of reclamation that is in excess of any bond forfeited to ensure reclamation. The Department, when performing reclamation under subsection (d) above shall not be held liable for any violations of any performance standards or reclamation requirements specified in Title V of the Federal Act, or in the Surface Coal Mining Land Conservation and Reclamation Act [225 ILCS 720], nor shall a reclamation activity undertaken on such lands or waters be held to any standards set forth in those Acts.

(h) Surface coal mining operations on lands eligible for remining shall not affect the eligibility of such lands for reclamation and restoration after the release of the bonds or deposits posted by any such operation. If the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, AML funds may be used if the amount of such bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if emergency conditions warrant, the Department shall immediately exercise its authority under the Emergency program.

We approve the addition of the above provisions at 62 IAC 2501.10(d) through (h) because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.12(d) through (h).

4. Exclusion of Certain Non-coal Reclamation Sites

Exclusion of Certain Non-coal Reclamation Sites, (30 CFR 875.16). Illinois added this new section to its plan narrative to state that the provisions of 62 IAC 2501.11 detail the eligibility of non-coal lands and waters for reclamation and abatement. We approve the addition of this section to the Illinois plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

Section 2501.11, Eligible Non-coal Lands and Water. Illinois added this new section to its implementing regulations at 62 IAC 2501.11 to provide reclamation eligibility guidelines for non-coal lands and water. Non-coal lands and water are eligible for reclamation activities if they were mined or affected by mining processes; they were mined before August 3, 1977, and left or abandoned in either an unreclaimed or inadequately reclaimed condition; the operator, permittee, or agent of the permittee has no continuing responsibility for reclamation under statutes of the State or Federal Government due to bond forfeiture, and the forfeited bond is insufficient to pay the total cost of reclamation; the Governor agrees that reclamation is necessary and submits a letter of request to the Federal Office; it is necessary for the protection of the public health and safety, general welfare and property; and the lands and water are not designated for remedial action under the Uranium Mill Tailings Radiation Control Act of 1978 or have been listed for remedial action under the Comprehensive Response Compensation and Liability Act of 1980.

We approve the addition of the above provisions at 62 IAC 2501.11 because paragraphs (a) through (e) are substantively identical to the counterpart Federal provisions found at 30 CFR 875.12(a) through (e) and paragraph (f) is substantively identical to the counterpart Federal provision found at 30 CFR 875.16. Paragraph (f) also satisfies a requirement of OSM's September 26, 1994, letter.

5. Authorization by the Governor

Illinois revised this section of its plan narrative to reflect the creation the Illinois Department of Natural Resources (IDNR). Previously, this section consisted of a letter from the Governor designating the Abandoned Mined Lands Reclamation Council as the agency responsible for administering the State Abandoned Mined Lands program. Illinois' revised narrative states that authority for administering the State Abandoned Mined Lands program is established by statute. The Abandoned Mined Lands and Water Reclamation Act, as amended, establishes that IDNR's Office of Mines and Minerals is responsible for administering the State reclamation program and receiving and administering grants under 30 CFR Part 886. We approve Illinois' revised narrative because it meets the requirement of 30 CFR 884.13(a), which requires the State reclamation plan to have a designation by the Governor of the State of the agency authorized to administer the State reclamation program and to receive and administer grants under 30 CFR Part 886.

6. Legal Opinion

Illinois revised this section of its plan narrative by replacing a letter from the chief legal officer of the Abandoned Mined Lands Reclamation Council with a letter from the chief legal officer of IDNR. We approve Illinois' revised narrative because it meets the requirement of 30 CFR 884.13(b), which requires the State reclamation plan to have a legal opinion from the State Attorney General or the chief legal officer of the State agency that the designated agency has the authority under State law to conduct the State reclamation program.

7. Project Selection

Project Selection, (30 CFR 884.13(c)(2))

Illinois revised this section of its plan narrative to state that sections 2501.7, 2501.8, 2501.10, 2501.11, 2501.13, 2501.16, and 2501.34 of the rules entitled ''Abandoned Mined Land Reclamation'' detail Abandoned Mined Lands project selection. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(c)(2), which requires a State reclamation plan to have a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including the specific criteria for ranking and identifying projects to be funded.

Section 2501.7, Objectives and Priorities

Illinois revised its implementing regulations at 62 IAC 2501.7(c) by removing a priority concerning the expenditure of Abandoned Mined Lands money on research and demonstration projects relating to the development of surface mining reclamation and water quality control program and methods

and techniques. We approve the revision of the above provision because it is substantively identical to the counterpart Federal provision found at Section 403(a) of SMCRA.

Illinois also added new paragraphs (d) and (e) to its implementing regulations at 62 IAC 2501.7. Paragraph (d) concerns the order in which projects are addressed. Paragraph (e) concerns the designation of projects that have an adverse economic impact upon a community. We approve the addition of the above provisions because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.13(b) and 30 CFR 874.12(d)(3), respectively.

Finally, at section 2501.7(f), Illinois revised the date by which the Department may make expenditure obligations on lands mined for substances other than coal. The date was changed from August 14, 1994, to August 31, 1999. We approve the revision of the above provision because it is not inconsistent with the provisions of 30 CFR 875.12, which detail when non-coal lands and waters are eligible for reclamation.

Section 2501.8, Utilities and Other Facilities

Illinois added this new section to its implementing regulations to provide guidance on use of Abandoned Mined Lands funds for water supplies. Section 2501.8(a) allows the Department to use up to 30 percent of the annual Abandoned Mined Lands funds for the purpose of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supplies, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. Section 2501.8(b) provides that adverse effects on water supplies that occurred both before and after August 3, 1977, are eligible for Abandoned Mined Lands funds, in spite of the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominantly by mining processes undertaken and abandoned before August 3, 1977. Section 2501.8(c) provides that adverse effects on water supplies that occurred both before and after the dates (and under the criteria) set forth in Section 2501.10(d) are eligible for Abandoned Mined Lands funds, notwithstanding the criteria specified in Section 2501.10(b), if the Department finds as part of its eligibility opinion that the adverse effects are caused predominately by mining processes undertaken and abandoned before those dates. Finally, section 2501.8(d) provides that enhancement of facilities or utilities includes upgrading to meet any local, State, or Federal public health or safety requirement. Enhancement does not include service area expansion not necessary to address a specific abandoned mine land problem.

We approve the addition of the above provisions at 62 IAC 2501.8 because they are substantively identical to the counterpart Federal provisions found at 30 CFR 874.14.

Section 2501.13, Preliminary Project Selection

Illinois revised its implementing regulations at 62 IAC 2501.13(b) to require the Department to select reclamation projects from a database that contains all known abandoned mine sites in the State which are eligible under Sections 2501.10 and 2501.11. Also, at 62 IAC 2501.13(b), Illinois revised the list of problem conditions the Department is to use to determine which sites are in the most need of reclamation. New section 2501.13(b)(9) provides that flooding of roads or improved property caused by sedimentation from Abandoned Mined Lands sites is a problem condition. New section 2501.13(b)(10) provides that hazardous recreational water bodies is a problem condition. Existing sections 2501.13(b)(9) and (10) were redesignated as sections 2501.13(b)(11) and (12). Finally, Illinois added new section 2501.13(b)(13) to provide that coal refuse material or spoilbanks adversely affecting lands or water resources is a problem condition.

We approve the revision and addition of the above provisions at 62 IAC 2501.13(a) and (b) because they meet the requirements of 30 CFR 874.13, which requires States to conduct reclamation projects in a manner that is consistent with OSM's ''Final Guidelines for Reclamation Programs and Projects'' (61 FR 68777—68785, December 30, 1996), and reflect the priorities of Section 403(a) of SMCRA.

Section 2501.16, Final Selection and Project Deferment

Illinois revised its regulations at 62 IAC 2501.16(a) to further detail the criteria by which the Department will identify and rank Abandoned Mined Lands projects. We approve the revision of the above provision because it provides additional satisfaction of the requirements of 30 CFR 874.13.

8. Coordination of Reclamation Activities

Illinois revised this section of its plan narrative to require that Abandoned Mined Lands staff meet with Natural Resource Conservation Service Rural Abandoned Mine Program coordinators on an annual basis to coordinate reclamation activities. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(c)(3), which requires a State reclamation plan to include a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including the coordination of reclamation work among the State reclamation program and the Rural Abandoned Mine Program administered by the Natural Resource Conservation Service.

9. Reclamation of Private Land

Reclamation of Private Land, (30 CFR 884.13(c)(5))

Illinois revised this section of its plan narrative to include an explanation of language found at 62 IAC 2501.25(b)(2). We find that the addition of this explanatory language merely clarifies the existing provision. Therefore, this section of the plan narrative continues to meet the Federal requirements at 30 CFR 884.13(c)(5) to describe the policies and procedures regarding reclamation on private land under 30 CFR Part 882.

Section 2501.25, Reclamation on Private Lands

Illinois added new paragraph (b)(3) to its implementing regulations at 62 IAC 2501.25 to allow the Department to waive a lien if it finds, before construction, that the reclamation work is being undertaken solely to seal, fill, or mark an open or settled mine shaft, drift or slope entry, adit or other mine opening or a subsidence pit. We approve the addition of the above provision because it is consistent with the provisions of 30 CFR 882.13(a)(3), which allows a state to waive a lien if findings made prior to construction indicate that the reclamation work primarily benefits health, safety, or environmental values of the greater community or area in which the land is located; or if the reclamation is necessitated by an unforseen occurrence, and the work will not result in a significant increase in the market value of the land as it existed immediately before the unforseen occurrence.

Illinois also revised its implementing regulations at 62 IAC 2501.25(c)(2) and (3). At 2501.25(c)(2), Illinois added

language to provide that a reclamation lien created under Section 2.09 of the State Act will continue to exist until satisfied, subject only to the 40-year limitation period and the requirements of Sections 13–118 through 13–121 of the Code of Civil Procedure [735 ILCS 5/13–118 *et seq.*]. At 2501.25(c)(3), Illinois revised the language to allow the Department to request appropriate foreclosure action by the Attorney General to satisfy the lien if the reclaimed property is transferred for an actual consideration in excess of the appraised fair market value of the property after reclamation, and the lien is not satisfied at the time of transfer. We approve the addition and revision of the above provisions because they are consistent with the provision at 30 CFR 882.14(b), which requires states to maintain or renew liens from time to time as required under State or local law.

10. Public Participation

Public Participation, (30 CFR 884.13(c)(7))

Illinois revised this section of its plan narrative concerning preparation of the original state plan, promulgation of rules and plan amendments, public participation in the reclamation program, compliance with Executive Order 12372, and the list of regional clearinghouses. Included in the revision to ''public participation in the reclamation program'' is a reference to the newly proposed provisions at 62 IAC 2501.40.

Section 2501.40, Public Participation

Illinois added this new section to its implementing regulations at 62 IAC 2501.40 to provide for public participation in the Abandoned Mined Lands program and projects. Section 2501.40(a) provides that any interested party may submit information and comments to the Director of the Department, the Director of the Office of Mines and Minerals, or the Manager of the Abandoned Mined Lands Division at any time. Section 2501.40(b) requires that the Department handle verbal and written requests for information as quickly as possible, and that requests made under the Freedom of Information Act (5 ILCS 140) be made and handled in accordance with the generally applicable procedures of the Department of Natural Resources. Section 2501.40(c) requires the Department to have available, upon request, copies of the Illinois State Reclamation Plan for Abandoned Mined Lands, Office of Mines and Minerals Annual and Bi-Annual Reports, specific project reports, and brochures and program materials. However, the availability of such reports, brochures and program materials can not be deemed a waiver of the Department's right to charge fees for its actual cost of reproducing and certifying public records requests under the Freedom of Information Act. Further, the Department may charge fees for its actual cost for providing multiple copies of free publications. Finally, section 2501.40(d) was added to read as follows:

(d) The Department shall hold such public meetings as it determines necessary and appropriate to advise the public of planned or ongoing AML projects, and to solicit input and participation in the AML program. Any interested person may request, in writing, that the Department hold a public meeting in connection with any AML project or program activity. Upon receipt of a written request to hold a public meeting, the Department shall contact the landowners directly involved in the project, as well as the local government bodies that may be interested. The Department shall schedule a public meeting if it determines that sufficient public interest exists to warrant the public meeting.

We approve Illinois' revised plan narrative and the addition of 62 IAC 2501.40 because they meet the requirements of 30 CFR 884.13(c)(7), which requires a State reclamation plan to have a description of the policies and procedures that the designated agency will follow in conducting the reclamation program, including public participation and involvement in the preparation of the State reclamation plan and in the State reclamation program.

11. Administration

Illinois revised this section of its plan narrative to reflect the reorganization of the Division of Abandoned Mined Lands Reclamation, within the Office of Mines and Minerals, Department of Natural Resources. They also updated the list of other State offices and agencies. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(1), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the organization of the designated agency and its relationship to other State organizations or officials that will participate in or augment the agency's reclamation capacity.

12. Personnel

Illinois revised this section of its plan narrative to reflect changes in its administrative and management structure and its personnel staffing policies. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(2), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the personnel staffing policies which will govern the assignment of personnel to the State reclamation program.

13. Procurement

Procurement, (30 CFR 884.13(d)(3))

Illinois revised this section of its plan narrative by changing all references to the Illinois Purchasing Act to the Illinois Procurement Code. They also removed language about the provisions of Section 5 and Section 9.01 of the Illinois Purchasing Act. Finally, Illinois revised its discussion about the exceptions to the competitive bidding requirements of the Illinois Procurement Code. We approve Illinois' revised plan narrative because it meets the requirement of 30 CFR 884.13(d)(3), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program, including the purchasing and procurement systems to be used by the agency.

44 IAC 1150. Illinois revised the following sections of its implementing regulations at 44 IAC 1150: Section 1150.10, Purpose; Section 1150.20, Scope; Section 1150.30; Applicability; Section 1150.100, Definition of Terms; Section 1150.200, Bidding Requirements and Conditions; Section 1150.300, Award and Execution of Contract; Section 1150.400, Contracts Involving Expenditures of $30,000.00 or Less; Section 1150.500, Emergency Contracting; Section 1150.700, Applicability; Section 1150.800, Prequalification; Section 1150.900, Subcontracting; Section 1150.1000, Requests for Proposals; and Section 1150.1300, Contract Negotiations. In addition, Illinois added the following sections to its implementing regulations at 44 IAC 1150: Section 1150.1100, Evaluation Procedure; Section 1150.1200, Selection Procedure; Section 1150.1325, Exemptions; and Section 1150.1350, Firm Performance Evaluations.

We approve the revisions to and additions of the above provisions because they meet the requirements of 30 CFR 884.13(d)(3), which requires a State reclamation plan to have a description of the administrative and management structure to be used in conducting the reclamation program,

including the purchasing and procurement systems to be used by the agency.

Section 1150.300(e)

Illinois added paragraph (e) to its implementing regulations at 44 IAC 1150.300 to read as follows:

(1) Under 30 CFR 874.16, every successful bidder for a federally funded AML contract must be eligible under 30 CFR 773.15(b)(1) at the time of contract award to receive a permit or conditional permit to conduct surface coal mining operations. Bidder eligibility must be confirmed by the federal Office of Surface Mining, Reclamation and Enforcement's automated Applicant/Violator System (AVS) for each contract to be awarded.

(2) At the time the successful bidder is notified by letter of intent that his/her bid will be accepted, the Department will provide to the bidder an Ownership/Control (''O/C'') information package. The bidder shall completely fill out the forms and return the completed forms to the Department. The Department will forward the completed forms to OSM at the Lexington, Kentucky AVS office for data entry and compliance check.

(3) All subcontractors who will receive 10% or more of the total contract funding will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check, prior to receiving the Department's approval of subcontractor.

(4) Any contract inspector, selected through a bidding process, regardless of the percentage of contract funding, will also be required to submit an O/C information package and be subject to the OSM/AVS compliance check.

(5) The Department shall deny a contract and cancel the award upon OSM's recommendation that the successful bidder is not eligible for an AML contract. The Department shall deny approval of a subcontractor upon OSM's recommendation that the subcontractor is not eligible for an AML contract. The Department shall deny an inspection contract upon OSM's recommendation that the contract inspector is not eligible for an AML contract.

(6) Any person denied an AML contract or participation in an AML funded project, shall appeal the decision and recommendation of OSM directly to OSM. Appeal should be made to establish eligibility for future AML projects. The Department will not delay a project pending appeal. The Department's role in the AVS compliance check process is ministerial and does not involve exercise of independent judgement or review of OSM's decision and recommendation. The Department shall not be responsible for any damages sustained by any person by reason of OSM's determination as to eligibility for AML contracts.

(7) After a Contractor, subcontractor, or contract inspector has once submitted an O/C information package and has been entered into the AVS in connection with an AML project, the Department may, in connection with subsequent projects, provide dated AVS printouts reflecting the information submitted and the current AVS recommendation, along with an AML Contractor O/C Data Certification form. The Contractor, subcontractor, or contract inspector shall complete and submit the certification in place of the O/C information package, in the same manner as provided above.

(8) Any potential AML Contractor, subcontractor or contract inspector may submit O/C information directly to OSM and the Lexington AVS Office, to predetermine eligibility for AML contracts.

We approve the addition of the above provisions because they meet the requirements of 30 CFR 874.16 and 30 CFR 875.20 and satisfy a requirement of the September 26, 1994, letter we sent to Illinois under 30 CFR 884.15(d).

14. Reclamation Activity

Illinois revised the amount of acreage in need of reclamation and the amount of acreage funded through the emergency response program in this section of its plan narrative. Illinois also added a new paragraph on the reclamation activity entitled ''Reclamation of Mine Subsidence.'' We approve Illinois revised plan narrative because it meets the requirement of 30 CFR 884.13(e), which requires a State reclamation plan to have a general description, derived from available data, of the reclamation activities to be conducted under the State reclamation plan, including the known or suspected eligible lands and waters within the State which require reclamation.

15. Reports

Illinois added this new section to its plan narrative to state that the Department will submit the OSM–76 Form, or its electronic counterpart in the Abandoned Mine Land Inventory System, at the time of project completion. We approve the addition of this section to Illinois' plan narrative because it satisfies a requirement of the September 26, 1994, letter we sent to Illinois under 30 CFR 884.15(d). It is also consistent with 30 CFR 886.23(b), which requires a State agency to submit a completed Form OSM–76 and any other closeout reports specified by OSM upon completion of a project.

16. Priorities, (20 ILCS 1920/2.03(4))

Illinois added this new section to its plan narrative to state that legislative measures will be taken to ensure compatibility between state statutes and federal regulations. This section recognizes that section 2.03(a) of the Abandoned Mined Lands and Water Reclamation Act is inconsistent with section 403(a) of SMCRA and 62 IAC 2501.7 and ensures that legislative action will be taken to correct this disparity. We approve the addition of this section to the plan narrative because it is not inconsistent with the requirements of 30 CFR 884.13.

17. 62 IAC 2501.19, Annual Grant Process

Illinois removed the language found in this section and replaced it with language requiring the Department to submit an annual grant application to OSM in accordance with the requirements of 30 CFR Part 886 to cover allowable costs of the Abandoned Mined Lands program. We find that Illinois' definition of allowable costs is substantively the same as the counterpart Federal definition of allowable costs found at 30 CFR 886.21. We further find that Illinois' requirement for an annual submission of a grant application is not inconsistent with the requirements of 30 CFR Part 886. Therefore, we approve Illinois' revision of this section.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 884.14(a)(2) and 884.15(a), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Illinois plan (Administrative Record No. IL–5027). No comments were received.

U.S. Environmental Protection Agency (EPA)

Under 30 CFR 884.14(a)(6), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Illinois proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

U.S. Fish and Wildlife Service (FWS)

Under section 7 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq*), we are required to ask the FWS to determine whether those provisions of the program amendment that relate to fish, wildlife, or plants and their habitat are likely to jeopardize the continued existence of species listed as endangered or threatened (under the authority of section 4 of the Endangered Species Act of 1973) or result in the

destruction or adverse modification of their habitat. None of the revisions that Illinois proposed to make in this amendment pertain to fish, wildlife, or plants and their habitat. Therefore, we did not ask the FWS for its determination under section 7 of the Endangered Species Act of 1973.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 884.14(a)(6), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On November 6, 1998, we requested comments on Illinois' amendment (Administrative Record No. IL–5027), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the proposed plan amendment as submitted by Illinois on October 22, 1998.

We approve the rules as proposed by Illinois with the provision that they be fully promulgated in identical form to the rules submitted to and reviewed by OSM and the public.

The Federal regulations at 30 CFR Part 913, codifying decisions concerning the Illinois plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions since each plan is drafted and promulgated by a specific State or Tribe, not by OSM. Decisions on proposed abandoned mine land reclamation plans and revisions submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and 30 CFR Part 884.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 913

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 8, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.For the reasons set out in the preamble, 30 CFR Part 913 is amended as set forth below:

PART 913—ILLINOIS

1. The authority citation for Part 913 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 913.25 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 913.25 Approval of Illinois abandoned mine land reclamation plan amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
October 22, 1998	January 22, 1999	Illinois Plan Narrative; 62 IAC 2501.1, .4, .7, .8, .10, .11, .13, .16, .19, .22, .25, .28, .31, and .40; 44 IAC 1150.10, 20, .30, .100, .200, .300, .400, .500, .700, .800, .900, .1000, .1100, .1200, .1300, .1325, and .1350.

[FR Doc. 99–1444 Filed 1–21–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–024–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Oklahoma regulatory program (from now on referred to as the ''Oklahoma program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to and additions of regulations pertaining to definitions; reclamation plan: siltation structures, impoundments, banks, dams, and embankments; permit variances from approximate original contour restoration requirements; small operator assistance; bond release applications; hydrologic balance: siltation structures; impoundments; disposal of excess spoil: preexisting benches; coal mine waste: general requirements; state inspections and monitoring; and request for hearing. Oklahoma intended that the amendment revise its program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548, Telephone: (918) 581–6430, E-mail mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902). You can find later actions concerning the conditions of approval and program amendments at 30 CFR 936.15 and 936.16.

II. Submission of the Proposed Amendment

By letter dated December 18, 1997 (Administrative Record No. OK–981), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to a June 17, 1997, letter (Administrative Record No. OK–979) that we sent to Oklahoma under 30 CFR 732.17(c). We announced receipt of the amendment in the January 6, 1998, **Federal Register** (63 FR 454). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the amendment. The public comment period closed on February 5, 1998. Because no one requested a public hearing or meeting, we did not hold one.

During our review of the amendment, we identified concerns relating to definitions (OAC 460:20–3–5); permitting requirements (OAC 460:20–27–14 and 460:–20–31–9); small operator assistance (OAC 460:20–35–1, –6, –7, and –8); hydrologic balance: siltation structures—definitions (OAC 460:20–43–12); impoundments (OAC 460:20–43–14 and 460:20–45–14); coal mine waste: general requirements (OAC 460:20–43–29 and 460:20–45–29); backfilling and grading: thin overburden (OAC 460:20–43–39); disposal of excess spoil: preexisting benches (OAC 460:20–45–27); and state inspections and monitoring (OAC 460:20–57–2). We notified Oklahoma of these concerns by faxes dated June 5 and 30, and October 21, 1998 (Administrative Record Nos. OK–981.13, OK–981.08, and OK–981.11, respectively). By letters dated June 22, August 10, September 24, and November 5, 1998 (Administrative Record Nos. OK–981.06, OK–981.09, OK–981.10, and OK–981.12, respectively), Oklahoma sent us additional explanatory information and revisions to its program amendment.

Based upon Oklahoma's additional explanatory information and revisions to its amendment, we reopened the public comment period in the November 25, 1998, **Federal Register** (63 FR 65149). The public comment period closed on December 10, 1998.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment. Any revisions that we do not discuss are about minor wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to Oklahoma's Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Definitions: ''Other treatment facilities,'' ''Previously mined area,'' and ''Siltation structure.''	460:20–3–5	701.5.
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Surface mining activities).	460:20–27–14(a), (a)(2), (a)(3), and (f).	780.25(a), (a)(2), (a)(3), and (f).
Reclamation plan: siltation structures, impoundments, banks, dams, and embankments. (Underground mining activities).	460:20–31–9(a), (a)(2), (a)(3), and (f).	784.16(a), (a)(2), (a)(3), and (f).
Permits incorporating variances from approximate original contour restoration requirements.	460:20–33–6(a)	785.16(a).
Program services and data requirements	460:20–35–6(a), (b)(1), and (b)(3)—(b)(5).	795.9(a), (b)(1), and (b)(4)—(b)(6).
Applicant liability	460:20–35–7(a)	795.12(a).
Assistance funding	460:20–35–8	795.11.
Requirement to release performance bonds	460:20–37–15(a)(3)	800.40(a)(3).
Hydrologic balance: siltation structures. (Surface mining activities)	460:20–43–12(a)—(a)(2)	816.46(a)—(a)(2).

Topic	State regulation—Oklahoma administrative code (OAC)	Federal counterpart regulation—30 Code of Federal Regulation (CFR)
Impoundments: general requirements. (Surface mining activities)	460:20–43–14(a)(1)—(a)(3), (a)(5), (a)(6), and (a)(9)—(a)(12).	816.49(a)(1)—(a)(3), (a)(5), (a)(6), and (a)(9)—(a)(12).
Impoundments: temporary impoundments. (Surface mining activities)	460:20–43–14(c)(2)(A) and (B)	816.49(c)(2)(i) and (ii).
Disposal of excess spoil: preexisting benches. (Surface mining activities).	460:20–43–27(c)	816.74(c).
Coal mine waste: general requirements. (Surface mining activities)	460:20–43–29(a)	816.81(a).
Hydrologic balance: siltation structures. (Underground mining activities).	460:20–45–12(a)—(a)(2)	817.46(a)—(a)(2).
Impoundments: general requirements. (Underground mining activities)	460:20–45–14(a)(1)—(a)(3), (a)(5)—(a)(6), (a)(9)—(a)(12).	817.49(a)(1)—(a)(3), (a)(5)—(a)(6), (a)(9)—(a)(12).
Impoundments: temporary impoundments. (Underground mining activities).	460:20–45–14(c)(2)(A)—(B)	817.49(c)(2)(i)—(ii).
Disposal of excess spoil: preexisting benches. (Underground mining activities).	460:20–45–27(c)	817.74(c).
Coal mine waste: general requirements. (Underground mining activities).	460:20–45–29(a)	817.81(a).
State inspections and monitoring	460:20–57–2(g)(4)(A) and (h)	840.11(g)(4)(i) and (h).
Request for hearing	460:20–61–11(a)	845.19(a) .

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

B. Revisions to Oklahoma's Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. OAC 460:20–27–14. Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. (Surface Mining Activities)

a. Oklahoma revised paragraph (b) to require siltation structures to be designed in compliance with the requirements of Section 460:20–43–12. Also, impoundments or earthen structures which permanently remain on the permit area have to be designed to comply with the requirements of Section 460:20–43–14. We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 780.25(b).

b. Oklahoma revised paragraph (c)(3) to allow its Department of Mines to establish, through the State program approval process, engineering design standards for impoundments:

1. That do not meet the size or other criteria of 30 CFR 77.216(a), or

2. That do not meet the Class B or C criteria for dams in TR–60, (210–VI–TR60, Oct. 1985), ''Earth Dams and Reservoirs,'' or

3. That are located where failure would not be expected to cause loss of life or serious property damage.

The design standards would ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20–43–14(a)(3)(B). We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 780.25(c)(3).

2. OAC 460:20–31–9. Reclamation Plan: Siltation Structures, Impoundments, Banks, Dams, and Embankments. (Underground Mining Activities)

a. Oklahoma revised paragraph (b) to require siltation structures to be designed in compliance with the requirements of Section 460:20–45–12. Also, impoundments or earthen structures which permanently remain on the permit area have to be designed to comply with the requirements of Section 460:20–45–24. We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 784.16(b).

b. Oklahoma revised paragraph (c)(2) to allow its Department of Mines to establish, through the State program approval process, engineering design standards for impoundments:

1. That do not meet the size or other criteria of 30 CFR 77.216(a), or

2. That do not meet the Class B or C criteria for dams in TR–60, (210–VI–TR60, Oct. 1985), ''Earth Dams and Reservoirs,'' or

3. That are located where failure would not be expected to cause loss of life or serious property damage.

The design standards would ensure stability comparable to a 1.3 minimum static safety factor in lieu of engineering tests to establish compliance with the minimum static safety factor of 1.3 specified in Section 460:20–45–14(a)(3)(B). We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 784.16(c)(3).

3. OAC 460:20–35–6. Program Services and Data Requirements

Oklahoma revised paragraph (b)(6) to read as follows:

The development of cross-section maps and plans required under Section 460:20–25–11, 460:20–29–11, and any other applicable regulation.

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulation at 30 CFR 795.9(b)(3).

4. OAC 460:20–43–12. Hydrologic Balance: Siltation Structures. (Surface Mining Activities) and OAC 460:20–45–12. Hydrologic Balance: Siltation Structures. (Underground Mining Activities)

Oklahoma proposed to delete paragraphs (a)(3) which provide the definition for ''other treatment facilities.'' We are approving these deletions because Oklahoma revised and moved this definition to Section 460:20–3–5. Definitions.

5. OAC 460:20–43–14. Impoundments. (Surface Mining Activities)

Oklahoma revised paragraphs (a)(4)(A) and (B) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall

have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20–27–14(c)(3).

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 816.49(a)(4) (i) and (ii).

6. OAC 460:20–45–14. Impoundments. (Underground Mining Activities)

Oklahoma revised paragraphs (a)(4)(A) and (B) to read as follows:

(A) An impoundment meeting the Class B or C criteria for dams in TR–60, or the size or other criteria of 30 CFR 77.216(a) or located where failure would be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.5 for a normal pool with steady state seepage saturation conditions, and a seismic safety factor of at least 1.2.

(B) Impoundments not included in Section (a)(4)(A) of this Section, except for a coal mine waste impounding structure, or located where failure would not be expected to cause loss of life or serious property damage shall have a minimum static safety factor of 1.3 for a normal pool with steady state seepage saturation conditions or meet the requirements of Section 460:20–31–9(c)(2).

We are approving this revision because it is not inconsistent with or less effective than the corresponding Federal regulations at 30 CFR 817.49(a)(4) (i) and (ii).

IV. Summary and Disposition of Comments

Public Comments

We requested public comments on the amendment, but did not receive any.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Oklahoma program (Administrative Record Nos. OK–981.03 and OK–981.16). In letters dated January 27, and December 14, 1998, the U.S. Army Corps of Engineers responded that they found the changes to the Oklahoma program satisfactory (Administrative Record Nos. OK–981.05 and OK–981.19).

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). None of the revisions that Oklahoma proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree to the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record Nos. OK–981.01 and OK–981.14). The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to get comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On December 30, 1997, and November 16, 1998, we requested comments on Oklahoma's amendment (Administrative Record Nos. OK–981.02 and OK–981.15, respectively), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as submitted by Oklahoma on December 18, 1997, and as revised on June 22, August 10, September 24, and November 5, 1998. We approve the regulations that Oklahoma proposed with the provision that they be published in identical form to the regulations sent to and reviewed by OSM and the public. To implement this decision, we are amending the Federal regulations at 30 CFR Part 936, which codify decisions concerning the Oklahoma program. We are making this final rule effective immediately to expedite the State program amendment process and to encourage the State to bring its programs into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

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

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 8, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 936 is amended as set forth below:

PART 936—OKLAHOMA

1. The authority citation for Part 936 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 936.15 is amended in the table by adding a new entry in chronological order by ''Date of final publication'' to read as follows:

§ 936.15 Approval of Oklahoma regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
December 18, 1997	January 22, 1999	460:20–3–5; 20–27–14(a), (a)(2), (a)(3), (b), (c)(3), (f); 20–31–9(a), (a)(2), (a)(3), (b), (c)(2), (f); 20–33–6(a); 20–35–6(a), (b)(1), and (b)(3) through (b)(6); 20–35–7(a); 20–35–8; 20–37–15(a)(3); 20–43–12(a) through (a)(3); 20–43–14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20–43–27(c); 20–43–29(a); 20–45–12(a) through (a)(3); 20–45–14(a)(1) through (a)(3), (a)(4)(A) and (B), (a)(5), (a)(6), and (a)(9) through (a)(12), (c)(2)(A) and (B); 20–45–27(c); 20–45–29(a); 20–57–2(g)(4)(A) and (h); and 20–61–11(a).

[FR Doc. 99–1443 Filed 1–21–99; 8:45 am]
BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 26, 1998.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Morever, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * * * *	*	*
USS PORTER	DDG 78	1.92 meters.
* * * * * * *	*	*

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * * * *	*	*
USS PORTER	DDG 78	102.00 thru 112.50°.
* * * * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Foward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less that ½ ship's length aft of forward masthead light. annex I, sec. 3 (a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS PORTER	DDG 78	X	X	X	13.8
* * *	*	*	*	*	*

Approved:

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).

Dated: October 26, 1998.

[FR Doc. 99–1487 Filed 1–21–99; 8:45 am]

BILLING CODE 3810–FF–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGDO5–98–114]

Drawbridge Operation Regulations; New Jersey Intracoastal Waterway, Manasquan River

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulation governing the operation of the Brielle Railroad Bridge across the New Jersey Intracoastal Waterway, Manasquan River at mile 0.9 in Point Pleasant, New Jersey. Beginning at 8 a.m. on March 1 through March 12, 1999, this deviation allows the bridge to remain closed to navigation between the hours of 8 a.m. and 4 p.m., Monday through Friday. This closure is necessary to facilitate extensive repairs and maintain the bridge's operational integrity while still providing for the reasonable needs of navigation.

DATES: The deviation is effective from 8 a.m. on March 1, 1999 until 4 p.m. on March 12, 1999.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administration, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Brielle Railroad Bridge is owned and operated by New Jersey Transit (NJ Transit. A letter was forwarded to the Coast Guard by NJ Transit requesting a temporary deviation from the normal operation of the bridge to implement extensive structural steel repairs. Presently, the draw is required to open on signal at all times. This requirement is included in the general operating regulations at 33 CFR 117.5. The repairs entail replacement or reinforcement of stringers, floor beams, laterals and bearings. Disassembling parts of the bridge and maintaining the drawbridge span in the closed position is necessary to complete the repairs.

The Coast Guard has informed the known users of the waterway of the bridge closure so that these users can arrange their transits to avoid being negatively impacted by the temporary deviation.

From March 1 until March 12, 1999, this deviation allows the draw of the Brielle Railroad Bridge to remain closed to vessels between the hours of 8 a.m. and 4 p.m., Monday through Friday and open on signal at all other times.

Dated: January 11, 1999.

Roger T. Rufe Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 99–1471 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 061–5039; FRL–6218–5]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Source Specific VOC RACT for Tuscarora Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision requires Tuscarora Incorporated, a major source of volatile organic compounds (VOCs), to implement reasonably available control technology (RACT). The intended effect of this action is to grant approval of a source-specific Consent Agreement submitted by the Commonwealth of Virginia to impose RACT requirements in accordance with the Clean Air Act.

DATES: This final rule is effective on March 23, 1999, without further notice, unless EPA receives adverse comments by February 22, 1999. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; the Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and Virginia Department of Environmental Quality, P.O. Box 10009, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov. While information may be requested via e-mail, any comments must be submitted in writing to the EPA Region III address above.

SUPPLEMENTARY INFORMATION:

I. Background

On July 12, 1996, the Commonwealth of Virginia, Department of Environmental Quality (VADEQ) submitted a source-specific VOC RACT determination for Tuscarora Incorporated located in Loudoun County. Loudoun County is in the Northern Virginia portion of the Metropolitan Washington D.C. serious ozone nonattainment area. Within this nonattainment area, all sources of VOC with the potential to emit 50TPY or more are considered major sources and subject to RACT. Because Tuscarora Incorporated is not subject to RACT under Virginia's category-specific regulations developed for industrial categories covered by Control Technique Guidelines (CTGs), it is termed a non-CTG source. Therefore, VADEQ has determined and imposed RACT via a Consent Agreement (Registration No. 71814) to meet the requirements of section 182 of the Clean Air Act.

II. Summary of the SIP Revision

Tuscarora Incorporated, a manufacturer of custom molded, foam plastic packing, structural components and material handling products, had pre-RACT uncontrolled VOC emissions of 105.2 TPY. These emissions emanate from plant operations using the primary resin expandable polystyrene (EPS) and from the occasional use of a polystyrene/polyethylene copolymer known as ARCEL. The VADEQ determined that RACT for the facility is the use of low and reduced VOC content EPS and ARCEL beads. The Consent Agreement (Registration No.71814) requires, among other things, that the EPS monthly weighted average percentage of VOC shall not exceed 4.5% and that the ARCEL monthly weighted average percentage of VOC shall not exceed 8.5%. The use of low and reduced VOC concentrations in EPS and ARCEL beads reduces potential VOC emissions by 31%. The Consent Agreement requires that Tuscarora Incorporated keep a daily detailed material log which documents the percentage of VOC contained in the EPS and ARCEL material processed at the facility. The log must provide sufficient information to determine compliance with the conditions of the Consent Agreement. The log must be available on site and must be current for the most recent five years. Additional details of the RACT determination may be found in VADEQ's submittal and the technical support document (TSD) prepared to support this rulemaking. Copies of these materials are available, upon request, from the EPA Regional office listed in the **ADDRESSES** section of this document.

EPA is approving Consent Agreement No. 71814 issued by VADEQ to Tuscarora Incorporated to impose RACT for VOCS as a revision to the Virginia SIP.

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the

Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The privilege does not extend to documents or information that are: (1) Generated or developed before the commencement of a voluntary environmental assessment; (2) that are prepared independently of the assessment process; (3) that demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) that are required by law.

On January 12, 1997, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts. * * *'' Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1997 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.'' Thus, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separated document that will serve as the proposal to approve the SIP revision should adverse or critical comments be filed. This SIP revision will be effective March 23, 1999, without further notice unless the Agency receives adverse comments by February 22, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final action and informing the public that the action will not take effect. All public comments received will then be addressed in a subsequent final action based on the proposed rule. EPA will not institute a second comment period on the rule. Parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this SIP revision will be effective on March 23, 1999, and no further action will be taken on the proposed rule.

III. Final Action

EPA is approving the Consent Agreement, Registration Number 71814, submitted by the Commonwealth of Virginia on July 12, 1996 as a SIP revision.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from review under E.O. 12866, entitled ''Regulatory Planning and Review.''

B. Executive Order 12875

Under E.O. 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. If EPA complies by consulting, E.O. 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 written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 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. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has 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 final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects 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. 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 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.'' Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because conditional approvals of SIP submittals under section 110 and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final regulation that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule. EPA has determined that the approval action proposed does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. Section 804, however, exempts from section 801 the following types of rules: rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). EPA is not required to submit a rule report regarding today's action under section 801 because this is a rule of particular applicability, establishing requirements only for Tuscarora Incorporated in Loudoun County, Virginia.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action to approve the VOC RACT determination submitted by VADEQ for Tuscarora Incorporated must be filed in the United States Court of Appeals for the appropriate circuit by March 23, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone.

Dated: December 28, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 et seq.

Subpart VV—Virginia

2. Section 52.2420 is amended by adding paragraph (c)(128) to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(c) * * *

(128) Revision to the State Implementation Plan submitted on July 12, 1996 by the Virginia Department of Environmental Quality regarding VOC RACT requirements for one VOC source.

(i) Incorporation by reference.

(A) The letter dated July 12, 1996 from the Virginia Department of Environmental Quality submitting one source-specific VOC RACT determination in the form of a Consent Agreement for Tuscarora Incorporated.

(B) Consent Agreement for Tuscarora Incorporated—Sterling, Loudoun County, VA, Consent Agreement, Registration Number 71814, effective on June 5, 1996.

(ii) Additional Material: Remainder of the State submittal pertaining to Tuscarora Incorporated.

[FR Doc. 99–1263 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300735A; FRL–6044–2]

RIN 2070–AB78

Revocation of Tolerances and Exemptions from the Requirement of a Tolerance for Canceled Pesticide Active Ingredients; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: EPA published in the **Federal Register** of October 26, 1998, a document announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. The amendatory language for one of the sections was incorrect. This document corrects that language.

DATES: This correction becomes effective January 25, 1999.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Joseph Nevola, Special Review Branch, (7508C), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location: Special Review Branch, Crystal Mall #2,

6th floor, 1921 Jefferson Davis Hwy., Arlington, VA. Telephone: (703) 308–8037; e-mail: nevola.joseph@epa.gov.

SUPPLEMENTARY INFORMATION: EPA published a document on October 26, 1998 (63 FR 57062) (FRL–6035–7), announcing the revocation of tolerances for residues of the pesticides listed in the regulatory text. In the final rule, EPA responded to a comment from Rhone-Poulenc AG Company which requested that certain tolerances for phosalone not be revoked, but retained so that those commodities could be legally imported into the United States. One of the tolerances Rhone-Poulenc wanted to retain was for almonds which was covered by the ''nuts'' crop group tolerance. The Agency revoked the tolerances for phosalone on nuts and should have added an entry for almonds; however, this was inadvertently not done. Therefore, the amendatory language to § 180.263 for phosalone was incorrect. This document will correct that language.

I. Regulatory Assessment Requirements

This final rule does not impose any new requirements. It only implements a technical correction to the Code of Federal Regulations (CFR). As such, this action does not require review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993) and Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), or special consideration of environmental justice related issues under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Pub. L. 104–113, section 12(d) (15 U.S.C. 272 note). In addition, since this action is not subject to notice-and-comment requirements under the Administrative Procedure Act (APA) or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*).

II. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 24, 1998.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

In FR Doc. 98–28486 published on October 26, 1998 (63 FR 57062), make the following correction:

§ 180.263 [Corrected]

On page 57066, in the third column, the amendatory language for § 180.263 is corrected to read as follows:

e. By removing from § 180.263, the entries for ''artichokes''; ''cattle, fat''; ''cattle, meat''; ''cattle, mbyp''; ''citrus fruits''; ''goats, fat''; ''goats, meat''; ''goats, mbyp''; ''hogs, fat''; ''hogs, meat''; ''hogs, mbyp''; ''horses, fat''; ''horses, meat''; ''horses, mbyp''; ''nectarines''; ''Nuts''; ''potatoes''; ''sheep, fat''; ''sheep,meat''; and ''sheep, mbyp''; and by adding the entry for ''almonds'' to read as follows:

§ 180.263 Phosalone; tolerances for residues.

* * * * *

Commodity	Parts per million
Almond	0.1
* * *	* *

[FR Doc. 99–1480 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300774; FRL–6053–4]

RIN 2070–AB78

Tebufenozide; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for residues of the insecticide tebufenozide and its metabolites in or on sugarcane at 0.3 part per million (ppm) for an additional 2-year period. This tolerance will expire and is revoked on December 31, 2000. This regulation also amends the tolerance level, due to a typographical error in the original document published by EPA in the **Federal Register** on November 26, 1997. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on sugarcane. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective January 22, 1999. Objections and requests for hearings must be received by EPA, on or before March 23, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number OPP–300774, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations

Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300774], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number OPP–300774. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: David Deegan, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9358, deegan.dave@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of November 26, 1997 (62 FR 62979) (FRL–5751–1), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the residues of tebufenozide and its metabolites in or on sugarcane at 0.3 ppm, with an expiration date of December 31, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of tebufenozide on sugarcane for this year's growing season due to the continuing need to control the pest, sugarcane borer. The applicant, the Louisiana Dept. of Agriculture & Forestry, had for several years used the chemical azinphos-methyl to control this pest. However, use of that product has been eliminated, leaving no registered alternative measures to control the borer. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of tebufenozide on sugarcane for control of sugarcane borer.

EPA is also, at this time, amending the tolerance value for the time-limited tolerance for residues of tebufenozide on sugarcane resulting from use authorized by EPA under section 18. The regulation published by EPA in the **Federal Register** on November 26, 1997, (FRL–5751–1), contained a typographical error which identified the tolerance level as ''0.03 ppm'' instead of the correct tolerance level, which is ''0.3 ppm.'' The risk assessment performed by EPA in response to this action in 1997, and discussed in detail in the November 26, 1997 **Federal Register** document, had identified the appropriate tolerance level at ''0.3 ppm.'' EPA is taking this current action on its own initiative.

EPA assessed the potential risks presented by residues of tebufenozide in or on sugarcane. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of November 26, 1997 (62 FR 62979) (FRL–5751–1). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6).

Therefore, the time-limited tolerance is extended for an additional 2-year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on December 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on sugarcane after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by March 23, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement ''when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection.'' For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300774] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at: opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), 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. If the mandate is unfunded, EPA must provide to OMB 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 an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), 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. If the mandate is unfunded, EPA must provide OMB, 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.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

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

List of Subjects in 40 CFR Part 180

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

Dated: December 29, 1998.

Tina E. Levine,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

§ 180.482 [Amended]

2. In § 180.482, paragraph (b), in the table, amend the entry ''Sugarcane' by revising the tolerance level ''0.03'' to read ''0.3'' and the date ''12/31/98'' to read ''12/31/00''.

[FR Doc. 99–1479 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 990104001–9001–01; I.D. 111398D]

RIN 0648–AM05

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Pacific Offshore Cetacean Take Reduction Plan Regulations

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

ACTION: Interim final rule; request for comments.

SUMMARY: This rule will allow acoustic deterrent devices to be deployed farther away from the net in the California/Oregon drift gillnet fishery (CA/OR DGN fishery). The intended effect of this action is to allow acoustic devices to be more safely and efficiently attached to drift gillnets.

DATES: Effective January 22, 1999. NMFS will accept comments until February 22, 1999.

ADDRESSES: Submit comments on the interim final rule to Dr. William T. Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Irma Lagomarsino, NMFS, Southwest Region, 562–980–4016.

SUPPLEMENTARY INFORMATION: On October 3, 1997 (62 FR 51805), NMFS published a final rule requiring training, equipment, and gear modifications for operators and vessels in the CA/OR DGN fishery to reduce the mortality and serious injury of several marine mammal stocks that occurs incidental to fishing operations. The regulatory text was codified in subpart C of 50 CFR part 229. To correct and clarify the meaning of the final rule, NMFS amended the regulations on May 21, 1998 (63 FR 27860).

Section 229.31(c) (1) and (2) require acoustic deterrent devices (pingers) to be used on all vessels in the CA/OR DGN fishery during every set and this section specifies pinger sound characteristics. Under § 229.31(c)(3), pingers must be attached on or near the floatline and on or near the leadline and spaced no more than 300 ft (90.0 m) apart. Pingers attached on extenders (buoy lines) or attached to the floatline with lanyards (lines) must be within 3 ft (0.91 m) of the floatline. Pingers attached with lanyards to the leadline must be within 6 ft (1.82 m) of the leadline. These pinger deployment distances were based on the same lengths of the lanyards used to attach pingers to the net in NMFS' pinger experiments in the CA/OR DGN fishery during 1996 to 1997. Results from these experiments indicated that over time, fishers became proficient at placing and removing pingers from both the floatline and leadline. The final Environmental Assessment of the final rule to implement the Pacific Offshore Cetacean Take Reduction Plan (NMFS, 1997) concluded that deploying pingers on the floatline is easier than the leadline because as the net is payed out the leadline is often buried by slack in the net. For this reason, the net reel may need to be slowed or stopped to safely attach and detach pingers to/from the leadline.

After the final rule became effective and the entire fishery was required to use pingers, NMFS learned that allowing pingers to be deployed farther away from the net could provide greater flexibility for attaching and removing pingers. Representatives of the CA/OR DGN fishery reported to NMFS that allowing pingers to be deployed farther away from the net could facilitate more efficient (faster) attachment of pingers during the ''setting'' of the net and removal of pingers during net retrieval. Also, at a series of skipper education workshops held in August and September 1998, CA/OR DGN fishers stated that pingers could be more efficiently and safely attached and removed to and from the net with longer pinger lanyards. Specifically, they suggested that allowing pingers to be deployed within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline should allow for more efficient and safe placement of pingers on the net. In particular, for some drift gillnet fishing operations, if longer pinger lanyards were attached permanently to the leadline, pingers may be deployed without slowing down the net reel because direct handling of the leadline to attach and/or remove pingers would not be necessary. For instance, after removing a ''leadline'' pinger from a permanently attached 36-ft (10.97 m) leadline lanyard during net retrieval, the lanyard could be temporarily tied to the floatline before the net was spun on the net reel. During the next fishing set, the leadline pinger lanyard would be readily accessible near the floatline for attachment of a leadline pinger. This rule allows greater

flexibility for pinger placement and removal from/to the net.

Increasing the length of pinger lanyards should not affect the efficacy of pingers at reducing cetacean bycatch in the fishery. Section 229.31(c)(1) stipulates that only pingers that broadcast a sound frequency of 10 kHz (±2 kHz) at 132 dB (±4 dB) re 1 micropascal at 1 m, lasting 300 milliseconds (+ 15 milliseconds) and repeating every 4 seconds (+ .2 seconds) may be used in the CA/OR DGN fishery. Pingers must also be operational to a water depth of at least 100 fathoms (600 ft or 182.88 m). Pingers were originally designed to produce a sound level that is audible at 15 dB above ambient noise levels at a distance of 100 m (328 ft) from the pinger (NMFS, 1996). To conservatively maintain this sound level in all areas of the net, pingers were placed every 300 ft (91.44 m) on the floatline and leadline during NMFS' pinger experiments in the CA/OR DGN fishery. NMFS required pingers to be attached on both the floatline and leadline because drift gillnets, especially when targeting swordfish, are often set with the floatline above the ocean temperature thermocline. Thermoclines may act as a barrier to sound transmission. Allowing pingers to be attached within 30 ft (9.14 m) and 36 ft (10.97 m) from the floatline and leadline, respectively, should maintain the same level of cetacean bycatch reduction as shorter pinger lanyards as long as the vertical distance between pingers on the floatline and leadline is not greater than 300 ft (91.44 m).

Although termed ''gillnets'', drift gillnets are designed to entangle fish rather than to capture fish by the gills. Drift gillnets are constructed of twisted nylon that is tied to form squares (meshes). Mesh size is measured as the distance between two opposite knots of mesh when stretched apart diagonally. To effectively catch fish, the net meshes must open to form squares. Fish entanglement would be impossible, or substantially reduced, if the net meshes were completely stretched during fishing. The average stretched mesh size in the CA/OR DGN fishery is 19 in (48.26 cm), but ranges from 16–22 in (48.26–55.88 cm). For 22-inch (55.88 cm) mesh (stretched size), the distance between the two opposing knots when the net is in the water is approximately 12 in (30.48 cm). Thus, because the maximum observed net depth (measures in meshes) is 160 meshes, the maximum vertical length of a drift gillnet while it is being fished is approximately 160 ft (48.76 m) (160 meshes × 1 ft (.3048 m) per mesh). Since pingers attached to the floatline with 30-ft (9.14 m) lanyards and pingers attached to the leadline with 36-ft (10.97 m) lanyards would not be more than approximately 226 ft (68.88 m) apart (160 + 30 + 36), the same level of marine mammal bycatch reduction should be maintained with the longer pinger lanyards. NMFS convened the Pacific Offshore Cetacean Take Reduction Team (Team) in February 1996 to prepare a draft plan to reduce cetacean bycatch in the CA/OR DGN fishery. NMFS will continue to reconvene this Team on an annual basis to monitor the effectiveness of the Plan's strategies to reduce marine mammal bycatch. The Team will also evaluate the fishery's progress towards meeting the marine mammal bycatch reduction goals of the MMPA.

At its June 1–2, 1998, meeting, the Team recommended that the final rule should be amended to allow pingers to be attached within 30 ft (9.14 m) and 36 ft (10.97 m) of the floatline and leadline, respectively, in order to increase the safety of pinger deployment.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), finds for good cause under 5 U.S.C. § 553(b)(B) that providing prior notice and an opportunity for public comment on this action is impracticable and contrary to the public interest because allowing pingers to be attached farther away from the net avoids an occupational hazard posed by the existing regulation. An additional **Federal Register** notification with an advance comment period would only prolong a risk to fishermen's safety without countervailing benefits to marine mammals. Setting and retrieving a drift gillnet in the CA/OR DGN fishery is already a dynamic and sometimes dangerous operation. On most vessels, two crew members are actively involved in setting the net: as the net is payed out into the water, one operates the mechanical net reel and the other snaps buoys and light-sticks to the floatline. Because the net is continually moving during this operation, a crew member's clothing, hands, arms, or legs can easily snag on an extender or on the net slack, and the crew member injured or taken overboard with the net. In this fishery, drift gillnet fishermen have been entangled in the net and injured and/or dragged overboard during the routine setting of the net. Requiring additional gear (e.g., pingers) to be attached directly, or nearly directly, to the floatline and leadline increases the hazard of this already dynamic and sometimes dangerous operation. Allowing pingers to be placed a greater distance away from the net decreases the probability that crew members will be accidentally entangled in the net and injured and/or dragged overboard.

The affected public was already involved in the formulation of this rule via mandatory workshops for vessel operators in the drift gillnet fishery in August and September 1998. Seventy percent of the drift gillnet permit holders participated in these workshops; all were informed of the workshops and afforded the opportunity to participate. At the workshops, the fishermen and NMFS discussed the proposal to allow pingers to be attached farther away from the net. Many of the participants confirmed that the proposal would make pinger deployment safer and more efficient. No fishers opposed the modification.

Because this rule prevents injury to fishermen and is not expected to decrease the effectiveness of pingers, the AA finds for good cause under 5 U.S.C. 553(d)(3) that delaying the effective date of this rule for 30 days is unnecessary. Further, because the rule allows pingers to be placed a greater distance away from the net, it relieves a restriction and under 5 U.S.C. 553(d)(1) is not subject to a delay in effectiveness. Accordingly, the AA makes this action effective upon the date it is filed for public inspection with the Office of the Federal Register.

As this rule is not subject to the requirement to provide prior notice and an opportunity for public comment under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. In § 229.31, paragraphs (c)(2) and (3) are revised, paragraphs (c)(4) and (5) are redesignated as paragraphs (c)(7) and (8), and new paragraphs (c)(4) through (6) are added to read as follows:

§ 229.31 Pacific Offshore Cetacean Take Reduction Plan.

* * * * *

(c) * * *

(2) While at sea, operators of drift gillnet vessels with gillnets onboard must carry enough pingers on the vessel to meet the requirements set forth under paragraphs (c)(3) through(6) of this section.

(3) *Floatline.* Pingers shall be attached within 30 ft (9.14 m) of the floatline and spaced no more than 300 ft (91.44 m) apart.

(4) *Leadline.* Pingers shall be attached within 36 ft (10.97 m) of the leadline and spaced no more than 300 ft (91.44 m) apart.

(5) *Staggered Configuration.* Pingers attached within 30 ft (9.14 m) of the floatline and within 36 ft (10.97 m) of the leadline shall be staggered such that the horizontal distance between them is no more than 150 ft (45.5 m).

(6) Any materials used to weight pingers must not change its specifications set forth under paragraph (c)(1) of this section.

* * * * *

3. Figure 1 to part 229 is revised to read as follows:

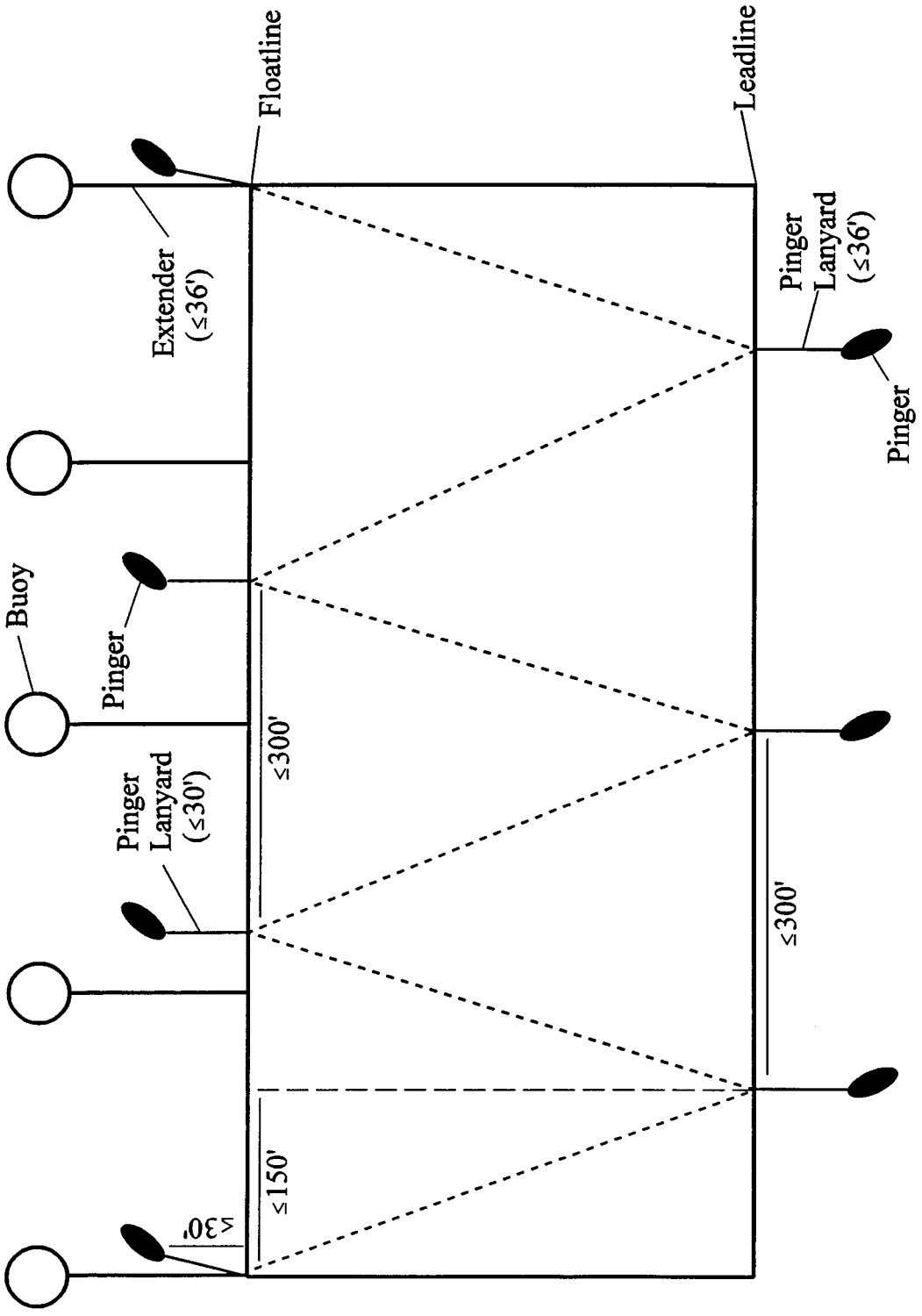
Dated: January 14, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 3510–P

Figure 1. Drift Gillnet Pinger Configuration and Extender Requirements



[FR Doc. 99–1382 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990113011–9011–01; I.D. 010699A]

RIN 0648–AM06

Fisheries of the Exclusive Economic Zone Off Alaska; Observer and Inseason Management Requirements for Pollock Catcher/Processors

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

ACTION: Emergency interim rule; request for comments.

SUMMARY: NMFS issues an emergency interim rule to establish additional observer coverage requirements for 20 catcher/processor (C/P) vessels identified in the American Fisheries Act (AFA). NMFS also is establishing inseason authority to manage the non-pollock harvest limitations required under the AFA for these 20 vessels. These actions are necessary to monitor and manage the harvest of the listed C/Ps. Their goal is to comply with the intent of the statutory provisions promulgated under the AFA for these vessels in 1999.

DATES: Effective January 20, 1999, through July 19, 1999. Comments must be received by February 8, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Environmental Assessment prepared for this emergency rule may be obtained from the same address.

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

SUPPLEMENTARY INFORMATION: MFS manages the U.S. groundfish fisheries of the Bering Sea and Aleutian Islands management area (BSAI) in the Exclusive Economic Zone (EEZ) pursuant to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP). The North Pacific Fishery Management Council (Council) prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq*. Regulations implementing the FMP appear at 50 CFR part 679. General regulations at 50 CFR part 600 also apply.

On October 20, 1998, the President signed the AFA into law. The AFA specifies the manner in which the BSAI pollock fishery must be managed, as well as measures to limit activity of pollock vessels in non-pollock fisheries. Section 208(e)(1) through (20) of the AFA lists C/Ps that are subject to specific harvest limitations for pollock and non-pollock species starting in 1999 (listed C/Ps). These harvest limitations will be established for 1999 as part of the 1999 groundfish specification process authorized under regulations at 50 CFR § 679.20. NMFS must implement additional observer coverage and inseason management authority necessary to monitor and manage these harvest limitations at the start of the 1999 fishing season. By regulation, the fishing season begins on January 20, 1999. At its November 1998 meeting, the Council recommended that these measures be implemented by emergency rule. The justification for, and a description of, these measures are discussed below.

Observer Coverage for Listed C/Ps

For the 1999 fishing year, section 211(b)(6) of the AFA requires only those listed C/Ps that are approved to participate in the 1999 multispecies groundfish community develop quota (MSCDQ) program to carry two observers and weigh catch on a scale on board approved by NMFS. For the 2000 fishing year, the AFA statutory provisions state that all 20 listed C/Ps shall (1) have two observers aboard at all times while groundfish are being harvested, processed, or received from another vessel in any fishery under the authority of the Council; and (2) weigh their catch on board on a NMFS-approved scale while harvesting groundfish in fisheries under the Council's authority.

CDQ groups have proposed that twelve of the twenty listed C/Ps participate in the 1999 MSCDQ program. The AFA requires that each of these 12 vessels that is approved to participate in the 1999 MSCDQ program have two observers aboard and weigh its catch on NMFS-approved scales at all times the vessel is used to fish for groundfish in 1999. These additional observer coverage requirements under the AFA for listed C/Ps do not change current observer coverage requirements for these vessels during their participation in the 1999 MSCDQ fisheries.

Current regulations at 50 CFR § 679.50 require the remaining eight listed C/Ps to have only one observer aboard at all times the vessel is used to fish in 1999. NMFS does not believe that one observer can adequately monitor the catch and associated harvest limitations specified for the listed C/Ps. Furthermore, a contract implementing a fishery cooperative under section 210 of the AFA among listed C/Ps and catcher vessels eligible to deliver pollock to listed C/Ps was filed with the Council and the Secretary of Commerce on December 20, 1998. NMFS believes that the reliance on observer data for compliance monitoring and on management of pollock catch amounts taken by listed C/Ps in the directed fishery for pollock or as incidental catch in non-pollock fisheries becomes increasingly important under such a fishery cooperative. Under a fishery cooperative, contract agreements would be established that essentially allocate specific amounts of pollock to individual vessels for purposes of directed fishing. Amounts of the non-pollock groundfish harvest limitations specified for the listed C/Ps also would be allocated under the fishery cooperative among individual vessels. Although NMFS does not intend to actively manage individual vessel groundfish harvests under the cooperative, it is challenged to ensure that overall groundfish or prohibited species catch harvest limitations are not exceeded and that the incidental catch of pollock taken in non-pollock groundfish fisheries is not credited against the pollock directed fishing allowance established under section 206(b) of the AFA for vessels harvesting pollock for processing by the listed C/Ps. To meet these management challenges, more than one observer must be aboard to sample and provide information on an increased number of hauls. NMFS, therefore, is implementing by this emergency interim rule a requirement that two NMFS-certified observers be aboard each of the 20 listed C/Ps at all times the vessel is used to fish for groundfish in the EEZ off Alaska.

In addition to the requirement that each listed C/P carry two NMFS-certified observers, NMFS requires that at least one of the observers aboard each listed C/P have successfully completed the additional training necessary to be certified to observe in the MSCDQ fisheries. This requirement for at least one MSCDQ-certified observer is necessary to ensure that the compliance monitoring role of the observers aboard the listed C/Ps can be successfully accomplished. The AFA (section 211(b)) requires that the C/Ps abide by harvest

limitations that apply only to the C/Ps. In order to monitor and enforce these newly imposed limitations, observers with more experience and training must be aboard C/Ps. NMFS-certified MSCDQ observers have that experience and training. MSCDQ observers receive special training in sampling for species composition in situations where bycatch may be limiting, in working with vessel personnel to resolve access to catch and other sampling problems, and in using flow scales for catch weight measurements. Monitoring by MSCDQ-certified observers is essential for accurate catch accounting, given the fact that a fishery cooperative has been established and that the potential exists for fishing to be curtailed when either groundfish or prohibited species harvest limitations specified for listed C/Ps have been reached.

Under this emergency interim rule, only one of the two observers is required to be MSCDQ certified so that the supply of these observers to the MSCDQ program is not jeopardized in 1999. NMFS notes that subsequent rulemaking establishing observer coverage requirements for listed C/Ps after 1999 could require both observers to be MSCDQ certified. Also, the MSCDQ-certified observer required by this emergency rule is not required to be trained as a ''lead CDQ observer'' as described at 50 CFR § 679.50(h)(1)(i)(E). A detailed discussion on the justification for additional observer training and certification criteria for individual vessel monitoring programs was provided both in the preamble to the proposed rule (62 FR 43866, August 15, 1997) and in the preamble to the final rule (63 FR 30381, June 4, 1998) implementing the MSCDQ program.

Inseason Authority to Manage Listed C/P Harvest Limits

Congress was concerned that, given the ability to form fishery cooperatives in 1999, listed C/Ps may utilize the benefits realized from fishery cooperatives and enter into or increase fishing effort in fisheries other than the pollock fishery. Section 211(b) of the AFA seeks to protect non-pollock fisheries from major and non-traditional redistributed fishing effort by listed C/Ps. To accomplish this, provisions under section 211(b)(2) establish harvest limitations for non-pollock groundfish and prohibited species that apply to listed C/Ps and that are based on historical catch amounts. These harvest limitations will be specified in the 1999 proposed, interim, and final BSAI groundfish specifications under 50 CFR § 679.20. Many of these harvest limitations are small amounts of fish that will not support a directed fishery for those species or species groups.

Current regulations do not clarify the inseason action NMFS will implement to maintain the harvest of non-pollock by listed C/Ps within specified harvest limitations mandated by the AFA under section 211(b). With clarification under this emergency rule, NMFS announces its intent to set a directed fishing allowance and close a groundfish species to directed fishing by the listed C/Ps when a harvest limitation specified for that species has been or will be reached. Additionally, NMFS lacks the regulatory authority to apply a directed fishing closure only to the 20 listed C/Ps when one or more of these non-pollock species may be available to directed fishing by other vessels. Furthermore, NMFS lacks regulatory authority under § 679.21(e)(7) to close directed fishing for all non-pollock groundfish by the listed C/Ps if NMFS determines that these vessels have reached a prohibited species harvest limitation.

This action is necessary to provide NMFS with the inseason management tools necessary to ensure that the management of specified harvest limitations will minimize the potential of a limit being exceeded while optimizing the opportunity to harvest the pollock directed fishing allowance allocated to vessels under section 206(b)(2) of the AFA for processing by the listed C/Ps.

Under this emergency rule, NMFS will establish directed fishing allowances for the non-pollock groundfish harvest limitations when it appears that one or more of these amounts have been or will be reached. The attainment of a non-pollock groundfish or prohibited species harvest limitation established under section 211(b)(2) of the AFA will not prohibit the listed C/Ps from participating in the directed fishery for pollock with pelagic trawl gear. However, the attainment of a non-pollock groundfish species harvest limitation established under section 211(b)(2) of the AFA will prohibit the listed C/Ps from participating in the directed fishery for that species. Also, the attainment of a prohibited species harvest limitation while fishing for non-pollock groundfish species will result in the closure of the applicable area to directed fishing for all non-pollock groundfish species. Bycatch or bycatch mortality of prohibited species taken by the listed C/Ps while participating in the pollock fishery will be credited against the respective prohibited species bycatch allowances specified for the pollock fishery. Consistent with existing regulations, attainment of a bycatch allowance specified for the pollock fishery will result in closure of a specified area to directed fishing for pollock with non-pelagic trawl gear.

NMFS anticipates that this emergency rule will limit the listed C/Ps' opportunity to participate in non-pollock groundfish fisheries. For example, in order for the listed C/Ps to participate in a directed fishery for a non-pollock groundfish species, the specified harvest limit for this species must be sufficiently large to support a directed fishery by the listed C/Ps. If NMFS determines that the amount is not sufficiently large to support a directed fishery by the listed C/Ps, directed fishing for the non-pollock groundfish species will be closed. When directed fishing for a non-pollock groundfish species is closed, the listed C/Ps may continue to retain amounts of that species up to the maximum retainable bycatch amounts established in regulations at § 679.20(e) and (f).

Classification

The Assistant Administrator for Fisheries, NOAA, has determined that this rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

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

NMFS finds that there is good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B). This action is necessary to implement the requirements of the AFA as they relate to the pollock fishery. Delaying the start of the pollock fishery beyond its scheduled regulatory start date of January 20, 1999, would conflict with investment-backed expectations of the regulated community and could disrupt supply of seafood products to U.S. markets and consequently would be contrary to the public interest. Likewise, the need to avoid delaying the start of the pollock season constitutes good cause to waive, pursuant to authority set forth at 5 U.S.C. 553(d)(3) the thirty-day delay in effective date otherwise required by 5 U.S.C. 553(d). In addition, the regulated industry has been aware that these new requirements would be necessary since the October 1998 Council meeting and have had ample

time to prepare for coming into compliance making a thirty-day delay in effective date unnecessary.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.2, a definition of ''American Fisheries Act'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

American Fisheries Act (AFA) (applicable through July 19, 1999) means Title II—Fisheries, Subtitles I and II, as cited within the Omnibus Appropriations Bill FY99 (Pub. L. 105–277).

* * * * *

3. In § 679.20, paragraph (d)(1)(iv) is added to read as follows:

§ 679.20 General limitations.

* * * * *

(d) * * *

(1) * * *

(iv) *American Fisheries Act harvest limitations (applicable through July 19, 1999).* (A) If the Regional Administrator determines that any harvest limitation of groundfish other than pollock, established under section 211(b)(2) (A) or (C) of the American Fisheries Act for catcher/processors identified in section 208(e)(1) through (20) of that Act, has been or will be reached, the Regional Administrator may establish a directed fishing allowance for the species or species group applicable only to those identified catcher/processors.

(B) In establishing a directed fishing allowance under paragraph (d)(1)(iv)(A) of this section, the Regional Administrator shall consider the amount of the harvest limitation established under section 211(b)(2) (A) or (C) of the American Fisheries Act that will be taken as incidental catch by those catcher/processors identified in section 208(e) (1) through (20) of that Act in directed fishing for other species.

4. In § 679.21, paragraphs (e)(3)(v) and (e)(7)(ix) are added to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e) * * *

(3) * * *

(v) *American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999).* The aggregate amounts of any crab, halibut or herring trawl PSC limit caught by the catcher/processors identified under section 208(e)(1) through (20) of the American Fisheries Act and counted against the bycatch allowances specified for the fishery categories defined under paragraphs (e)(3)(iv)(B) through (E) of this section shall be limited to the amounts established under section 211(b)(2)(B) of that Act and published in the **Federal Register** under paragraph (e)(6) of this section.

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(7) * * *

(ix) *Closures under the American Fisheries Act prohibited species catch limitations (applicable through July 19, 1999).* When the Regional Administrator determines that the catcher/processors identified under section 208(e)(1) through (20) of the American Fisheries Act have caught the amount of any crab, halibut, or herring prohibited species catch limitation specified under paragraph (e)(3)(v) of this section, directed fishing for groundfish by those vessels will be prohibited in the applicable area defined under this paragraph (e)(7), except for pollock with pelagic trawl gear.

* * * * *

5. In § 679.50, paragraph (c)(5) is added to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 21, 2000.

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(c) * * *

(5) *Observer coverage under the American Fisheries Act (applicable through July 19, 1999).* Any catcher/processor listed under section 208(e)(1) through (20) of the American Fisheries Act is required to have two observers aboard the vessel any day it harvests, receives, or processes groundfish. One of the two observers must meet the qualifications described at paragraph (h)(1)(i)(D) of this section.

* * * * *

[FR Doc. 99–1379 Filed 1–15–99; 5:01 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990115017–9017–01; I.D. 011199A]

RIN 0648–AM08

Fisheries of the Exclusive Economic Zone Off Alaska; Steller Sea Lion Protection Measures for the Pollock Fisheries Off Alaska

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

ACTION: Emergency interim rule; revision to 1999 interim harvest specifications; technical amendment to Steller sea lion no-trawl zones; request for comments.

SUMMARY: NMFS issues an emergency interim rule implementing reasonable and prudent alternatives to avoid the likelihood that the pollock fisheries off Alaska will jeopardize the continued existence of the western population of Steller sea lions or adversely modify their critical habitat. This emergency rule would implement three types of management measures for the pollock fisheries of the Bering Sea and Aleutian Islands Management Area (BSAI) and Gulf of Alaska (GOA): Measures to temporally disperse fishing effort, measures to spatially disperse fishing effort, and pollock trawl exclusion zones around important Steller sea lion rookeries and haulouts. These emergency measures are necessary and must be effective before the start of the BSAI and GOA pollock fisheries on January 20, 1999, or NMFS will be obligated under the Endangered Species Act to close all fishing for pollock until such measures are in place.

DATES: Effective January 20, 1999, through July 19, 1999. Comments must be received by February 22, 1999.

ADDRESSES: Comments may be sent to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the Biological Opinion

(BO) on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands Subarea, and the Environmental Assessment/ Regulatory Impact Review (EA/RIR) prepared for the emergency rule may be obtained from the same address. The BO is also available on the Alaska Region home page at http://www.fakr.noaa.gov.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228 or kent.lind@noaa.gov.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMPs). The North Pacific Fishery Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801, *et seq.*, implemented by regulations appearing at 50 CFR part 679. Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679 respectively.

Purpose and Need for Action

NMFS issued a BO dated December 3, 1998, and revised December 16, 1998, on the pollock fisheries of the BSAI and GOA and the Atka mackerel fishery of the Aleutian Islands Subarea. The BO concluded that the BSAI and GOA pollock trawl fisheries, as currently managed, are likely to (1) jeopardize the continued existence of the western population of Steller sea lions and (2) adversely modify its critical habitat. The clause ''jeopardize the continued existence of'' means ''to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species'' (50 CFR 402.02). The clause ''adversely modify its critical habitat'' means ''a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical'' (50 CFR 402.02). The BO also concluded that the Atka mackerel fishery, as modified by recent regulatory changes, is not likely to jeopardize the continued existence of Steller sea lions or their critical habitat.

In 1990, NMFS designated the Steller sea lion as a threatened species under the Endangered Species Act of 1973. The designation followed severe declines throughout much of the GOA and Aleutian Islands region. In 1993, NMFS defined critical habitat for the species to include (among other areas), the marine areas within 20 nautical miles (nm) of major rookeries and haulouts of the species west of 144° W longitude. In 1997, NMFS recognized two separate populations, and reclassified the western population (west of 144° W longitude) as endangered. Counts of adults and juveniles in the western population of Steller sea lions declined from about 110,000 to about 30,500 between the late 1970s and 1990, a decline of 72 percent. The decline has continued, with counts of adults and juveniles declining 27 percent from 1990 to 1996, and an additional 9 percent from 1996 through 1998. Similarly, counts of pups dropped by 19 percent from 1994 through 1998. The absolute magnitude of the decline has been smaller in recent years because the western population is already at a severely reduced level. However, the continued decline remains a serious problem.

Multiple factors have contributed to the decline, but considerable evidence indicates that lack of available prey is a major problem. Foraging studies confirm that Steller sea lions depend on pollock as a major prey source, and sea lions may be particularly sensitive to the availability of prey during the winter. The significance of pollock in the diet of sea lions may have increased since the 1970s due to shifts in the Bering Sea ecosystem related to oceanographic changes. Pollock are also the target of the largest commercial fisheries in Alaska, fisheries that have grown increasingly concentrated in time and space. This concentration of effort occurs largely in areas designated as Steller sea lion critical habitat and may reduce prey availability at critical times in the life history of sea lions. For these reasons, the BO concluded that the pollock fisheries of the BSAI and GOA may compete with sea lions and either contribute to their decline or impede their recovery. Additional information on Steller sea lions and the pollock fisheries of the BSAI and GOA is contained in the BO and in the EA prepared for this action (See **ADDRESSES**).

The BO concluded that, to avoid the likelihood of jeopardizing the continued existence of the western population of Steller sea lions or of adversely modifying its critical habitat, reasonable and prudent alternatives to the existing pollock trawl fisheries in the BSAI and GOA must accomplish three basic principles: (1) Temporal dispersion of fishing effort, (2) spatial dispersion of fishing effort, and (3) pollock trawl exclusion zones around Steller sea lion rookeries and haulouts. The BO also contained examples of specific management measures that would implement the three basic principles.

At its December, 1998 meeting, the Council deliberated on various management measures to implement the principles described in the BO. After significant debate and public comment, the Council voted to adopt a series of emergency measures to protect Steller sea lions. After review, NMFS has determined that the Council's recommended measures, with certain modifications, adhere to the principles identified in the BO. The Council's motion forms the basis for the management measures contained in this emergency rule.

Elements of the Emergency Rule

Aleutian Islands Closure

The emergency rule closes the Aleutian Islands Subarea to directed fishing for pollock. This closure, recommended by the Council as part of its emergency rule recommendation, is consistent with the principles contained within the BO. In light of its recommendation to close the Aleutian Islands Subarea to directed fishing for pollock, the Council also recommended that the pollock total allowable catch (TAC) for the Aleutian Islands Subarea be reduced to 2,000 metric tons (mt) to provide for incidental catch of pollock by vessels participating in other groundfish fisheries. This TAC recommendation, if approved by NMFS, will be published in the final 1999 BSAI harvest specifications.

Pollock Trawl Exclusion Zones

This emergency rule prohibits directed fishing for pollock within either 10 or 20 nm of rookeries and haulouts in the Bering Sea Subarea and GOA. The location, size, and period of each exclusion zone are set out in the Tables 12 and 13 of 50 CFR part 679 of the codified text. The size of the exclusion zones in each area reflects the relative widths of the continental shelf. In the Bering Sea Subarea, the shelf is relatively wide and exclusion zones have radii of 20 nm. In the GOA, the shelf is narrower and exclusion zones have radii of 10 nm.

NMFS approved these sites on the basis of ten Steller sea lion counts

conducted since 1979 during the reproductive season (summer) and non-reproductive season (winter). NMFS used the following criteria to identify and approve sites that require exclusion zones and to determine the period of the closure:

1. Rookeries

All rookery sites have 10 or 20 nm year-round pollock trawl exclusion zones.

2. Summer Haulouts

Haulouts with greater than 200 sea lions in a summer survey since 1979 and less than 75 sea lions in winter surveys since 1979 have 10 or 20 nm pollock trawl exclusion zones effective May 1 through October 31.

3. Winter Haulouts

Haulouts with less than 200 sea lions in summer surveys since 1979 and greater than 75 sea lions in a winter survey since 1979 have 10 or 20 nm pollock trawl exclusion zones effective November 1 through April 31.

4. Year-Round Haulouts

Haulouts with greater than 200 sea lions in a summer survey since 1979 and greater than 75 sea lions in a winter survey since 1979 have year-round 10 or 20 nm pollock trawl exclusion zones.

The Council's emergency rule recommendations contained all of the pollock exclusion zones put forth by NMFS in the BO with one exception in the Bering Sea Subarea and eight exceptions in the GOA.

In the Bering Sea Subarea, the Council recommended no closure for a proposed 20 nm exclusion zone around the Cape Sarichef haulout. The BO states that ''some of the principles identified above may be accomplished by an incremental or phased approach if the incremental approach does not jeopardize the continued existence of the western population of Steller sea lions. The phase in of any reasonable and prudent alternative must not be drawn out, and two years is a general guideline with a significant portion occurring in year one.''

Consistent with the BO, and based on the above criteria, NMFS has decided to phase in the exclusion zone around this haulout with a 10 nm exclusion zone in 1999 and anticipates extending the exclusion zone to 20 nm for 2000 and beyond.

In the GOA, the Council recommended no closures around Cape Barnabas, Gull Point, Rugged Island, Point Elrington, Cape Ikolik, Needles, Mitrofania, and Sea Lion Rocks. Based on the above criteria, NMFS has decided to implement a 1 year phase-in period for these locations. For 1999, NMFS has decided not to implement exclusion zones at these locations, and anticipates phasing-in 10 nm exclusion zones for 2000 and beyond. The extension of exclusion zones for Cape Sarichef and the eight locations in the GOA would be accomplished through separate rulemaking.

Although the Council's recommended measures included pollock trawl exclusion zones in the Aleutian Islands Subarea, implementation of these exclusion zones becomes unnecessary with the closure of the Subarea to directed fishing for pollock. This emergency rule does not affect existing no-trawl and no-entry zones that apply to all groundfish fisheries. The new exclusion zones established by this emergency rule prohibit directed fishing for pollock only.

Bering Sea Management Measures

1. Fishing Seasons

This emergency rule establishes new fishing seasons for the four sectors of the Bering Sea pollock fishery that are defined in the American Fisheries Act (AFA). These new fishing seasons are summarized in Table 1. This emergency rule also repeals existing fair start provisions that required vessels fishing for pollock in the Bering Sea Subarea to cease fishing for groundfish during the week leading up to each pollock season or face a mandatory stand down period during the first week of the pollock season. The Council has determined that these fair start requirements are no longer necessary given the protections for other fisheries that are contained within the AFA.

TABLE 1.—BSAI POLLOCK FISHING SEASONS BY SECTOR

Fishing season [1]	Industry sector		
	Inshore and catcher/processor	Mothership	Community development quota (CDQ)
A1 Season	Jan. 20–Feb. 15	Feb. 1–April 15	Jan. 20–April 15.
A2 Season	Feb. 20–April 15	Feb. 1–April 15	Jan. 20–April 15.
B Season	Aug. 1–Sept. 15	Aug. 1–Sept. 15	April. 15–Dec. 31.
C Season	Sept. 15–Nov. 1	Sept. 15–Nov. 11	April 15–Dec. 31.

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, Alaska local time (A.l.t.).

2. Seasonal Apportionment of TAC

The pollock TAC allocated to each industry sector will be apportioned to the fishing seasons previously identified according to the following formula set out in Table 2. Overages and underages may be ''rolled over'' to subsequent fishing seasons during the same year, except that the combined fishing activities of all sectors during a fishing season may not exceed 30 percent of the annual TAC.

TABLE 2.—BSAI SEASONAL APPORTIONMENTS OF POLLOCK TAC

Fishing Season	Industry Sector (in percent)		
	Inshore and Catcher/processor	Mothership	CDQ
A1 Season	27.5	40	45
A2 Season	12.5	40	45
B Season	30	30	55

TABLE 2.—BSAI SEASONAL APPORTIONMENTS OF POLLOCK TAC—Continued

Fishing Season	Industry Sector (in percent)		
	Inshore and Catcher/processor	Mothership	CDQ
C Season	30	30	55

3. Critical Habitat/Catcher Vessel Operational Area (CH/CVOA) Conservation Zone

This emergency rule establishes a combined CH/CVOA conservation zone for the purpose of regulating total removals of pollock. This CH/CVOA conservation zone includes the portion of Bering Sea critical habitat known as the Bogoslof foraging area and the portion of the CVOA that extends eastward from the Bogoslof foraging area. The CH/CVOA conservation zone consists of the area of the Bering Sea Subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;
55°00′ N lat. 168°00′ W long.;
55°30′ N lat. 168°00′ W long.;
55°30′ N lat. 166°00′ W long.;
56°00′ N lat. 166°00′ W long.;
56°00′ N lat. 163°00′ W long.

This emergency rule restricts pollock harvests within the CH/CVOA conservation zone during the A1 and A2 seasons to a percentage of each sector's seasonal TAC apportionment according to the percentages displayed in Table 3.

TABLE 3.—TAC LIMITS WITHIN THE CH/CVOA CONSERVATION ZONE

Fishing season	Industry sector (in percent)			
	Inshore	Catcher/processor	Mothership	CDQ
A1 Season	70	40	50	100
A2 Season	70	40	50	100
B Season		[reserved]		
C Season		[reserved]		

NMFS will monitor catch by each industry sector and close the CH/CVOA conservation zone to directed fishing for pollock by sector when NMFS determines that the specified CH/CVOA limit has been reached. The Council intended that inshore catcher vessels less than or equal to 99 ft (30.2 m) length overall (LOA) would be exempt from CH/CVOA closures from September 1 through March 31 unless the 70 percent cap for the inshore sector has been reached. NMFS will announce the closure of the CH/CVOA conservation zone to catcher vessels over 99 ft (30.2 m) LOA before the inshore sector 70 percent limit is reached. NMFS will implement the closure in a manner intended to leave remaining quota within the CH/CVOA that is sufficient to support directed fishing for pollock by vessels less than or equal to 99 ft (30.2 m) LOA for the duration of the current inshore sector opening.

An emergency rule implemented pursuant to the Magnuson-Stevens Act must not remain in effect for more than 180 days. This emergency rule will expire on July 19, 1999, and does not specify a spatial distribution of pollock TAC for the B and C seasons in the Bering Sea Subarea. NMFS has determined that the spatial dispersion scheme recommended by the Council for the B and C seasons does not adequately meet the principles for reasonable and prudent alternatives outlined in the BO. If the Council submits revised recommendations in a timely manner, NMFS will consider implementing them. In the absence of further recommendations by the Council that provide protections equivalent to or exceeding the principles contained in the BO, NMFS anticipates implementing through subsequent emergency rule the B and C season spatial allocation scheme contained in the BO. Under this scheme, the B and C season TAC allocations would be apportioned among the following three areas based on distribution of exploitable biomass as determined by summer surveys: (1) CH/CVOA conservation zone, (2) east of 170° W long. and outside of the CH/CVOA conservation zone, and (3) west of 170° W long. and north of 56° N lat.

Gulf of Alaska Management Measures

1. Fishing Seasons and TAC Apportionments

This emergency rule establishes new fishing seasons and pollock TAC apportionments in the Western and Central (W/C) Regulatory Areas of the GOA. These new fishing seasons are summarized in Table 4. The TAC for pollock in the combined W/C Regulatory Areas will continue to be apportioned among Statistical Areas 610, 620, and 630 in proportion to the distribution of the pollock biomass as determined by the most recent NMFS surveys. The pollock fishing season in the Eastern Regulatory Area will be unchanged.

TABLE 4.—POLLOCK FISHING SEASONS AND SEASONAL TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA

Fishing season	TAC apportionment (percent)	Dates [1]	
		From	To
A Season	30	January 20	April 1.

TABLE 4.—POLLOCK FISHING SEASONS AND SEASONAL TAC APPORTIONMENTS FOR THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA—Continued

Fishing season	TAC apportionment (percent)	Dates [1]	
		From	To
B Season	20	June 1	July 1.
C Season	25	September 1	The date of closure of a statistical area (610, 620, 630) to directed fishing, or October 1, whichever comes first.
D Season	25	Five days after the date of closure of a statistical area (610, 620, 630) to directed fishing in the C season.	November 1.

[1] The time of all openings and closures of fishing seasons, other than the beginning and end of the calendar fishing year, is 1200 hours, A.l.t.

2. Limits on Pollock Catch Within Shelikof Strait

To prevent localized depletions of pollock within Shelikof Strait, an important winter foraging area for Steller sea lions, the emergency rule limits removals from within Shelikof Strait during the A season. For the purpose of this emergency rule, a Shelikof Strait conservation zone is defined as the area bound by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.;
58°51′ N lat. 152°00′ W long.; and, the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to
57°00′ N lat. 154°00′ W long.;
56°30′ N lat. 154°00′ W long.;
56°30′ N lat. 155°00′ W long.;
56°00′ N lat. 155°00′ W long.;
56°00′ N lat. 157°00′ W long.; and, the intersection of 157°00′ W long. with the Alaska Peninsula.

This area overlaps portions of statistical areas 620 and 630. The Shelikof Strait conservation zone catch limit is not a separate TAC for this area, but a limit on allowable removals from this area. Either one or both of the statistical areas could be closed to directed fishing upon attainment of the specific TACs before the Shelikof Strait catch limit is reached.

NMFS will determine the A season catch limit for the Shelikof Strait conservation zone by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the most recent estimate of total pollock biomass in the GOA. NMFS will then multiply by the overall pollock TAC for the GOA and further multiplied by the A season apportionment of 30 percent. For 1999, NMFS has specified an interim Shelikof Strait catch limit of 15,857 mt (see the revised 1999 interim specifications below). When NMFS determines that the A season pollock removals from within the Shelikof Strait conservation zone have reached this specified limit, NMFS will prohibit directed fishing for pollock in Shelikof Strait.

3. W/C GOA Trip Limits

The Council recommended that NMFS establish a 300,000 lb trip limit for catcher vessels harvesting pollock in the directed pollock fisheries of the Western or Central Regulatory Areas of the Gulf of Alaska (W/C GOA). However, NMFS' recordkeeping and reporting requirements currently require that catch and landings be reported in metric tons (mt). NMFS is, therefore, rounding the Council's recommended 300,000 lb trip limit to the nearest equivalent in mt and establishing a trip limit of 136 mt. The emergency rule prohibits the operator of a catcher vessel fishing for groundfish in the W/C GOA from retaining on board more than 136 mt of pollock harvested in the W/C GOA. In addition, to prevent the large scale use of tender vessels to avoid the trip limit restriction, this rule also prohibits vessels operating as tenders from retaining on board more than 272 mt (the equivalent of 2 fishing trips) of unprocessed pollock that was harvested in the W/C GOA. This 136 mt trip limit does not exempt vessels from existing regulations that require 100 percent retention of pollock when directed fishing for pollock is open. A vessel operator must cease fishing for pollock during a fishing trip before the 136 mt trip limit is reached in order to avoid a violation of either the 136 mt trip limit or the 100 percent retention requirement for pollock.

Revised 1999 Interim Harvest Specifications for Pollock in the BSAI and GOA

The regulatory changes in this emergency rule require revision of the 1999 interim specifications of pollock TAC for the BSAI and GOA. Existing regulations at 50 CFR 679.20(c)(2) do not require that interim harvest specifications for pollock in the BSAI and GOA be temporally or spatially dispersed. However, the BO concluded that the current program for managing the BSAI and GOA pollock fisheries could jeopardize Steller sea lions or their critical habitat. Therefore, to allow the Bering Sea and GOA pollock fisheries to commence on January 20, 1999, this emergency rule also adjusts the 1999 interim specifications for pollock to comport with the reasonable and prudent management measures outlined above.

The specifications for Bering Sea Subarea pollock in Table 1 of the 1999 interim harvest specifications (64 FR 50, January 4, 1999) are replaced by the following Table 6. The interim specifications for pollock were changed for two reasons: (1) To comport with the temporal and spatial dispersions required by the BO, and (2) to incorporate the Council's final 1999 TAC recommendations for pollock, which are reduced from the 1999 proposed specifications.

TABLE 6.—REVISED INTERIM 1999 TAC AMOUNTS FOR POLLOCK IN THE BERING SEA SUBAREA

Species and component	Area	A1 Season [1]		A2 Season	
		Interim TAC	CH/CVOA limit	Interim TAC	CH/CVOA limit
Pollock:					
Inshore	BS	115,394	[2] 80,776	52,452	[2] 36,716
Offshore catcher/processor and catcher vessel total	BS	92,316	36,926	41,962	16,785
Listed catcher/processors [3]	BS	84,469	33,787	38,395	15,358
Listed catcher vessels [3]	BS	7,847	3,139	3,567	1,427
Mothership	BS	33,569	16,785	n/a	n/a
CDQ	BS	44,640	44,640	n/a	n/a

[1] The mothership and CDQ sectors have a single A season apportionment equal to 40 and 45 percent of their annual TAC allocations, respectively.

[2] Under the emergency rule, NMFS will close the CH/CVOA conservation zone to inshore vessels greater than 99 ft (30.2 m) LOA while maintaining a sufficient CH/CVOA allowance to support fishing activities by inshore catcher vessels under 99 ft (30.2 m) LOA for the duration of the current opening. However, once the specified CH/CVOA limit is reached, all inshore vessels will be prohibited from engaging in directed fishing for pollock inside the CH/CVOA conservation zone.

[3] Section 210(c) of the AFA requires that not less than 8.5 percent of the directed fishing allowance allocated to listed catcher/processors shall be available for harvest only by eligible catcher vessels delivering to listed catcher/processors.

The first seasonal allowances for W/C GOA pollock in Table 1 of the 1999 Interim Harvest Specifications (64 FR 46, January 4, 1999) are replaced by the following Table 7:

TABLE 7.—REVISED FIRST SEASONAL ALLOWANCES OF POLLOCK IN THE WESTERN (W) AND CENTRAL (C) REGULATORY AREAS OF THE GULF OF ALASKA (GOA)

Species and area	Interim TAC
Pollock:	
W (610)	6,936
C (620)	11,652
C (630)	9,156
W/C Subtotal	27,744
Shelikof Strait Subtotal [1]	15,857

[1] The pollock catch limit for the Shelikof Strait conservation zone is determined by calculating the ratio of the most recent estimate of pollock biomass in Shelikof Strait (489,900 mt) divided by the most recent estimate of total pollock biomass in the GOA (933,000 mt). This ratio will then be multiplied by the overall pollock TAC for the GOA (100,920 mt) and multiplied by the A season apportionment of 30 percent.

Technical Amendment to Steller Sea Lion No-Trawl Zones

This emergency interim rule also makes technical changes to the existing no-trawl zones set out in Tables 4 and 6 50 CFR part 679 by suspending them and by adding Tables 13 and 14 to 50 CFR part 679.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has determined that this emergency interim rule is necessary to respond to an emergency situation and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

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

Failure to have the measures contained in this rule in place by January 20, 1999, would force delay of the start of the pollock fisheries of the BSAI and GOA with significant costs to industry. This would occur because without these measures, the December 16, 1998, BO would require that to protect Steller sea lions, no pollock fishing occur. Thus, notice and comment procedures for this rule would prevent NMFS from performing its necessary function of allowing the fishery to be prosecuted while protecting this endangered species. As such, NMFS finds that the immediate need to effect the provisions of this rule by January 20, 1999, constitutes good cause to waive the requirement to provide prior notice and an opportunity for public comment pursuant to authority set forth at 5 U.S.C. 553(b)(B), as such procedures would be impracticable and contrary to the public interest. The need for these measures to be in place by January 20, 1999, as explained above, constitutes good cause under authority contained in 5 U.S.C. 553(d)(3) to waive the requirement for a 30-day delay in effective date.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable.

The President has directed Federal agencies to use plain language in their communications with the public, including regulations. To comply with that directive, we seek public comment on any ambiguity or unnecessary complexity arising from the language used in this emergency interim rule.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Recordkeeping and reporting requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

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

50 CFR CHAPTER VI

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

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

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

2. In § 679.7, paragraph (b) is suspended and paragraph (i) is added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(i) *Prohibitions specific to the GOA (applicable through July 19, 1999)*—(1) *Southeast Outside trawl closure (applicable through July 19, 1999).* Use any gear other than non-trawl gear in the GOA east of 140° W long.

(2) *Western/Central GOA Pollock trip limit (applicable through July 19, 1999).* Retain on board a catcher vessel at any time, more than 136 mt of unprocessed pollock, or retain on board a tender vessel at any time, more than 272 mt of unprocessed pollock, harvested in the Western or Central Areas of the GOA.

3. In § 679.20, paragraphs (a)(5)(i)(A) and (a)(5)(ii)(B) are suspended, and new paragraphs (a)(5)(i)(C) and (a)(5)(ii)(C) are added to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(5) * * *

(i) * * *

(C) *BSAI seasonal allowances (applicable through July 19, 1999)—(1) Inshore.* The portion of the Bering Sea Subarea pollock TAC allocated to the inshore component under Section 206(b) of the American Fisheries Act will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(e)(4)(i), as follows: A1 Season, 27.5 percent; A2 Season, 12.5 percent, B Season, 30 percent, C Season, 30 percent. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator provided that overall pollock removals from all sectors during a fishing season do not exceed 30 percent of the combined annual TAC of pollock.

(2) Catcher/processor. The portion of the Bering Sea Subarea pollock TAC allocated to the catcher/processor component under Section 206(b) of the American Fisheries Act will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(e)(4)(ii), as follows: A1 Season, 27.5 percent; A2 Season, 12.5 percent; B Season, 30 percent; C Season, 30 percent. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that overall pollock removals from all sectors during a fishing season do not exceed 30 percent of the combined annual TAC of pollock.

(3) Mothership. The portion of the Bering Sea Subarea pollock TAC allocated to the mothership component under Section 206(b) of the American Fisheries Act will be divided into three seasonal allowances corresponding to the three fishing seasons set out at § 679.23(e)(4)(iii) as follows: A Season, 40 percent; B Season, 30 percent; C Season, 30 percent. Within any fishing year, underage or overage of any seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator provided that overall pollock removals from all sectors during a fishing season do not exceed 30 percent of the combined annual TAC of pollock.

* * * * *

(ii) * * *

(C) *GOA seasonal allowances (applicable through July 19, 1999).* Each apportionment established under paragraph (a)(5)(ii)(A) of this section will be divided into four seasonal allowances corresponding to the four fishing seasons set out at § 679.23(d)(3) as follows: A Season, 30 percent; B Season, 20 percent; C Season, 25 percent; D Season, 25 percent. Within any fishing year, underage or overage of a seasonal allowance may be added to or subtracted from subsequent seasonal allowances in a manner to be determined by the Regional Administrator, provided that a revised seasonal allowance does not exceed 30 percent of the annual TAC apportionment.

* * * * *

4. In § 679.22, paragraphs (a)(7) and (b)(2) are suspended and (a)(11) and (b)(3) are added to read as follows:

§ 679.22 Closures.

(a) * * *

(8) * * *

(iv) *Pollock closure (applicable through July 19, 1999).* Directed fishing for pollock is prohibited at all times within the Aleutian Islands Subarea.

* * * * *

(11) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof District (applicable through July 19, 1999)*—(i) *Year-round trawl closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 12 to this part.

(ii) *Seasonal trawl closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the four Steller sea lion rookeries shown in Table 12 to this part.

(iii) *Pollock closures (applicable through July 19, 1999).* Directed fishing for pollock is prohibited within 10 or 20 nm of each of the 25 Steller sea lion haulout and rookery sites shown in Table 12 to this part. The radius in nm and time period that each closure is in effect are shown in Table 12 to this part.

(iv) *Critical Habitat/Catcher Vessel Operational Area (CH/CVOA) conservation zone (applicable through July 19, 1999)*—(A) *General.* Directed fishing for pollock by vessels catching pollock for processing either by the inshore, offshore catcher processor, or mothership component is prohibited within the CH/CVOA conservation zone for the duration of a fishing season when the Regional Administrator announces by notification in the **Federal Register** that the criteria set out in paragraph (a)(7)(iv)(C) of this section have been met by that industry component.

(B) *Boundaries.* The CH/CVOA conservation zone consists of the area of the Bering Sea Subarea between 170°00′ W long. and 163°00′ W long., south of straight lines connecting the following points in the order listed:

55°00′ N lat. 170°00′ W long.;
55°00′ N lat. 168°00′ W long.;
55°30′ N lat. 168°00′ W long.;
55°30′ N lat. 166°00′ W long.;
56°00′ N lat. 166°00′ W long.; and,
56°00′ N lat. 163°00′ W long.

(C) *Criteria for closure—(1) General.* The directed fishing closures identified in paragraph (a)(7)(iv)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of pollock reaches a percentage specified in the following table:

Fishing season	Industry component (in percent)		
	Inshore	Catcher/ processor	Mothership
A1 Season	70	40	50
A2 Season	70	40	50
B Season		[reserved]	
C Season		[reserved]	

(2) Inshore catcher vessels greater than 99 ft (30.2 m) LOA. The Regional Administrator will close directed fishing to inshore catcher vessels greater than 99 ft (30.2 m) LOA prior to reaching the inshore CH/CVOA limit to accommodate fishing by vessels less than or equal to 99 ft (30.2 m) LOA inside the CH/CVOA conservation zone for the duration of the inshore seasonal opening. During the A1 and A2 seasons, the Regional Administrator will estimate how much of the inshore A1 and A2 seasonal allowance is likely to be harvested by catcher vessels less than

or equal to 99 ft (30.2 m) LOA and reserve a sufficient amount of the inshore CH/CVOA allowance to accommodate fishing by such vessels after the closure of the CH/CVOA conservation zone to vessels greater than 99 ft (30.2 m) LOA. The CH/CVOA conservation zone will be closed to directed fishing for all inshore catcher vessels when the inshore limit specified in paragraph (a)(7)(iv)(C)(*1*) of this section has been met.

(b) * * *

(3) *Steller sea lion protection areas—(applicable through July 19, 1999)*—(i) *Year-round trawl closures.* Trawling is prohibited in the GOA within 10 nm of the nine Steller sea lion rookeries shown in Table 13 to this part.

(ii) *Pollock closures (applicable through July 19, 1999).* Directed fishing for pollock is prohibited within 10 nm of each of the 45 Steller sea lion haulout and rookery sites shown in Table 13 to this part. The radius in nm and time period that each closure is in effect are shown in Table 13 to this part.

(iii) *Shelikof Strait conservation zone (applicable through July 19, 1999).*—(A) *General.* Directed fishing for pollock is prohibited within the Shelikof Strait conservation zone during the A season defined at § 679.23(d)(3) when the Regional Administrator announces through notification in the **Federal Register** that the A season catch of pollock from within the Shelikof Strait conservation zone reaches the amount determined by paragraph (b)(2)(iii)(C) of this section.

(B) *Boundaries.* The Shelikof Strait conservation zone consists of the area bound by straight lines and shoreline connecting the following coordinates in the following order:

58°51′ N lat. 153°15′ W long.
58°51′ N lat. 152°00′ W long.

and the intersection of 152°00′ W long. with Afognak Island; aligned counterclockwise around the shoreline of Afognak, Kodiak, and Raspberry Islands to

57°00′ N lat. 154°00′ W long.
56°30′ N lat. 154°00′ W long.
56°30′ N lat. 155°00′ W long.
56°00′ N lat. 155°00′ W long.
56°00′ N lat. 157°00′ W long.

and the intersection of 157°00′ W long. with the Alaska Peninsula.

(C) *Determination of catch limit.* The pollock catch limit for the Shelikof Strait conservation zone will be published in the annual specifications under § 679.20(c) and is determined by calculating a ratio equal to the most recent estimate of pollock biomass in Shelikof Strait divided by the most recent estimate of total pollock biomass in the GOA. NMFS will then multiply by the overall pollock TAC for the GOA and further multiplied by the A season apportionment of 30 percent.

* * * * *

5. In § 679.23, paragraphs (d)(2) and (e)(2) are suspended, and new paragraphs (d)(3) and (e)(4) are added to read as follows:

§ 679.23 Seasons.

* * * * *

(d) * * *

(3) *Directed fishing for pollock (applicable through July 19, 1999).* Subject to other provisions of this part, directed fishing for pollock in the Western and Central Regulatory Areas is authorized only during the following four seasons:

(i) *A season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., April 1;

(ii) *B season.* From 1200 hours, A.l.t., June 1, through 1200 hours, A.l.t., July 1;

(iii) *C season.* From 1200 hours, A.l.t., September 1, within a statistical area until the date of closure of the statistical area to directed fishing, or 1200 hours, A.l.t., October 1, whichever comes first.

(iv) *D season.* From 1200 hours, A.l.t., five days after the closure of the C season in a statistical area until 1200 hours, A.l.t., November 1.

(e) * * *

(4) *Directed fishing for pollock in the Bering Sea Subarea (applicable through July 19, 1999).—(i) Inshore and offshore catcher/processor components.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the inshore component and by the offshore catcher processor component in the Bering Sea Subarea is authorized only during the following four seasons:

(A) *A1 season.* From 1200 hours, A.l.t., January 20, through 1200 hours, A.l.t., February 15;

(B) *A2 season.* From 1200 hours, A.l.t., February 20, through 1200 hours, A.l.t., April 15;

(C) *B season.* From 1200 hours, A.l.t., August 1, through 1200 hours, A.l.t., September 15; and,

(D) *C season.* From 1200 hours, A.l.t., September 15, through 1200 hours, A.l.t., November 1.

(ii) *Mothership component.* Subject to other provisions of this part, directed fishing for pollock by vessels catching pollock for processing by the offshore mothership component in the Bering Sea Subarea is authorized only during the following three seasons:

(A) *A season.* From 1200 hours, A.l.t., February 1, through 1200 hours, A.l.t., April 15;

(B) *B season.* From 1200 hours, A.l.t., August 1, through 1200 hours, A.l.t., September 15; and,

(C) *C season.* From 1200 hours, A.l.t., September 15, through 1200 hours, A.l.t., November 1.

* * * * *

6. Tables 4 and 6 to 50 CFR part 679 are suspended and Tables 12 and 13 are added to read as follows:

TABLE 12 TO 50 CFR PART 679

[Steller sea lion protection areas[1] in the Bering Sea Subarea[2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Bering Sea								
Walrus	57°11.00′	169°56.00′			20	20		10
Uliaga	53°04.00′	169°47.00′	53°05.00′	169°46.00′		20		
Chuginadak	52°46.50′	169°42.00′	52°46.50′	169°44.50′		20		
Kagamil	53°02.50′	169°41.00′				20		
Samalga	52°46.00′	169°15.00′				20		
Adugak	52°55.00′	169°10.50′			20	20		10
Umnak/Cape Aslik	53°25.00′	168°24.50′			20	20		

TABLE 12 TO 50 CFR PART 679—Continued

[Steller sea lion protection areas [1] in the Bering Sea Subarea [2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Ogchul	53°00.00′	168°24.00′	.....	.....	20	20	.....	10
Bogoslof/Fire Island	53°56.00′	168°02.00′	.....	.....	20	20	.....	10
Emerald	53°17.50′	167°51.50′	.....	.....	.....	20	.....	.....
Unalaska/Cape Izigan	53°13.50′	167°39.00′	.....	.....	20	20	.....	.....
Unalaska/Bishop Pt	53°58.50′	166°57.50′	.....	.....	20	20	.....	.....
Akutan/Reef-lava	54°07.50′	166°06.50′	54°10.50′	166°04.50′	20	20	.....	.....
Old Man Rocks	53°52.00′	166°05.00′	.....	.....	20	20	.....	.....
Akutan/Cape Morgan	54°03.50′	166°00.00′	54°05.50′	166°05.00′	20	20	20	10
Rootok	54°02.50′	165°34.50′	.....	.....	.....	20	.....	.....
Akun/Billings Head	54°18.00′	165°32.50′	54°18.00′	165°31.50′	20	20	20	10
Tanginak	54°12.00′	165°20.00′	.....	.....	20	.....	.....	.....
Tigalda/Rocks NE	54°09.00′	164°57.00′	54°10.00′	164°59.00′	20	20	.....	.....
Unimak/Cape Sarichef	54°34.50′	164°56.50′	.....	.....	10	10	.....	.....
Aiktak	54°11.00′	164°51.00′	.....	.....	20	.....	.....	.....
Ugamak	54°14.00′	164°48.00′	54°13.00′	164°48.00′	20	20	20	10
Round	54°12.00′	164°46.50′	.....	.....	.....	20	.....	.....
Sea Lion Rock (Amak)	55°28.00′	163°12.00′	.....	.....	20	20	20	10
Amak+rocks	55°24.00′	163°07.00′	55°26.00′	163°10.00′	20	20	.....	.....

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Closure zones around many of these sites also extend into statistical area 610 of the Gulf of Alaska Management Area.

TABLE 13 TO 50 CFR PART 679 (EFFECTIVE THROUGH JULY 19, 1999)

[Steller sea lion protection areas [1] in the Gulf of Alaska [2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Gulf of Alaska								
Bird	54°40.50′	163°18.00′	.....	.....	10	10	.....	.....
South Rocks	54°18.00′	162°41.50′	.....	.....	10	10	.....	.....
Clubbing Rocks	54°42.00′	162°26.50′	54°43.00′	162°26.50′	10	10	.....	10
Pinnacle Rock	54°46.00′	161°46.00′	.....	10	.....	10	.....	10
Sushilnoi Rocks	54°50.00′	161°44.50′	.....	.....	.....	10	.....	.....
Olga Rocks	55°00.50′	161°29.50′	54°59.00′	161°31.00′	10	10	.....	.....
Jude	55°16.00′	161°06.00′	.....	.....	10	10	.....	.....
The Whaleback	55°16.50′	160°06.00′	.....	.....	10	10	.....	.....
Chernabura	54°47.50′	159°31.00′	54°45.50′	159°33.50′	10	10	.....	10
Castle Rock	55°17.00′	159°30.00′	.....	.....	.....	10	.....	.....
Atkins	55°03.50′	159°19.00′	.....	.....	10	10	.....	10
Spitz	55°47.00′	158°54.00′	.....	.....	.....	10	.....	.....
Kak	56°17.00′	157°51.00′	.....	.....	.....	10	.....	.....
Lighthouse Rocks	55°47.50′	157°24.00′	.....	.....	10	10	.....	.....
Sutwik	56°31.00′	157°20.00′	56°32.00′	157°21.00′	.....	10	.....	.....
Chowiet	56°00.50′	156°41.50′	56°00.50′	156°42.00′	10	10	.....	10
Nagai Rocks	55°50.00′	155°46.00′	.....	.....	10	10	.....	.....
Chirikof	55°46.50′	155°39.50′	55°46.50′	155°43.00′	10	10	.....	10
Puale Bay	57°41.00′	155°23.00′	.....	.....	10	10	.....	.....
Takli	58°03.00′	154°27.50′	58°02.00′	154°31.00′	.....	10	.....	.....
Cape Gull	58°13.50′	154°09.50′	58°12.50′	154°10.50′	.....	10	.....	.....
Sitkinak/Cape Sitkinak	56°34.50′	153°51.50′	.....	.....	10	10	.....	.....
Kodiak/Cape Ugat	57°52.00′	153°51.00′	.....	.....	10	10	.....	.....
Shakun Rock	58°32.50′	153°41.50′	.....	.....	10	10	.....	.....
Twoheaded Island	56°54.50′	153°33.00′	56°53.50′	153°35.50′	10	10	.....	.....
Cape Douglas	58°51.50′	153°14.00′	.....	.....	.....	10	.....	.....

TABLE 13 TO 50 CFR PART 679 (EFFECTIVE THROUGH JULY 19, 1999)—Continued

[Steller sea lion protection areas [1] in the Gulf of Alaska [2] are identified in the following table. Where two sets of coordinates are given, the baseline extends in a clock-wise direction from the first set of geographic coordinates along the shoreline at mean lower-low water to the second set of coordinates. Where only one set of coordinates is listed, that location is the base point.]

Management area/island/site	Boundaries to				Directed fishing for pollock prohibited within . . . (nm)		Trawling prohibited within . . . (nm)	
	Latitude (N)	Longitude (W)	Latitude (N)	Longitude (W)	Nov. 1 through April 31	May 1 through Oct. 31	Jan. 1 through April 15	Year-round
Latax Rocks	58°42.00′	152°28.50′	58°40.50′	152°30.00′	10	10		
Ushagat/SW	58°55.00′	152°22.00′				10		
Ugak	57°23.00′	152°15.50′	57°22.00′	152°19.00′		10		
Sea Otter Island	58°31.50′	152°13.00′			10	10		
Long	57°47.00′	152°13.00′			10			
Kodiak/Cape Chiniak	57°37.50′	152°09.00′			10	10		
Sugarloaf	58°53.00′	152°02.00′			10	10		10
Sea Lion Rocks (Marmot)	58°21.00′	151°48.50′			10	10		
Marmot	58°14.00′	151°47.50′	58°10.00′	151°51.00′	10	10		10
Perl	59°06.00′	151°39.50′			10	10		
Outer (Pye) Island	59°20.50′	150°23.00′	59°21.00′	150°24.50′	10	10		10
Steep Point	59°29.00′	150°15.00′				10		
Chiswell Islands	59°36.00′	149°34.00′			10	10		
Wooded Island (Fish)	59°53.00′	147°20.50′			10	10		
Glacier Island	60°51.00′	147°09.00′			10	10		
Seal Rocks	60°10.00′	146°50.00′			10	10		
Cape Hinchinbrook	60°14.00′	146°38.50′				10		
Hook Point	60°20.00′	146°15.50′				10		
Cape St. Elias	59°48.00′	144°36.00′			10	10		

[1] Three nm NO TRANSIT ZONES are described at 50 CFR 227.12(a)(2) of this title.
[2] Additional closures along the Aleutian Island chain that extend into statistical area 610 of the Gulf of Alaska are displayed in Table 13 to this part.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 981021264–9016–02; I.D. 092998A]

RIN 0648–AL29

Fisheries of the Exclusive Economic Zone Off Alaska; Season and Area Apportionment of Atka Mackerel Total Allowable Catch

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

ACTION: Final rule; 1999 interim Atka mackerel specifications.

SUMMARY: NMFS issues regulations that divide the Atka mackerel total allowable catch (TAC) specified for the Aleutian Islands Subarea (AI) into two seasonal allowances; reduce the percentage of Atka mackerel TAC harvested from Steller sea lion critical habitat (CH) over a 4-year period in the Western and Central Districts of the AI; and extend the seasonal no-trawl zone around Seguam and Agligadak rookeries in the AI Eastern District into a year-round closure. This action is necessary to avoid potential jeopardy to the continued existence of Steller sea lions due to fishery-induced localized depletions of Atka mackerel, a primary prey species for Steller sea lions. This action is intended to foster the recovery of Steller sea lions and to further the conservation goals of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP).

DATES: Effective January 19, 1999.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this 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: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the Bering Sea and Aleutian Islands Management Area (BSAI) pursuant to the FMP. General regulations governing U.S. fisheries appear at 50 CFR part 600. The FMP is implemented by regulations appearing at 50 CFR part 679 issued under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The North Pacific Fishery Management Council (Council) prepared the FMP under authority of the Magnuson-Stevens Act. Fishing for Atka mackerel (*Pleurogrammus monopterygius*) is governed by the FMP and its implementing regulations.

Background

The purpose and need for this action were described in the preamble to the proposed rule published on November 9, 1998 (63 FR 60288). That document and the EA/RIR/FRFA describe the conservation and management events leading to this action. In summary, the number of Steller sea lions (*Eumetopias jubatus*) west of 144°W. long. in the Gulf of Alaska (GOA) and the BSAI has declined severely during the last several decades. In 1997, NMFS recognized these animals as a separate and endangered population. NMFS has

defined CH for this population to generally include marine areas within 20 nautical miles (nm) of major Steller sea lion rookeries and haul outs west of 144°W. long. and principal foraging areas. NMFS is the lead agency responsible for the conservation of this marine mammal species and its recovery.

NMFS scientists have found that Atka mackerel are the most common prey species for Steller sea lions in portions of the AI Central and Western Districts, based on the collection of Steller sea lion scats. Further investigation of Atka mackerel fishery data indicates that the fishery has led to localized depletions of Steller sea lion prey, thereby increasing evidence of competition for Atka mackerel between Steller sea lions and the fishery. The single most important feature of CH for the Steller sea lion is its prey base. Areas designated as CH for this species must include sufficient food to meet the energy demands of a stable and healthy sea lion population.

Although the ultimate cause(s) of the population decline of Steller sea lions west of 144°W. long. remain(s) uncertain, NMFS believes that the lack of available prey is an important contributing factor. Atka mackerel is an important part of the mix of species preyed on by Steller sea lions. This rule reduces the proportion of the annual Atka mackerel catch taken from within designated CH to prevent potential jeopardy to the continued existence of the endangered Steller sea lion population and adverse modification of its CH.

At its meeting in June 1998, the Council adopted the fishery management alternative described in the proposed rule. This action implements the management elements described in the proposed rule, with no change. Briefly, these elements include (1) dividing the Atka mackerel TACs specified for each subarea and district of the BSAI into two equal seasonal allowances, (2) progressively reducing the catch of Atka mackerel within areas designated as Steller sea lion CH and (3) extending the seasonal 20 nm no-trawl zones around the Seguam and Agligadak rookeries in the Eastern District of the AI into 20 year-round closures.

Interim Specifications

Regulations at § 679.20(c)(1) require annual publication of proposed specifications of catch limits in the BSAI and GOA groundfish fisheries for the next fishing year. NMFS published the 1999 proposed specifications for the BSAI on December 30, 1998 (63 FR 71867). Interim specifications (§ 679.20(c)(2)) provide for groundfish fisheries that start in early January each year and remain in effect until superceded by publication of the final specifications. NMFS published interim specifications for the BSAI groundfish fisheries on January 4, 1999 (64 FR 50). This final rule changes the regulatory procedures for setting interim specifications at § 679.20(c)(2)(ii)(A), and effectively changes the published interim specifications for Atka mackerel to the A season apportionments that appear in Table 3 of the proposed BSAI specifications. The A season apportionments of Atka mackerel, and catch limits inside CH as specified in Table 3, will remain in effect for 1999, until superceded by publication of the final specifications for 1999. The revised interim TACs (in metric tons) for Atka mackerel are as follows:

Subarea & Component	Inside CH	Total
Western AI (543)	7,459	11,475
Central AI (542)	7,616	9,520
Eastern AI and BS Jig Gear	.....	127
Eastern AI and BS Other Gear	.....	6,269
Total	.....	27,391

Response to Comments

NMFS invited public comments on the proposed rule from November 9, 1998, through December 9, 1998 (63 FR 60288, November 9, 1998). NMFS received three letters of substantive comment and one letter stating that no comment would be made. Ten principal comments from the three comment letters are summarized and responded to here.

Comment 1. The proposed regulations would lessen the jeopardy to the Steller sea lions posed by the Atka mackerel fishery and should be adopted. Enforcement of the regulations will require detailed knowledge of the location of fishing vessels. NMFS should adopt a vessel monitoring system (VMS) for the Atka mackerel fishery as soon as possible.

Response. NMFS notes the support for the regulations. As noted in the preamble to the proposed rule, the Council recommended that NMFS establish a VMS program to monitor the activity of vessels fishing with trawl gear in CH areas. NMFS intends to implement VMS requirements in 1999 before the start of the second Atka mackerel fishing season on September 1.

Comment 2. NMFS should design and implement, in consultation with the fishing industry and other agencies, a program for evaluating the effectiveness of the regulations on the availability of Atka mackerel to Steller sea lions and on Steller sea lion recovery. Such an evaluation program should include efforts to determine whether the catch of 40 percent of the total AI mackerel harvest in the Steller sea lion CH is too high to result in reduced competition between Steller sea lions and the Atka mackerel fishery.

Response. NMFS recognizes that research into the relationship between groundfish fisheries and the Steller sea lion is necessary and advisable. Information from well-designed research studies may better enable NMFS and the Council to craft fishery management measures that ensure sufficient prey availability for sea lion recovery and that minimize, to the extent practicable, burdensome impacts on the fishing industry. NMFS is reviewing a preliminary research plan to investigate the effects of the Atka mackerel fishery on Steller sea lion condition and fitness, and the efficacy of trawl exclusion zones as a sea lion conservation measure. NMFS has initiated planning discussions on how best to undertake the initial steps of this proposal, which include small-scale bottom trawl surveys and tagging of Atka mackerel for movement studies.

Comment 3. Reducing the likely adverse impacts of high-volume, concentrated trawl fishery removals of key prey species from sea lion CH should be the highest priority for sea lion conservation. The proposed regulations fall short in this respect. Additional measures for sea lion conservation should include (1) no trawling for Atka mackerel in all Steller sea lion CH and foraging habitat in the AI, (2) spreading the catch more evenly in time with quarterly allocations, (3)

spreading the catch more evenly in space with smaller spatial allocations, and (4) reducing the overall TAC in response to sharp declines in the estimates of stock biomass.

Response. NMFS believes that the measures contained in this action will reduce the likelihood of fishery-induced localized depletions of Steller sea lion prey within CH. However, if continuing research indicates that this is not the case, NMFS will change the regulations, in consultation with the Council, to reflect the newly acquired understanding of sea lion prey requirements and fishery effects on local prey availability. Although the Atka mackerel biomass decreased from a peak in 1990 and 1991, the TAC-setting process incorporates risk-averse methods that ensure conservative catch levels.

Comment 4. The proposed regulations are inadequate because they do not insure that adverse modification will not occur in sea lion CH, especially in the Eastern District of the AI. No analysis exists to show that a 50-percent reduction in total fishery removals from CH in Districts 542 and 543 is adequate to avoid localized depletions or other adverse modifications of CH. The problem of fleet concentration and locally intense pulse fishing is not addressed by broad spatial allocations because the fishery is likely to remain spatially concentrated in discrete locations under the proposed regulations. Two equal seasonal allowances of Atka mackerel TACs are not sufficient to prevent locally high extraction rates. The proposed measures do not adequately address the need to reduce fishing in the fall and winter months when sea lion prey is believed to be more scarce. Finally, allocating substantial portions of the Atka mackerel TAC outside of the CH, without reductions in TAC levels, will likely result in transferring the problems to these other areas.

Response. See response to Comment 3. A 50-percent reduction in total fishery removals from CH is a reasonable first step that substantially diminishes competition for Atka mackerel between Steller sea lions and the Atka mackerel fishery. For example, based on catch history and the Atka mackerel TAC of 22,400 metric tons (mt) for the Central AI District (542) in 1998, up to 98 percent or 21,952 mt could have been caught by the fishery inside CH. Under the conservation program implemented by this final rule, and assuming the same TAC, the catch of Atka mackerel inside CH would be reduced to 17,920 mt in the first year and to 8,960 mt by the fourth year of the program. Further in this example, the catches made inside CH without the conservation measures normally would be taken at one time of the year, in winter. This action will divide the catch inside CH between winter and summer/fall seasons. Instead of removing 21,952 mt from CH during one winter season (in this example) the fishery would ultimately be allowed to remove only 4,480 mt during a winter season. Hence, disbursement of the fleet by area and season will significantly reduce fishery-induced localized depletions of Atka mackerel inside CH. If new information in the future indicates otherwise, NMFS will re-examine these measures in that light. To this end, the phased-in approach to reducing catch levels inside CH is designed, in part, to avoid transferring the conservation problem to other areas outside CH by allowing time to identify and respond to unanticipated effects of this action.

Comment 5. The Atka mackerel TAC reapportionment plan should be approved for the Eastern and Western AI Districts and modified for the Central AI District where only the temporal reapportionment of Atka mackerel fishing should be implemented. The proposed CH area restrictions for the Central AI District could negatively affect the Atka mackerel stock and, thereby, adversely impact foraging opportunities for sea lions as a greater proportion of fishing is mandated outside of current fishing areas. The Council's Scientific and Statistical Committee (SSC) advised the Council to move forward with seasonal modifications, but not spatial modifications, to the Atka mackerel fishery. The SSC was concerned that disproportionate harvest rates of Atka mackerel in marginal areas for the stock (outside CH) could hurt the mackerel population and possibly impact sea lions. In the Eastern and Western Districts, a reasonable fishery can be conducted under the proposed modifications.

Response. For 1999, the apportionment of Atka mackerel TAC between areas inside and outside Steller sea lion CH in the AI Central District will be 80 percent inside and 20 percent outside. This represents the first year of a four-year phased-in reduction in the proportion caught in CH (to 40 percent inside CH in 2002), but only a 15 percent reduction from the recent 3-year average of 95 percent caught within CH in the Central District. While NMFS recognizes that mandated movements of the fishery may have unforeseen consequences to the fishery, the Atka mackerel stock, and the habitats of other species, NMFS believes that decreased use of CH areas by the fishery will promote the recovery of Steller sea lions. Furthermore, the phased-in reduction of the use of CH areas will enable NMFS and the Council to revisit these actions before 2002. If research, groundfish surveys (to be conducted in both 2000 and 2002), or other information sources indicate that redistribution of the fishery to areas outside CH is having detrimental effects on the Atka mackerel stock or the habitats of other species, NMFS may consider different measures to promote the recovery of the Steller sea lion population and protect the habitats of marine species.

Comment 6. Although industry presented several options to the Council for addressing the potential impact of the Atka mackerel fishery on Steller sea lions, NMFS informed the industry and Council that the only acceptable options were those based on inside-outside CH apportionments of TAC. NMFS stated other options that failed to limit harvest within CH could result in a finding that the fishery jeopardized the recovery of sea lions (under the Endangered Species Act) and could result in fishery closures in 1999. NMFS was acting as both judge and jury, stifling the Council process and affecting the content of options eventually adopted by the Council. The result was approval of measures based on the split of the TAC between inside and outside CH despite the Council's reservations regarding the merits of such an approach.

Response. During the process of developing conservation measures to address the potentially adverse impact of the Atka mackerel fishery on the recovery of the endangered Steller sea lion, NMFS hosted several industry workshops and considered comments by the Council's SSC and Advisory Panel, as well as public testimony, provided at the April and June 1998 Council meetings. The alternative management measures presented to the Council included options such as the step-wise implementation of CH harvest limitations that were suggested by industry and ultimately adopted by the Council. Although both industry and conservation groups presented other options, NMFS did not pursue these options as reasonable alternatives in light of the standards provided by the ESA and other applicable law and due to the limited knowledge on fishery interactions with Steller sea lions. NMFS balanced these concerns with precautionary principles that require immediate and significant action be taken to mitigate activities that pose jeopardy to the recovery of Steller sea lions or adversely impact their CH.

NMFS acknowledges the Council's reservations in adopting the proposed measures given the scarcity of existing information. However, such action is commended, prudent, and subject to change in the future as new information becomes available.

Comment 7. NMFS should not implement the third and fourth year Atka mackerel catch reductions in the CH of the Central AI District if data from the first and second year's fisheries indicate that this district cannot support a fishery for 60 percent of the TAC outside CH. NMFS should reconsider its entire area apportionment plan if research in the next few years concludes that fishing does not affect the density of Atka mackerel in areas inhabited by sea lions. The Council should be required to conduct an annual review of the phased-in modifications to the Atka mackerel fishery. NMFS made several important commitments to research the effect of the fishery on the density of Atka mackerel in areas inhabited by sea lions. NMFS also agreed that a better assessment of the spatial distribution of Atka mackerel was necessary. NMFS should follow through on its commitment so that an adequate review of the action can be conducted.

Response. See responses to Comments 2 and 5. NMFS intends to support research on the effects of fishing on Steller sea lion prey to the extent funding permits. NMFS also supports periodic review of the phased-in catch restrictions inside CH.

Comment 8. NMFS' expressed intent to manage catch limitations inside CH areas by counting all catch from the beginning of a season against the catch limits inside CH, regardless of where the fish were actually caught, will create a ''race-for-fish'' inside CH contrary to the stated objective of the plan. NMFS should delay implementing CH restrictions until a VMS program is implemented so that the location of catch can be correctly counted against the area in which it is taken. The fishing industry is willing to work with NMFS to establish a reasonable monitoring system.

Response. As noted in the response to Comment 1, NMFS intends to implement VMS requirements by September 1, 1999. The primary purpose of these requirements will be to enforce area closures; not for catch accounting purposes. The resolution of catch location data, even with the use of a VMS, is not sufficient to determine whether any particular catch of fish was taken from inside or outside of the CH area. This is because a VMS does not necessarily match a catch of fish to a particular area. NMFS' presumption that initial catches of Atka mackerel come from within CH is historically based in that significant amounts of the Atka mackerel TAC have been harvested within Steller sea lion CH. As discussed in the EA/RIR/FRFA, only 5 to 15 percent of the Atka mackerel harvest currently occurs outside of CH. Because of this current harvesting practice, NMFS' approach should not stimulate any more of a ''race-for-fish'' than currently exists without vessel-specific catch quotas. To not follow this approach would undermine the conservation measures implemented by this action to protect Steller sea lions. NMFS may alter this approach as data develops concerning increased harvests of Atka mackerel outside of CH.

Comment 9. NMFS has made no explicit allowances for TAC not taken in the A season to be incorporated into the B season. NMFS should commit to rolling over unharvested A season quota into the B season. Otherwise, fishermen will have an incentive to fish in hazardous weather conditions which creates a safety issue.

Response. The proposed rule, at § 679.20(a)(8)(ii)(B), specifically provided for the addition of unharvested amounts of the A season allowance to the B season allowance. This provision is unchanged in the final rule. NMFS will exercise this reapportionment authority such that the percentage of an Atka mackerel TAC that may be harvested from inside CH during the B season under § 679.22(a)(8)(iii)(B) of the final rule is not exceeded. That is, unharvested amounts of the TAC apportionment specified for the A season would be reapportioned to the B season for harvest outside CH. An overage of the A season TAC apportionment would be deducted from the B season TAC apportionment proportionately between inside and outside CH areas.

Comment 10. In the analysis presented to the Council, NMFS incorrectly determined that there were no small entities (pursuant to the Regulatory Flexibility Act (RFA)) affected by the management measures being developed. In the proposed rule, NMFS attempted to remedy this error by admitting that some impacted entities could be ''small entities,'' as defined by the RFA. NMFS should have made this determination during development of the measures as it may have changed the outcome of the Council decision. Despite a current finding of significant impact on small entities, the analyses of impacts should have been prepared in conjunction with the development of proposed measures instead of in hindsight. NMFS continues to miss the point on impacts on communities in the AI that are by definition ''small entities'' by maintaining that the issue is impact on Community Development Quota (CDQ) communities. Dutch Harbor and Adak are not CDQ communities but are clearly small entities which depend heavily on income from services provided to vessels participating in the Atka mackerel fishery. Further discrepancy exists between the meaning of ''small entity'' as used in the analysis of impacts of the pollock inshore-offshore allocations developed at the same time as the analysis of Atka mackerel management measures.

Response. During the development of alternatives, NMFS prepared an analysis of the potential economic impacts of various Steller sea lion conservation measures. This initial analysis indicated that this measure would not result in significant economic impacts on a substantial number of small entities because most of the entities that would be directly affected by the measures were not considered ''small entities'' under the RFA. For fishing firms, a ''small entity'' would have receipts of less than $3 million dollars annually. The initial analysis indicated that catcher/processor vessels dominate the Atka mackerel fishery and these vessels did not appear to meet this ''small entity'' criterion. NMFS presented this analysis to the Council and public. Public testimony presented to the Council included comments on the impacts on small entities and challenged the tentative view that the conservation measures would not have a significant economic impact under the RFA. NMFS later determined that a definite certification of no significant impact on a substantial number of small entities could not be made due to a lack of empirical information. Therefore, NMFS prepared an initial regulatory flexibility analysis (IRFA) that was available for public review and comment at the time the proposed rule was published for public review. A final regulatory flexibility analysis (FRFA) was prepared for the final rule.

The Council process for recommending conservation and management measures is public and iterative, and designed to incorporate new information as it emerges through this process. Compliance with the RFA is primarily an agency responsibility. NMFS is satisfied that the public was adequately notified of the potential small entity impacts, and that the final agency decision to implement this rule has taken these potential impacts into consideration. For example, exemption of small entity jig gear vessels from the rule and the phased-in approach to

reducing Atka mackerel catches within CH serve to mitigate economic impacts of the rule on all directly affected entities.

For purposes of the RFA, NMFS must identify small entities that are expected to comply with the rule, i.e. those that would be directly or indirectly regulated by the rule. For this rule, those small entities include those small businesses, small organizations, and small governmental jurisdictions as described in the FRFA (section 5.2). Although the fishing ports of Alaska are small entities, they are not regulated by this action. CDQ groups, on the other hand, are small entities that are directly regulated by this action. Most of the vessels that have participated in the Atka mackerel fishery recently have had total annual receipts in excess of $3 million, and few are small entities. Similarly, few of the factory trawlers in the BSAI pollock fishery should have been identified as small entities for the purposes of the IRFA for the inshore-offshore allocation (Amendment 51 to the FMP). For this action, a summary of the analysis of entities affected indirectly is presented in the preamble to the proposed rule. Due to public comment indicating that the rule could have adverse economic impacts on small entities, including governmental jurisdictions, and without empirical information to demonstrate conclusively that significant impacts on a substantial number of small entities would not occur, NMFS prepared an IRFA and FRFA for this action.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule's primary management measures are time and area closures to directed fishing for Atka mackerel. These closures affect only fishermen who use trawl gear.

What areas does this rule close? This rule prohibits trawling within 10 nm and within 20 nm of the Steller sea lion rookeries identified in this final rule at § 679.22(a)(7) and (8). Most of these areas were already closed to trawling before this final rule. This action makes permanent closures that were seasonal around the two Steller sea lion rookeries shown in Table 5b of this rule. In addition, this rule prohibits trawling for Atka mackerel within areas designated as Steller sea lion CH in the Western and Central Districts of the AI when NMFS announces this area closure in the **Federal Register**. The Alaska Region, NMFS will announce these CH closures in an information bulletin. Contact the Alaska Region, Sustainable Fisheries Division (see **ADDRESSES**) for further information on obtaining closure announcements. Tables 1 and 2, and Figure 4 of rules at 50 CFR part 226 identify the CH area in the Western and Central Districts of the AI The only exception to the CH closure to trawl gear is for harvesting groundfish CDQ. However, a CDQ group must cease fishing with trawl gear inside CH areas in the Western and Central Districts of the AI, when it has taken its specified allocation of Atka mackerel for the fishing year.

When is fishing for Atka mackerel with trawl gear allowed? This final rule authorizes directed fishing for Atka mackerel with trawl gear in the AI Subarea only during two seasons specified in this rule at § 679.23(e)(3). Directed fishing for Atka mackerel during each season will end on the last day of the season or when the Alaska Region Administrator determines that the seasonal allowance for either season has been harvested. NMFS will announce seasonal closures of directed fishing for Atka mackerel in the **Federal Register** and in information bulletins released by the Alaska Region. Affected fishermen should keep themselves informed of such closure notices.

Classification

This action has been determined to be not significant under E.O. 12866.

Pursuant to the RFA, NMFS has prepared a Final Regulatory Flexibility Analysis (FRFA), which is supplemented by the preamble to this final rule. A summary of significant issues raised in public comments in response to the IRFA and the NMFS response to those comments are provided in Comment 10. No new reporting, recordkeeping or other compliance requirements are imposed by this rule. The FRFA concludes the following regarding the small entities to which this rule applies and measures to mitigate significant economic impacts on small entities.

Business entities affected directly. The actions being considered for the BSAI Atka mackerel fishery would have direct effects on fewer than 15 fishing vessels all of which are expected to be factory trawlers. In 1997, 12 factory trawlers participated in the BSAI Atka mackerel fishery and eight of these vessels accounted for 81 percent of the retained catch in that fishery. All of the factory trawlers in the Atka mackerel fishery are owned by seafood companies with annual receipts that exceed the $3 million small entity threshold by the Small Business Administration for fish harvesting businesses. In 1998, 1 percent of the Atka mackerel TAC in Area 541 (127 mt) was allocated to vessels using jig gear. However, for all of 1998, NMFS did not receive any Atka mackerel catch reports by vessels using jig gear in Area 541 and the entire 127 mt TAC allocation was unharvested. Up to 10 vessels using jig gear had expressed interest in fishing for Atka mackerel in Area 541 and all of these vessels are small entities. However, the final rule would exempt vessels using jig gear from the A-B season split, critical habitat restrictions, and VMS requirements. Therefore, all small entities using jig gear to fish for Atka mackerel would be unaffected by this action.

Small communities and groups affected directly. Because, very little BSAI Atka mackerel is delivered to on-shore processors and because the principal participants in this fishery are not residents of Alaska fishing communities, with the exception of the CDQ communities, few small communities would be affected directly. With the expansion of the CDQ program to include all BSAI groundfish and crab, the 50 plus CDQ communities would be affected by actions that affect the Atka mackerel CDQ. However, the effects on these communities are not expected to be significant because Atka mackerel is expected to account for less than 5% of the value of the CDQs to these communities, none of the actions would eliminate all of the value of the Atka mackerel CDQs, and the CDQs are but one source of income for these communities. To further reduce the potential impacts of this action on CDQ groups, the Council's preferred alternative would exempt CDQ groups from the A-B season split so that CDQ groups are not forced to fish small amounts of Atka mackerel CDQ during two separate time periods.

Business entities affected indirectly. A much larger number of entities would be affected indirectly if the final rules result in the factory trawlers, that have dominated the Atka mackerel fishery, switching effort from the Atka mackerel fishery to other groundfish fisheries. If the fishing capacity of the eight factory trawlers that were the core of the Atka mackerel fleet in 1997 were diverted to other fisheries, these vessels could take substantially larger shares of the catch in the BSAI rock sole, Pacific cod, flathead sole, or other flatfish fishery or the GOA flatfish fisheries. Much of any such increase in catch by the core Atka mackerel fleet would be at the expense of other factory trawlers in the BSAI and both catcher vessels and other factory trawlers in the GOA. In 1996, 67 factory

trawlers participated in BSAI and GOA Pacific cod fisheries and 42 factory trawlers participated in the various BSAI and GOA flatfish fisheries. In 1996, 180 trawl catcher vessels participated in the Pacific cod fisheries of the BSAI and GOA and 62 trawl catcher vessels participated in the various flatfish fisheries of the BSAI and GOA. Due to inshore/offshore TAC allocations for Pacific cod in the GOA and TAC splits between catcher vessels and catcher processors in the BSAI, catcher vessels participating in the Pacific cod fishery will be unaffected if Atka mackerel factory trawlers shift into the Pacific cod fishery. However, catcher vessels fishing for flatfish in the BSAI and GOA could face impacts if effort shifts away from Atka mackerel as a result of this action. The extent to which these shifts may occur is impossible to quantify or predict.

Most of the factory trawlers operating in the BSAI and GOA Pacific cod and flatfish fisheries are owned by or affiliated with ''large'' entities. In addition, up to half of the catcher vessels fishing in the BSAI are believed to be owned by or affiliated with large entities. However, in a written comment to the Council submitted for this action, an industry representative for flatfish and Pacific cod factory trawlers indicated that more than 30 percent of the factory trawlers in the BSAI flatfish and Pacific cod fisheries expected 1998 annual gross revenues to be less than $3 million. NMFS does not have information to confirm or refute this figure. Furthermore, the ownership characteristics of these vessels has not been analyzed to determine if they are independently owned and operated or affiliated with a larger parent company. Because NMFS cannot quantify the number of small entities that may be indirectly affected by this action, or quantify the magnitude of those effects, NMFS concludes that it is possible that this action could have a significant economic impact on a substantial number of small entities.

Measures taken to reduce impacts on small entities. The Council considered and adopted a series of exemptions to reduce the impacts of this action on small entities. The final rule contains the following elements to reduce impacts on small entities: (1) Vessels using jig gear would be exempted from all aspects of the proposed action, (2) CDQ groups would be exempted from the A–B season split to prevent having to fish for small Atka mackerel CDQ amounts during two times of the year, and (3) vessels using hook-and-line gear would be exempt from the closure to fishing inside critical habitat. The critical habitat closures would affect vessels using trawl gear only, (4) both jig and hook and line vessels would be exempted from future VMS requirements for the Atka mackerel fishery.

As stated in the preceding paragraph and in the section entitled, ''Business entities affected directly,'' all small entities in the Atka mackerel fishery (jig boats) are exempt from all aspects of this final rule. NMFS is not aware of additional alternatives that could further mitigate this action's economic impact on small entities.

Pursuant to section 7 of the ESA, NMFS initiated consultation on the effects of fishing under this action on listed species, including the Steller sea lion, and designated CH. The biological opinion prepared for this consultation, dated December 3, 1998, as revised December 16, 1998, concludes that the Atka mackerel fishery in the AI, without this action, would appreciably reduce the likelihood of the survival and recovery of Steller sea lions and adversely modify their designated CH. With the conservation measures in this final rule fully implemented by 2002, the biological opinion further concluded that fishing for Atka mackerel under these measures should not appreciably reduce the likelihood of both the survival and recovery of Steller sea lions. This rule implements the identified conservation measures.

This final rule contains no new collection-of-information requirements subject to the Paperwork Reduction 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 the immediate effectiveness of this rule is required to prevent the Atka mackerel fishery from exceeding the A season apportionment of the Atka mackerel TAC inside CH when directed fishing for this species opens in January 1999.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: January 15, 1999.

Andrew A. Rosenberg,

Deputy 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 part 679 continues to read as follows:

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

2. In § 679.20, paragraphs (a)(8) and (c)(2)(ii)(A) are revised to read as follows:

§ 679.20 General limitations.

* * * * *

(a) * * *

(8) *BSAI Atka mackerel*—(i) *Jig gear.* Vessels using jig gear will be allocated up to 2 percent of the TAC of Atka mackerel specified for the Eastern Aleutian Islands District and Bering Sea subarea, after subtraction of reserves, based on the following criteria:

(A) The amount of Atka mackerel harvested by vessels using jig gear during recent fishing years;

(B) The anticipated harvest of Atka mackerel by vessels using jig gear during the upcoming fishing year; and

(C) The extent to which the jig-gear allocation will support the development of a jig-gear fishery for Atka mackerel while minimizing the amount of Atka mackerel TAC annually allocated to vessels using jig gear that remains unharvested at the end of the fishing year.

(ii) *Other gears.* The remainder of the Atka mackerel TAC, after subtraction of the jig gear allocation and reserves, will be allocated to vessels using other authorized gear types.

(A) *Seasonal allowances.* The Atka mackerel TAC specified for each subarea or district of the BSAI will be divided equally, after subtraction of the jig gear allocation and reserves, into two seasonal allowances corresponding to the A and B seasons defined at § 679.23(e)(3).

(B) *Overages and underages.* Within any fishing year, unharvested amounts of the A season allowance will be added to the B season allowance and harvests in excess of the A season allowance will be deducted from the B season allowance.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(A) The interim specifications for pollock and Atka mackerel will be equal to the first seasonal allowance for pollock and Atka mackerel that is published in the proposed specifications under paragraph (c)(1) of this section.

* * * * *

3. In § 679.22, paragraphs (a)(7) and (a)(8) are revised to read as follows.

§ 679.22 Closures.

(a) * * *

(7) *Steller sea lion protection areas, Bering Sea Subarea and Bogoslof*

District—(i) *Year-round closures.* Trawling is prohibited within 10 nm of each of the eight Steller sea lion rookeries shown in Table 4a of this part.

(ii) *Seasonal closures.* During January 1 through April 15, or a date earlier than April 15, if adjusted under § 679.20, trawling is prohibited within 20 nm of each of the six Steller sea lion rookeries shown in Table 4b of this part.

(8) *Steller sea lion protection areas, Aleutian Islands Subarea*—(i) *10-nm closures.* Trawling is prohibited within 10 nm of each of the 17 Steller sea lion rookeries shown in Table 5a of this part.

(ii) *20-nm closures.* Trawling is prohibited within 20 nm of each of the two Steller sea lion rookeries shown in Table 5b of this part.

(iii) *Western and Central Aleutian Islands critical habitat closures*—(A) *General.* Trawling is prohibited within areas designated as Steller sea lion critical habitat in the Western or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) when the Regional Administrator announces by notification in the **Federal Register** that the criteria for a trawl closure in a district set out in paragraph (a)(8)(iii)(B) of this section have been met.

(B) *Criteria for closure.* The trawl closures identified in paragraph (a)(8)(iii)(A) of this section will take effect when the Regional Administrator determines that the harvest of a seasonal allowance of Atka mackerel specified under § 679.20(a)(8)(ii)(A) reaches the following percentage identified for each year and district:

Year	Western (543) (percent)	Central (542) (percent)
1999	65	80
2000	57	67
2001	48	46
2002 and after	40	40

(C) *Duration of closure.* A Steller sea lion critical habitat area trawl closure within a district will remain in effect until NMFS closes Atka mackerel to directed fishing within the same district.

(D) *CDQ fishing.* Harvesting groundfish CDQ with trawl gear is prohibited within areas designated as Steller sea lion critical habitat in the Western and/or Central Districts of the AI (see Table 1, Table 2, and Figure 4 to part 226 of this title) for an eligible vessel listed on an approved CDP after the CDQ group has harvested the percent of the annual Atka mackerel CDQ specified for the year and district at paragraph (a)(8)(iii)(B) of this section.

* * * * *

4. In § 679.23, paragraph (e)(3) is redesignated as paragraph (e)(4) and a new paragraph (e)(3) is added to read as follows:

§ 679.23 Seasons.

* * * * *

(e) * * *

(3) *Directed fishing for Atka mackerel with trawl gear.* Subject to other provisions of this part, directed fishing for Atka mackerel with trawl gear in the Aleutian Islands Subarea is authorized only during the following two seasons:

(i) *A season.* From 0001 hours, A.l.t., January 1, through 1200 hours, A.l.t., April 15;

(ii) *B season.* From 1200 hours, A.l.t., September 1, through 1200 hours, A.l.t., November 1.

* * * * *

5. In part 679, Table 5 is revised to read as follows:

TABLE 5.—ALEUTIAN ISLANDS SUBAREA STELLER SEA LION PROTECTION AREAS

Name of island	From		To	
	Latitude	Longitude	Latitude	Longitude
3-nm NO TRANSIT ZONES described at 227.12(a)(2) of this title.				
a. Trawling Prohibited Year-Round Within 10 nm:				
Yunaska Island	52° 42.0′ N	170° 38.5′ W	52° 41.0′ N	170° 34.5′ W
Kasatochi Island	52° 10.0′ N	175° 31.0′ W	52° 10.5′ N	175° 29.0′ W
Adak Island	51° 36.5′ N	176° 59.0′ W	51° 38.0′ N	176° 59.5′ W
Gramp Rock	51° 29.0′ N	178° 20.5′ W		
Tag Island	51° 33.5′ N	178° 34.5′ W		
Ulak Island	51° 20.0′ N	178° 57.0′ W	51° 18.5′ N	178° 59.5′ W
Semisopochnoi	51° 58.5′ N	179° 45.5′ E	51° 57.0′ N	179° 46.0′ E
Semisopochnoi	52° 01.5′ N	179° 37.5′ E	52° 01.5′ N	179° 39.0′ E
Amchitka Island	51° 22.5′ N	179° 28.0′ E	51° 21.5′ N	179° 25.0′ E
Amchitka Is/Column Rocks	51° 32.5′ N	178° 49.5′ E		
Ayugadak Point	51° 45.5′ N	178° 24.5′ E		
Kiska Island	51° 57.5′ N	177° 21.0′ E	51° 56.5′ N	177° 20.0′ E
Kiska Island	51° 52.5′ N	177° 13.0′ E	51° 53.5′ N	177° 12.0′ E
Buldir Island	52° 20.5′ N	175° 57.0′ E	52° 23.5′ N	175° 51.0′ E
Agattu Is./Gillion Pt	52° 24.0′ N	173° 21.5′ E		
Agattu Island	52° 23.5′ N	173° 43.5′ E	52° 22.0′ N	173° 41.0′ E
Attu Island	52° 54.5′ N	172° 28.5′ E	52° 57.5′ N	172° 31.5′ E
b. Trawling Prohibited Year-Round Within 20 nm:				
Seguam Island	52° 21.0′ N	172° 35.0′ W	52° 21.0′ N	172° 33.0′ W
Agligadak Island	52° 06.5′ N	172° 54.0′ W		

Note: Each rookery extends in a clockwise direction from the first set of geographic coordinates, along the shoreline at mean lower low water, to the second set of coordinates; if only one set of geographic coordinates is listed, the rookery extends around the entire shoreline of the island at mean lower low water.

[FR Doc. 99–1432 Filed 1–19–99; 12:48 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

Fisheries of the Exclusive Economic Zone Off Alaska

CFR Correction

In Title 50 of the Code of Federal Regulations, parts 600 to End, revised as of Oct. 1, 1998, on page 440, first column, § 679.2 is corrected by adding paragraph (2) to the definition of *Catcher vessel* to read as follows:

§ 679.2 Definitions.

* * * * *

Catcher vessel means:

(1) * * *

(2) (Applicable through December 31, 1998). With respect to moratorium groundfish, as defined in paragraph (1) of this definition; with respect to moratorium crab species, a vessel that is used to catch, take, or harvest moratorium crab species that are retained on board as fresh fish product at any time.

* * *

BILLING CODE 1505–01–D

Proposed Rules

Federal Register
Vol. 64, No. 14
Friday, January 22, 1999

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 134 and 140

Debt Collection Through Offset

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA) proposes to amend its regulations on Debt Collection Through Offset. SBA proposes to amend these regulations to conform with the Debt Collection Procedures Act of 1996 and the Debt Collection Improvement Act of 1996. The amendments will allow other Federal agencies to offset debts owed to SBA and will allow SBA to participate in the Government-wide Treasury Offset Program administered by the Department of the Treasury.

SBA is currently publishing the proposed language for its regulations on General Rules and Debt Collection Through Offset. At a later date, SBA will publish the proposed language for its regulations on Debt Collection Through Administrative Wage Garnishment and proposed amendments that define terms used in that future proposal.

DATES: Submit comments on or before February 22, 1999.

ADDRESSES: Address all comments concerning this proposed rule to Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management, Small Business Administration, 409 Third Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Arnold S. Rosenthal, Assistant Administrator, Office of Portfolio Management (202) 205–6481.

SUPPLEMENTARY INFORMATION: 13 CFR Part 140 established procedures for SBA to collect past-due debts through administrative or salary offset. SBA now proposes to amend this rule, pursuant to the Debt Collection Improvement Act of 1996, Pub. L. 104–134, authorizing the Agency to: participate in the mandatory Government-wide payment offset system known as the Treasury Offset Program administered by the Department of Treasury.

To participate in the Treasury Offset Program, the administrative or salary offset procedures must be available not only to SBA, but to other agencies as well. This proposed rule would make the changes necessary to allow SBA or another Federal agency to collect past-due debts through administrative or salary offset. This proposed rule also amends SBA's offset procedures, and contains plain language revisions and clarifications.

The following is a section by section analysis of each provision of SBA's regulations that would be affected by this proposed rule:

- Section 140.1 would be amended to incorporate plain language principles.
- Section 140.2 would be deleted and replaced with a definition section.
- Section 140.3 would be deleted. The offset procedures would now be located in § 140.6.
- Section 140.5 would be added to explain the purpose and scope of the offset procedures.
- Section 140.6 would be added to set forth the offset procedures. The new procedures establish two steps for offset. The first entails the verification of a debt. SBA will send a notice to the debtor and review any response to determine whether the debt is past due and enforceable. The SBA Office of Hearings and Appeals would no longer review administrative offsets, and would only review salary offsets. The second steps involves SBA's implementation of an administrative or salary offset or referral of a debt to the Department of the Treasury or another Federal agency for offset. In addition, SBA would now be able to implement an offset action upon referral from another Federal agency.
- Section 134.202 paragraph (b) would also be amended to refer only to salary offsets.

Compliance With Executive Orders 12612, 12778, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA certifies that this rule would not have a significant economic impact on a substantial number of small entities within the meaning of Executive Order 12866 or the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. This proposed rule only applies to individuals who have outstanding debts to the United States. It is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the United States economy.

For purposes of the Paperwork Reduction Act, 44 U.S.C. Ch. 35, SBA certifies that this rule contains no new reporting or record keeping requirements.

For purposes of Executive Order 12612, SBA certifies that this rule would not have any federalism implications warranting the preparation of a Federalism Assessment.

For purposes of Executive Order 12778, SBA certifies that this rule is drafted, to the extent practicable, under the standards set forth in Section 2 of that Order.

List of Subjects

13 CFR Part 134

Administrative practice and procedure.

13 CFR Part 140

Claims, Government employees, Income taxes, Wages.

Accordingly, under the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA proposes to amend 13 CFR parts 134 and 140 as follows:

PART 134—[AMENDED]

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 504, 15 U.S.C. 632, 634(b)(6), and 637(a).

2. Revise § 134.202(b) to read as follows:

§ 134.202 Commencement of cases.

* * * * *

(b) In debt collection proceedings under part 140, subpart B, of this chapter, no later than 15 days after you receive of a notice of indebtedness and plan to collect such debt by salary offset;

* * * * *

PART 140—[AMENDED]

3. Amend the heading for part 140 to read as follows:

PART 140—DEBT COLLECTION

4. The authority citation for part 140 is revised to read as follows:

Authority: 31 U.S.C. 3711, Collection and compromise; 31 U.S.C. 3720A, Reduction of tax refund by amount of debt; 5. U.S.C. 5514, Installment deduction for indebtedness to the United States; 31 U.S.C. 3716, Administrative offset; 15 U.S.C. 634(b)(6), Small Business Act; 31 U.S.C. 3720, the Debt Collection Improvement Act of 1996.

5–6. Add a subpart heading for §§ 140.1 through 140.2, to read as follows:

Subpart A—General Rules

7. Revise § 140.1 to read as follows:

§ 140.1 What does this part cover?

This part establishes procedures we may use to collect past-due debts owed to the Government. You cannot use our failure to follow these regulations to defend against a suit to collect a debt.

8. Revise § 140.2 to read as follows:

§ 140.2 Definitions.

Unless otherwise noted, the following definitions apply to subpart B.

(a) Administrative offset. To satisfy a debt, we may withhold money we owe you or another Federal agency owes you. This procedure is an ''administrative offset'' and is authorized by 31 U.S.C. 3716.

(b) Agency. Agency includes a department, agency, court, or court administrative office, in the executive, judicial, or legislative branch of the Federal Government, including Government corporations. For purposes of this section, agency means either the agency administering the program giving rise to the debt or the agency attempting to recover the debt.

(c) Creditor agency. Creditor agency means any agency owed a debt that seeks to collect that claim through administrative offset.

(d) Day. Day means calendar day. To count days, include the last day of the period unless it is a Saturday, a Sunday, or a Federal legal holiday.

(e) Debt. Debt means money owed to the United States for any reason, including loans made or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines, penalties, damages, interest, or forfeitures. A debtor is someone who owes money to the United States from any source.

(f) Debtor/You/Your. Debtor/You/Your means a person, organization, or entity, other than a Federal agency, that owes a debt.

(g) Disposable pay. As used in subpart B of this part (offset), disposable pay means what remains of your pay after any amounts required by law are deducted.

(h) Legally Enforceable. As used in subpart B of this part (offset), a debt is legally enforceable if, on the date of offset, SBA's claim would not be barred in even one forum, including a State or Federal Court or administrative agency. Non-judgment debts are enforceable for ten years; judgment debts are enforceable beyond 10 years.

(i) Non-tax. Non-tax means not related to an obligation under the Internal Revenue Code of 1986, as amended.

(j) Past-Due. As used in subpart B of this part (offset), a debt is past due if it has been reduced to judgment, accelerated, or due for at least 90 days.

(k) Salary offset. If you are an active or retired Federal employee (a civilian employee as defined by 5 U.S.C. 2105, an employee of the U.S. Postal Service or Postal Rate Commission, or a member of the Uniformed Services or Reserve of the Uniformed Services), we may deduct payments owed to the United States from your paycheck. This procedure is a ''salary offset'' and is authorized by 5 U.S.C. 5514 and 31 U.S.C. 3716.

(1) Any amount deducted from your salary in any one pay period will not exceed 15 percent of your disposable pay, unless you agree in writing to a greater percentage.

(2) A Federal agency also may collect against travel advances, training expenses, disallowed payments, retirement benefits, or any other amount due you, including lump sum payments. These collection efforts are not salary offsets and are not subject to the 15-percent limitation in paragraph (k)(1) of this section.

(l) Tax refund offset. We may request that the Department of the Treasury (Treasury) reduce your tax refund by the amount of the debt as authorized by 31 U.S.C. 3720A. A Federal agency, at the same time, may take additional action against you to collect the debt. Even if SBA refers your debt to other agencies (within 6 months of the initial notice), it needs to review your debt only once under subpart B of this part and its authorizing statutes.

(m) Treasury Offset Program. The Treasury Offset Program is a centralized process which provides for the offset of Federal payments, including Federal tax refunds, Federal salary payments, retirement payments, and other types of payments, to collect debts you owe the Federal Government. The Treasury operates the Treasury Offset Program through the Financial Management Service.

(n) We/Our/Us. We/Our/Us refers to the SBA.

9. Remove § 140.3 and add a subpart heading for §§ 140.5 through 140.6 to read as follows:

Subpart B—Debt Collection Through Offset

10. Add § 140.5 to read as follows:

§ 140.5 What does this subpart cover?

This subpart establishes procedures we may use to collect, through offset, past-due debts you owe to the United States. An offset occurs when we or another Federal agency withhold(s) money to which you may be entitled to satisfy a debt that you owe to the United States. These regulations set forth procedures for how we determine if a debt is past due and legally enforceable, and thus appropriate for offset. These regulations also set forth procedures we follow when implementing an offset action or referring the debt to another agency for offset. You cannot use our failure to follow these regulations to defend against a suit to collect the debt

9. Add 9. § 140.6 to read as follows:

§ 140.6 How does SBA verify whether I owe a debt, or collect a debt from me through offset?

(a) *Verifying a debt.* (1) At least 30 days before starting an offset action or referring a debt to another agency for offset, we must send you a written notice .

(2) Our written notice must state the nature and amount of the debt; that we or another Federal agency may attempt an offset; that you may present evidence that the debt does not exist, is not past due, or is not legally enforceable; that you may inspect and copy, at your expense, Government records relating to the debt; that, to avoid the offset, you may reach an agreement with us on a schedule for repayment; and that, if you do not reach agreement on repayment or seek review of the debt, we or another agency may offset without further notice. If we propose a schedule for repayment of your debt, you may present evidence that you cannot meet this schedule. If a written agreement establishes this schedule, you cannot challenge the schedule.

(3) We also must tell you that, unless you respond to the notice as provided in paragraph (a)(4) or (a)(5) of this section, we or the agency to which we refer your debt may disclose to consumer reporting agencies (also known as credit bureaus or credit agencies) that you are responsible for the debt, and the specific information necessary to establish your identity, including the amount, status, history of

the debt, and agency program under which it arose. If you respond to us within the 15-or 60-day periods set forth in paragraphs (a)(4) and (a)(5) of this section, we will not disclose the information to consumer reporting agencies and will not refer the debt to another Federal agency until we consider your response and determine that you owe a past-due, legally enforceable debt.

(4) If we notify you that we intend to start a salary offset to satisfy your debt, you may request a hearing from SBA's Office of Hearings and Appeals (OHA). Part 134 of this title governs OHA proceedings. To have a hearing before OHA, you must request a hearing within 15 days of receiving the notice. If you file your request in time, we must stop collection proceedings until OHA's Administrative Law Judge (ALJ) decides your case. You must state in your request for an OHA hearing the date you received the notice and present the evidence you believe shows the debt is not past due or legally enforceable. You also must send a copy of your submission to the SBA Associate General Counsel for Litigation, Office of General Counsel, at the Small Business Administration, 409 Third Street, SW., Washington, DC 20416. OHA's ALJ will issue a decision within 60 days after you filed your request for a hearing with OHA.

(5) If we notify you that we intend to start an administrative offset or to refer your debt to another Federal agency for possible offset, you may request review from the SBA official identified in the notice. To obtain review of the debt, you must submit to the designated official, within 60 days of the notice, the evidence showing the debt is not past due or legally enforceable. By failing to request review within this period, you waive any objection to the offset action. If you request review of the debt, the relevant SBA official will notify you in writing of the final decision and whether we will continue with the offset action or refer your debt to another agency for offset.

(6) We need not follow these procedures to verify that a debt is past due and legally enforceable if another Federal agency already has made this determination.

(b) *Actions after SBA verifies a past-due, legally enforceable debt.* (1) After verifying a past-due, legally enforceable debt, we may—

(i) Begin an offset action to recover the debt;

(ii) Refer the debt to another agency for offset;

(iii) Notify consumer reporting agencies of the debt; or

(iv) Begin other appropriate action to attempt collection of the debt.

(2) If you are subject to an offset action, you may be required to pay, in addition to your debt, interest, penalties, and administrative costs, such as the costs of collection. We or another Federal agency will provide notice of any such interest, penalties, and administrative costs.

(3) If another Federal agency asks us to offset a debt, we may rely on the creditor agency's determination that a debt is past due and legally enforceable. We will not begin an offset until the creditor agency has provided written notice that you owe a past-due, legally enforceable debt, and of its amount, and that the agency has fully complied with its regulations concerning administrative offsets. After receiving such notice, we will provide you notice that we will begin an offset. You are not entitled to further review from us that the debt is valid or the offset proper.

(4) If we refer the debt to a consumer reporting agency and the status or amount of your debt substantially changes, we will report that change promptly to each consumer reporting agency we originally contacted. We will obtain satisfactory assurances from each consumer reporting agency that the consumer reporting agency has complied with all Federal laws relating to provision of consumer credit information.

(5) If another agency is beginning an offset of your debt and you make any additional payments to us, we will notify the other agency of these payments and your new balance as soon as reasonably possible.

(c) We or another Federal agency may make an offset prior to completing the procedures described in this part, if failure to make an offset would substantially prejudice the Government's ability to collect the debt; and the time before the Government otherwise would make payment to you does not reasonably permit the completion of the procedures. If we initiate the offset action, we then must provide you with an opportunity to present evidence that the debt is not past due or legally enforceable and take appropriate action in response to this evidence.

(d) If you owe us a past-due, legally enforceable debt that is over 180 days delinquent, including non-tax debt administered by a third party acting as an agent for the Federal Government, we must, as required by 31 U.S.C. 3716(c)(6), notify the Treasury of all such non-tax debts for purposes of administrative offset.

Dated: January 6, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–1240 Filed 1–21–99; 8:45 am]

BILLING CODE 8025–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1213, 1500, and 1513

Bunk Beds; Extension of Time To Issue Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Extension of time to issue proposed rule.

SUMMARY: On January 22, 1998, the Consumer Product Safety Commission (''CPSC'') or ''Commission'') issued an advance notice of proposed rulemaking (''ANPR'') that began a rulemaking proceeding addressing possibly unreasonable risks of injury and death associated with children's entrapments in bunk beds. 63 FR 3280.

A rule mandating bunk bed performance requirements to reduce this hazard could be issued under either the Federal Hazardous Substances Act (''FHSA'') or the Consumer Product Safety Act (''CPSA''), or both. The CPSA provides that a proposed standard under that act must be issued within 12 months of publication of the ANPR, unless the 12-month period is extended by the Commission for good cause. In this notice, the Commission extends the period for issuing any proposed CPSA rule until March 22, 1999.

ADDRESSES: Mail requests for documents concerning this rulemaking should be directed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207–0001. Documents may be obtained or examined at the Office of the Secretary, Consumer Product Safety Commission, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814; telephone (301) 504–0800. The Commission also may be contacted by telefacsimile to (301) 504–0127 or by e-mail to cpsc–os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: John Preston, Directorate for Engineering Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0494, ext. 1315.

SUPPLEMENTARY INFORMATION: Under Section 9(c) of the CPSA, the Commission must propose a consumer product safety rule within 12 months of the publication of an ANPR, unless the Commission extends that period for

good cause. 15 U.S.C. 2058(c). Since the ANPR for bunk beds was published on January 22, 1998, the 12-month period for proposal of any CPSA rule in that proceeding expires on January 22, 1999.

After publication of the ANPR, the public was given until April 7, 1998, to file written comments with the CPSC. The CPSC's staff then analyzed the comments and other available information and prepared a briefing package that was sent to the Commission on December 16, 1998. The Commission was briefed on this matter on January 7, 1999, and should decide whether to propose a rule in the near future.

However, the Commission is not certain that it will decide whether to issue a proposed rule before the 12-month deadline passes. Accordingly, the Commission extends the date for publishing an ANPR to March 22, 1999.

Dated: January 15, 1999.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 99–1483 Filed 1–21–99; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–110524–98]

RIN 1545–AW85

Capital Gains, Installment Sales, Unrecaptured Section 1250 Gain

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the taxation of capital gains on installment sales of depreciable real property. The proposed regulations interpret changes made by the Taxpayer Relief Act of 1997, as amended by the Internal Revenue Service Restructuring and Reform Act of 1998 and the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999. The proposed regulations affect persons required to report capital gain from an installment sale where a portion of the capital gain is unrecaptured section 1250 gain and a portion is adjusted net capital gain.

DATES: Written comments or requests for a public hearing must be received by April 22, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–110524–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, 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–110524–98), 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, Susan Kassell, (202) 622–4930; concerning submissions, LaNita VanDyke, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) relating to the taxation of capital gains on installment sales of depreciable real property.

Prior to 1997, the maximum rate on net capital gain for individuals was 28 percent. In the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 831) (1997 Act), Congress amended section 1(h) generally to reduce the maximum capital gain tax rates for individuals. Certain substantive changes and technical corrections to section 1(h) were enacted as part of the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 685), including the repeal of an 18-month holding period requirement for amounts properly taken into account after December 31, 1997, and by the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105–277 (112 Stat. 2681).

As amended, section 1(h) generally divides net capital gain into three rate groups based on the nature of the property, the nature of the gain, and the holding period of the property.

A maximum marginal rate of 28 percent applies to 28-percent rate gain (28-percent gain), the combination of (1) capital gains and losses from the sale or exchange of collectibles held for more than one year; (2) an amount equal to gain excluded from income on the sale or exchange of certain small business stock under section 1202; (3) capital gains and losses determined under special transition rules in section 1(h)(13) for certain amounts taken into account in 1997; (4) net short-term capital loss for the tax year; and (5) any long-term capital loss carryover to the tax year under section 1212.

A maximum marginal rate of 25 percent applies to unrecaptured section 1250 gain (25-percent gain), which is defined in section 1(h)(7)(A) as the amount of long-term capital gain (not otherwise treated as ordinary income) that would be treated as ordinary income if section 1250(b)(1) included all depreciation and the applicable percentage under section 1250(a) were 100 percent, reduced by any net loss in the 28-percent rate category. Effectively, the amount of gain taxed at 25 percent is the amount of straight-line depreciation allowed for the property. Thus, the 25-percent rate category partially recaptures such depreciation, but the recapture is limited, inter alia, in that the recapture rate may be less than the marginal rates that applied to the depreciation deductions. Section 1(h)(7)(B) limits the unrecaptured section 1250 gain from section 1231 assets for any tax year to the net section 1231 gain for that year.

A maximum marginal rate of 20 percent generally applies to adjusted net capital gain (20/10-percent gain), defined in section 1(h)(4) as the portion of net capital gain that is not taxed at the 28-percent or 25-percent rates. Under section 1(h)(1)(B), a 10-percent rate applies to any portion of adjusted net capital gain that would otherwise be taxed at a 15-percent rate if capital gains were taxed as ordinary income.

For amounts properly taken into account after July 28, 1997, and before January 1, 1998, an 18-month holding period is required to obtain the maximum 25-percent, 20-percent, or 10-percent rates.

Section 453 provides that, unless taxpayers elect out, gain from an installment sale is recognized as payments on the installment obligation are received. Before the 1997 Act, reporting capital gain under the installment method was relatively straightforward: the capital gain portion of each payment was taxed at the maximum capital gain rate of 28 percent. Section 1(h) provides for multiple rates, but does not address how to treat an installment sale of depreciable real property when the gain to be reported consists of both 25-percent gain and 20/10-percent gain.

Explanation of Provisions

Front-Loaded Allocation of Unrecaptured Section 1250 Gain

Under the proposed regulations, if a portion of the capital gain from an

installment sale is 25-percent gain and a portion is 20/10-percent gain, the taxpayer is required to take the 25-percent gain into account before the 20/10-percent gain, as payments are received. (Because sales that result in 28-percent gain cannot also yield 25-percent gain or 20/10-percent gain, an allocation rule for 28-percent gain is unnecessary.)

A front-loaded allocation method for 25-percent gain is generally consistent with the statute, under which 20/10-percent gain (that is, adjusted net capital gain) is defined as the residual category of capital gain not taxed at maximum rates of 28 percent or 25 percent. The front-loaded method precludes taxpayers from recognizing some 20/10-percent gain from an installment sale even when the amount ultimately recognized proves to be less than the amount subject to recapture at the 25-percent rate. Absent a front-loaded allocation method this inappropriate result could arise, for example, when a taxpayer later disposes of an installment obligation at a discounted price or when the amount to be received is contingent.

The IRS and Treasury Department have previously adopted analogous front-loaded allocation methods with respect to installment sales. For example, before 1984—when Congress enacted section 453(i), which requires immediate recognition of recapture gain at ordinary rates under sections 1245 and 1250— taxpayers were permitted to defer recognition of this ordinary-rate recapture gain under the installment method. Thus, an installment payment could contain both capital gain and gain taxed at ordinary rates. By regulation, a front-loaded allocation of the ordinary-rate recapture gain was required. §§ 1.1245–6(d); 1.1250–1(c)(6). See *Dunn Construction* v. *United States*, 323 F. Supp. 440 (N.D. Ala. 1971) (upholding § 1.1245–6(d) as ''reasonable and consistent with the underlying statute'' and a valid exercise of the regulatory authority under section 453). See also §§ 1.1251–1(e)(6), 1.1252–1(d)(3), 1.1254–1(d), and 16A.1255–1(c)(3).

Interaction With Section 1231

Section 1(h) also does not address the interaction of the capital gain rates, the installment method, and the rules in section 1231. Section 1231(a) generally provides that, when gains from the sale or exchange of property used in a trade or business exceed losses from such property, the gains and losses are treated as long-term capital gains and losses. Conversely, when section 1231 losses exceed section 1231 gains, the gains and losses are treated as ordinary. The capital nature of net section 1231 gain is subject to an exception: under section 1231(c), net section 1231 gain is treated as ordinary income to the extent of the taxpayer's non-recaptured net section 1231 losses for the preceding five years.

With respect to the interaction of section 1231(c) and the capital gain rates, the IRS and Treasury Department have already provided that section 1231 gain that is recharacterized as ordinary gain under section 1231(c) is deemed to consist first of 28-percent gain, then 25-percent gain, and finally 20/10-percent gain. See Notice 97–59 (1997–45 IRB 7, 8). An example in the proposed regulations illustrates the application of this principle in the installment sale context. Consistent with this treatment and with the general rule that 25-percent gain is front-loaded, another example in the proposed regulations illustrates that—in a year in which installment gain is characterized as ordinary gain under section 1231(a) because there is a net section 1231 loss for the year—the gain is treated as consisting of 25-percent gain first, before 20/10-percent gain, for purposes of determining how much 25-percent gain remains to be taken into account in later payments.

The examples in the proposed regulations—regarding the interaction of sections 1(h), 453, and 1231—are specific applications of the general rule that, for any given installment payment, gain from all previous payments is treated as consisting first of 25-percent gain, rather than 20/10-percent gain, in determining how much of each category of gain remains to be reported with respect to current and subsequent payments. Under the regulations, in making this determination it is generally irrelevant how such prior gain was actually reported and taxed. For example, an installment payment that is taxed at 15 percent because the taxpayer is in a low tax bracket may be treated as consisting of 25-percent gain (that is, unrecaptured section 1250 gain) for allocation purposes, even though the gain is not actually taxed at 25 percent. The proposed regulations focus on examples involving section 1231 since they are the most common.

Treatment of Installment Payments From Sales Prior to the Effective Date of the 1997 Act

The capital gains provisions of the 1997 Act were effective for taxable years ending after May 6, 1997. However, the maximum rate of 28 percent was not reduced for gains properly taken into account before May 7, 1997. Under settled authority, originating in *Snell* v. *Commissioner*, 97 F.2d 891 (5th Cir. 1938), the law in effect when an installment payment is received controls the tax treatment of the payment. Unless otherwise provided, installment payments received after a change in the law are taxed under the new law, whether favorable or unfavorable, looking back to the original transaction for the facts necessary to apply the changed law. In *Snell*, for example, installment payments from what was a capital asset in the sale year were taxed as ordinary income after Congress changed the definition of a *capital asset*. See also *Estate of Kearns* v. *Commissioner*, 73 T.C. 1223 (1980); *Klein* v. *Commissioner*, 42 T.C. 1000 (1964); Rev. Rul. 79–22 (1979–1 CB 275). Congress also implicitly has recognized the *Snell* principle by enacting grandfather exceptions when the application of *Snell* would be unfavorable. For example, when Congress extended the holding period requirement for capital gain in 1976, the legislation specifically excepted from the new, harsher requirements post-1976 installment gain from pre-1976 sales.

The legislative history of the 1997 Act reflects the *Snell* principle, providing that section 1(h) ''generally applies to sales and exchanges (and installment payments received) after May 6, 1997.'' Conf. Rep. 105–220, 105th Cong., 1st Sess. 382, 383 (1997). Thus, under these settled principles, gain on installment payments received after May 6, 1997, from sales on or before that date, is taxed at the new, lower maximum rates of 25 percent, 20 percent, or 10 percent if it qualifies as unrecaptured section 1250 gain or adjusted net capital gain. However, as in the case of gain from post-effective-date sales, section 1(h) does not specify how to allocate the two categories of gain.

The proposed regulations provide that the capital gain rates applicable to installment payments that are received on or after the effective date of the 1997 Act from sales prior to the effective date are determined as if, for all payments received after the date of sale but before the effective date, 25-percent gain had been taken into account before 20/10-percent gain. This approach is consistent with the Snell principle in that it provides for the same method of allocation, whether the sale occurred before or after the effective date of the 1997 Act. For taxpayers who sold property and received installment payments before the effective date of the 1997 Act, this provision is favorable, since it generally reduces or eliminates the amount of 25-percent gain to be reported on installment payments

received after the effective date. The approach is also simple—because it is generally irrelevant how the prior gain was actually reported and taxed, in most cases taxpayers will simply calculate the total amount of 25-percent gain on the sale and subtract from that all gain previously reported, in order to arrive at the amount of 25-percent gain remaining to be reported.

Treatment of Installment Payments Received Between the Effective Date of the Statute and the Effective Date of the Final Regulations

The proposed regulations also address the treatment of gain in installment payments that are received during the period between the effective date of section 1(h) and the effective date of the final regulations. The proposed regulations provide that, in the event the cumulative amount of 25-percent gain actually reported in installment payments received during this period was less than the amount that would have been reported using the front-loaded allocation method of the regulations, the amount of 25-percent gain actually reported, rather than an amount determined under a front-loaded allocation method, must be used in determining the amount of 25-percent gain that remains to be reported. This provision ensures that taxpayers cannot underreport the total amount of 25-percent gain by taking inconsistent positions with respect to payments received before and after the effective date of the regulations. By providing for this rule, no inference is intended that any allocation method other than the method provided for by the regulations was a reasonable interpretation of section 1(h) in this context. However, the IRS will not challenge the use of a pro rata allocation method—that is, a method under which the amounts of 25-percent gain and 20/10-percent gain in each installment payment bear the same relationship as the total amounts of 25-percent and 20/10-percent gain to be reported on the sale—for installment payments received before the effective date of the final regulations, if the taxpayer used the same pro rata method for all installment payments during such period.

Proposed Effective Date

The regulations are proposed to be effective for payments properly taken into account after the date the regulations are published as final regulations in the **Federal Register**.

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 regulations do not impose a requirement for the 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) that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written 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 authors of these regulations are Susan Kassell and Rob Laudeman, Office of the Assistant Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, the IRS proposes to amend 26 CFR part 1 as follows:

PART 1—INCOME TAXES

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

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

Par. 2. Section 1.453–12 is added to read as follows:

§ 1.453–12 Allocation of unrecaptured section 1250 gain reported on the installment method.

(a) *General rule.* Unrecaptured section 1250 gain, as defined in section 1(h)(7), is reported on the installment method if that method otherwise applies under section 453 or 453A and the corresponding regulations. If gain from an installment sale includes unrecaptured section 1250 gain and adjusted net capital gain (as defined in section 1(h)(4)), the unrecaptured section 1250 gain is taken into account before the adjusted net capital gain.

(b) *Installment payments from sales before May 7, 1997.* The amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, from a sale before May 7, 1997, is determined as if, for all payments properly taken into account after the date of sale but before May 7, 1997, unrecaptured section 1250 gain had been taken into account before adjusted net capital gain.

(c) *Installment payments received after May 6, 1997, and before the effective date of the final regulations.* If the amount of unrecaptured section 1250 gain in an installment payment that is properly taken into account after May 6, 1997, and before the effective date of the final regulations, is less than the amount that would have been taken into account under this section, the lesser amount is used to determine the amount of unrecaptured section 1250 gain that remains to be taken into account.

(d) *Examples.* In each example, the taxpayer, an individual whose taxable year is the calendar year, does not elect out of the installment method. The installment obligation bears adequate stated interest, and the property sold is real property held in a trade or business that qualifies as both section 1231 property and section 1250 property. In all taxable years, the taxpayer's marginal tax rate on ordinary income is 28 percent. The following examples illustrate the rules of this section:

Example 1. General rule. This example illustrates the rule of paragraph (a) of this section.

(i) In 1998, A sells property for $10,000, to be paid in ten equal annual installments beginning on December 1, 1998. A originally purchased the property for $5,000, held the property for several years, and took straight-line depreciation deductions in the amount of $3,000. In each of the years 1998–2007, A has no other capital or section 1231 gains or losses.

(ii) A's adjusted basis at the time of the sale is $2,000. Of A's $8,000 of section 1231 gain on the sale of the property, $3,000 is attributable to prior straight-line depreciation

deductions and is unrecaptured section 1250 gain. The gain on each installment payment is $800.

(iii) As illustrated in the following table, A takes into account the unrecaptured section 1250 gain first. Therefore, the gain on A's first three payments, received in 1998, 1999, and 2000, is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2001, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1998	1999	2000	2001	2002	2003-2007	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 25%	800	800	800	600	.....	.....	3000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 2. Installment payments from sales prior to May 7, 1997. This example illustrates the rule of paragraph (b) of this section.

(i) The facts are the same as in *Example 1* except that A sold the property in 1994, received the first of the ten annual installment payments on December 1, 1994, and had no other capital or section 1231 gains or losses in the years 1994–2003.

(ii) As in *Example 1*, of A's $8000 of gain on the sale of the property, $3000 was attributable to prior straight-line depreciation deductions and is unrecaptured section 1250 gain.

(iii) As illustrated in the following table, A's first three payments, in 1994, 1995, and 1996, were received before May 7, 1997, and taxed at 28 percent. Under the rule described in paragraph (b) of this section, A determines the allocation of unrecaptured section 1250 gain for each installment payment after May 6, 1997, by taking unrecaptured section 1250 gain into account first, treating the general rule of paragraph (a) of this section as having applied since the time the property was sold, in 1994. Consequently, of the $800 of gain on the fourth payment, received in 1997, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1994	1995	1996	1997	1998	1999–2003	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at 28%	800	800	800	.....	.....	.....	2400
Taxed at 25%	.....	.....	.....	600	.....	.....	600
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 3. Effect of section 1231(c) recapture. This example illustrates the rule of paragraph (a) of this section when there are non-recaptured net section 1231 losses, as defined in section 1231(c)(2), from prior years.

(i) The facts are the same as in *Example 1*, except that in 1998 A has non-recaptured net section 1231 losses from the previous four years of $1000.

(ii) As illustrated in the table at the end of this example, in 1998, all of A's $800 installment gain is recaptured as ordinary income under section 1231(c). Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, the $800 recaptured as ordinary income under section 1231(c) is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In 1999, A's installment gain is taxed at two rates. First, $200 is recaptured as ordinary income under section 1231(c). Second, the remaining $600 of gain on A's 1999 installment payment is taxed at 25 percent. Because the full $800 of gain reduces unrecaptured section 1250 gain, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2000 is taxed at 25 percent. Of the $800 of gain on the fourth payment, received in 2001, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1998	1999	2000	2001	2002	2003–2007	Total gain
Installment gain	800	800	800	800	800	4000	8000
Taxed at ordinary rates under section 1231(c)	800	200	.....	.....	.....	.....	1000
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Remaining non-recaptured net section 1231 losses	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

Example 4. Effect of a net section 1231 loss. This example illustrates the application of paragraph (a) of this section when there is a net section 1231 loss.

(i) The facts are the same as in *Example 1* except that A has section 1231 losses of $1000 in 1998.

(ii) In 1998, A's section 1231 installment gain of $800 does not exceed A's section 1231 losses of $1000. Therefore, A has a net section 1231 loss of $200. As a result, under section 1231(a) all of A's section 1231 gains and losses are treated as ordinary gains and losses. As illustrated in the table at the end of this example, A's entire $800 of installment gain is ordinary gain. Under the rule described in paragraph (a) of this section, for purposes of determining the amount of unrecaptured section 1250 gain remaining to be taken into account, A's $800 of ordinary section 1231 installment gain in 1998 is treated as reducing unrecaptured section 1250 gain. Therefore, A has $2200 of unrecaptured section 1250 gain remaining to be taken into account.

(iii) In 1999, A has $800 of section 1231 installment gain, resulting in a net section 1231 gain of $800. A also has $200 of non-recaptured net section 1231 losses. The $800 gain is taxed at two rates. First, $200 is taxed at ordinary rates under section 1231(c), recapturing the $200 net section 1231 loss sustained in 1998. Second, the remaining $600 of gain on A's 1999 installment payment is taxed at 25 percent. As in

Example 3, the $200 of section 1231(c) gain is treated as reducing unrecaptured section 1250 gain, rather than adjusted net capital gain. Therefore, A has $1400 of unrecaptured section 1250 gain remaining to be taken into account.

(iv) The gain on A's installment payment received in 2000 is taxed at 25 percent, reducing the remaining unrecaptured section 1250 gain to $600. Of the $800 of gain on the fourth payment, received in 2001, $600 is taxed at 25 percent and the remaining $200 is taxed at 20 percent. The gain on A's remaining six installment payments is taxed at 20 percent. The table is as follows:

	1998	1999	2000	2001	2002	2003–2007	Total gain
Installment gain	800	800	800	800	800	4000	8000
Ordinary gain under section 1231(a)	800	.....	.....	.....	.....	.....	800
Taxed at ordinary rates under section 1231(c)	.....	200	.....	.....	.....	.....	200
Taxed at 25%	.....	600	800	600	.....	.....	2000
Taxed at 20%	.....	.....	.....	200	800	4000	5000
Net section 1231 loss	200	.....	.....	.....	.....	.....	.....
Remaining to be taxed at 25%	2200	1400	600	.....	.....	.....	.....

(e) *Effective date.* This section applies to installment payments properly taken into account after the date these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1148 Filed 1–21–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–116824–98]

RIN 1545–AW91

Notice and Opportunity for Hearing Upon Filing of Notice of Lien

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for June 15, 1999, at 10 a.m. must be received by June 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–116824–98), 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–116824–98), 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. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Michael L. Slaughter (202) 622–7180; concerning the regulations, Jerome D. Sekula (202) 622–3610 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to the notification required to be provided to any taxpayer named in a notice of lien under section 6323. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for June 15, 1999, at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit

electronic or written comments by April 22, 1999 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by June 1, 1999.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). 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 301.6320–1 is added to read as follows: *§ 301.6320–1 Notice and opportunity for hearing upon filing of notice of Federal tax lien.*

[The text of this proposed section is the same as the text of § 301.6320–1T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1415 Filed 1–19–99; 10:56 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–117620–98]

RIN 1545–AW90

Notice and Opportunity for Hearing Before Levy

AGENCY: Internal Revenue Service (IRS), Treasury.

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

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to notice to taxpayers of a right to a hearing before levy. The text of those temporary regulations also serves as the text of these proposed regulations. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by April 22, 1999. Outlines of topics to be discussed at the public hearing scheduled for June 15, 1999, at 10 a.m. must be received by June 1, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117620–98), 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–117620–98), 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. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, submission of written comments, and to be placed on the building access list to attend the hearing, Michael L. Slaughter (202) 622–7180; concerning the regulations, Jerome D. Sekula (202) 622–3610 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to notice to taxpayers of a right to a hearing before levy. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed 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 these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic and written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. The IRS and Treasury Department specifically request comments on the clarity of the proposed rule and how it may be made easier to understand.

A public hearing has been scheduled for June 15, 1999, at 10 a.m. in room 2615 Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having a visitor's name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** caption of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit electronic or written comments by April 22, 1999 and an outline of the topics to be discussed and the time to be devoted to each topic (a signed original and eight (8) copies) by June 1, 1999.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving requests to speak has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of this regulation is Jerome D. Sekula, Office of Assistant Chief Counsel (General Litigation). 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 301.6330–1 is added to read as follows:

§ 301.6330–1 Notice and opportunity for hearing prior to levy.

[The text of this proposed section is the same as the text of § 301.6330–1T published elsewhere in this issue of the **Federal Register**.]

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–1413 Filed 1–19–99; 10:56 am]

BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2510

RIN 1210–AA48

Plans Established or Maintained Pursuant to Collective Bargaining Agreements Under Section 3(40)(A) of ERISA

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of meeting.

SUMMARY: The Department of Labor's (Department) ERISA Section 3(40) Negotiated Rulemaking Advisory Committee (Committee) was established under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (the FACA) to develop a proposed rule implementing the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. 1001–1461 (ERISA). The purpose of the proposed rule is to establish a process and criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. The proposed rule will also provide guidance for determining when an employee benefit plan is established or maintained under or pursuant to such an agreement. Employee benefit plans that are established or maintained for the purpose of providing benefits to the employees of more than one employer are ''multiple employer welfare arrangements'' (MEWAs) under section 3(40) of ERISA, and therefore are subject to certain state laws, unless they meet one of the exceptions set forth in section 3(40)(A). At issue in this regulation is the exception for plans or arrangements that are established or maintained under one or more agreements which the Secretary finds to be collective bargaining agreements. It is the view of the Department that it is necessary to distinguish organizations that provide benefits through collectively bargained employee representation from organizations that are primarily in the business of marketing commercial insurance products.

DATES: The Committee will meet from 9:00 a.m. to approximately 5:00 p.m. on each day on Tuesday, February 9 and Wednesday, February 10, 1999.

ADDRESSES: This Committee meeting will be held in Room S–4215, Conference Room A/B, at the offices of the U.S. Department of Labor, 200 Consitution Avenue, NW, Washington, DC 20210. All interested parties are invited to attend this public meeting. Seating is limited and will be available on a first-come, first-serve basis. Individuals with disabilities wishing to attend should contact, at least 4 business days in advance of the meeting, Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346), if special accommodations are needed. The date, location and time for subsequent Committee meetings will be announced in advance in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Minutes of all public meetings and other documents made available to the Committee will be available for public inspection and copying in the Public Documents Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC from 8:30 a.m. to 5:30 p.m. Any written comments on these minutes should be directed to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210 (telephone (202) 219–4600; fax (202) 219–7346). This is not a toll-free number.

Agenda

The Committee will first adopt the minutes of the previous meeting. The Committee will then continue to discuss the possible elements of a process and potential criteria for a finding by the Secretary of Labor that an agreement is a collective bargaining agreement for purposes of section 3(40) of ERISA. Discussion of these issues is intended to help the Committee members define the scope of a possible proposed rule.

Members of the public may file a written statement pertaining to the subject of this meeting by submitting 15 copies on or before Tuesday, February 2, 1999 to Patricia Arzuaga, Office of the Solicitor, Plan Benefits Security Division, U.S. Department of Labor, Room N–4611, 200 Constitution Avenue, NW, Washington, DC 20210. Individuals or representatives wishing to address the Committee should forward their request to Ms. Arzuaga or telephone (202) 219–4600. During each day of the negotiation session, time permitting, there shall be time for oral public comment. Members of the public are encouraged to keep oral statements brief, but extended written statements may be submitted for the record.

Organizations or individuals may also submit written statements for the record without presenting an oral statement. 15 copies of such statements should be sent to Ms. Arzuaga at the address above. Papers will be accepted and included in the record of the meeting if received on or before February 2, 1999.

Signed at Washington, DC, this 15th day of January, 1999.

Leslie Kramerich,

Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration.

[FR Doc. 99–1464 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–98–111]

RIN 2115–AE47

Drawbridge Operation Regulations; Debbies Creek, New Jersey

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the regulations governing the operation of the Monmouth County highway bridge, at mile 0.4, across Debbies Creek, at Manasquan, New Jersey. The proposal would continue to provide the current opening schedule, except that from January 1 through March 31, a 24 hour advance notice would be required. This change is intended to relieve the bridge owner of the burden of having a bridge tender staff the bridge during periods when there are few or no requests for openings, while still providing for the reasonable needs of navigation. In addition, the Coast Guard proposes enumeration and rewording of the current regulation to ensure clarity and consistency.

DATES: Comments must be received on or before March 23, 1999.

ADDRESSES: Comments may be mailed to Commander (Aowb), USCG Atlantic Area, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann Deaton, Bridge Administrator, USCG Atlantic Area, (757) 398–6222.

SUPPLEMENTARY INFOMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses and should identify this rulemaking (CGD05–98–111). Commenters should identify the specific section of this proposed rule to which each comment applies, and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Monmouth County highway bridge is owned and operated by the Board of Chosen Freeholders of the County of Monmouth (BCFCM) in New Jersey. Title 33 Code of Federal Regulations (CFR) Part 117.715 requires the bridge to open on signal, except that, from Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need be opened only on the hour and the half hour if any vessels are waiting to pass.

The BCFCM has requested a change in the regulation to require a 24 hour advance notice for bridge openings from January 1 through March 31. Bridge logs from 1989 through 1997 revealed a total of 496 bridge openings in the months of January, February and March. During this period, bridge tenders received an average of approximately 18 bridge-opening requests per month. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that the proposed changes will more fairly balance the competing needs of vehicular and vessel traffic. The Coast Guard also believes that enumeration and rewording would clarify the current regulation.

Discussion of Proposed Amendments

The Coast Guard proposes to amend 33 CFR 117.715 by inserting a new provision requiring a 24 hour advance notice for bridge openings from January 1 through March 31. Additionally, to ensure clarity and consistency of the operating regulation, the text of the current 33 CFR 117.715 would be enumerated and reworded.

Regulatory Evaluation

This proposed 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 reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to plan their transits and to timely contact the bridge tender to provide the 24 hours advance notice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small independently owned and operated businesses which are not dominant in their fields and that otherwise, qualify as ''small buiness concerns'' under Section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3510–3520).

Federalism

The Coast Guard analyzed this action in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this proposed regulation will not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation based on the fact that this is a promulgation of an operating regulation for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations 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.

2. Section 117.715 is revised to read as follows:

§ 117.715 Debbies Creek.

(a) The draw of the Monmouth County highway bridge, mile 0.4 at Manasquan, shall open on signal, except as follows:

(1) From January 1 through March 31, the draw need open only if at least 24 hours advance notice is given.

(2) From Memorial Day through Labor Day from 7 a.m. to 8 p.m., the draw need open only on the hour and half hour if any vessels are waiting to pass.

(b) The owners of the bridge shall provide and keep in good legible condition two board gages painted white with black figures not less than eight inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: January 11, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 99–1473 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[VA 061–5039; FRL–6218–6]

Approval and Promulgation of Air Quality Implementation Plans; Virginia; Approval of Source-Specific VOC RACT for Tuscarora Incorporated

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia. This revision requires Tuscarora Incorporated, a major source of volatile organic compounds (VOCs), to implement reasonably available control technology (RACT). In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by February 22, 1999.

ADDRESSES: Written comments should be addressed to David Arnold, Chief, Ozone and Mobile Sources Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; and the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Janice M. Lewis, (215) 814–2185, at the EPA Region III address above, or via e-mail at lewis.janice@epa.gov.

SUPPLEMENTARY INFORMATION: For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: December 28, 1998.

Thomas Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 99–1264 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[Docket No. A98–46, FRL–6222–9]

Promulgation of Federal Implementation Plan for New Jersey; Ozone 15 Percent Rate of Progress Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the authority of section 110(c)(1) of the Clean Air Act (CAA), EPA is proposing a federal implementation plan (FIP) that will further New Jersey's progress towards attaining the ozone standard. The intended effect of this FIP is to address the shortfall in the State's 15 Percent Rate of Progress (ROP) Plans for the New Jersey portions of two severe ozone nonattainment areas—the New York, Northern New Jersey, Long Island Area, and the Philadelphia, Wilmington, Trenton Area. EPA was required to develop a FIP because New Jersey did not meet the condition in it's federally-approved 15 Percent ROP Plans requiring New Jersey to implement an enhanced inspection and maintenance program by November 15, 1997. Pursuant to a court order, EPA's final FIP must be signed by the EPA Administrator no later than August 15, 1999.

EPA's proposed FIP relies on four already-adopted federal air pollution control measures that will result in the required volatile organic compound (VOC) emission reductions. Specifically, the FIP recognizes VOC reductions resulting from the emission standards for new nonroad spark-ignition engines, the emission standards for automobile refinish coatings, and the emission standards for architectural coatings. In addition, for the Philadelphia, Wilmington, Trenton Area, the FIP relies upon emission reductions from the already adopted National Emission Standard for Benzene Waste Operations. In total, these measures will result in sufficient VOC emission reductions to achieve the 15 Percent ROP demonstration required by the CAA. Because these requirements are already adopted they will provide the emission

reductions in the most expeditious time frame.

DATES: Comments must be received on or before March 17, 1999. EPA has scheduled a public hearing on the New Jersey Ozone 15 Percent Shortfall FIP for March 3, 1999 from 1:00 p.m. to 3:00 p.m.

ADDRESSES: Written comments on the EPA's proposed FIP must be received by EPA at the address below on or before March 17, 1999. Comments should be submitted (in duplicate, if possible) to: Ronald Borsellino, Chief, Air Programs Branch, Environmental Protection Agency, Region II Office, 290 Broadway, New York, New York 10007–1866.

The public hearing will be held at the following location: Rutgers University, New Brunswick, Labor Education Center, Labor Center Way, room 102. For directions, please contact Paul Truchan at (212) 637–3711.

A copy of docket No. A98–46, containing material relevant to EPA's proposed action, is available for review at: Environmental Protection Agency, Region II Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Interested persons may make an appointment with Paul Truchan (212) 637–3711 to inspect the docket at EPA's New York City office on weekdays between 9 a.m. and 4 p.m.

A copy of docket No. A98–46 is also available to review at the New Jersey Department of Environmental Protection, Office of Air Quality Management, Bureau of Air Quality Planning, 401 East State Street, CN418, Trenton, New Jersey 08625.

Electronic availability: This document is also available as an electronic file on EPA's Region 2 Web Page at http://www.epa.gov/ region02.

FOR FURTHER INFORMATION CONTACT: Paul Truchan, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3711.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Introduction—the Shortfall

Today's action affects two areas of New Jersey which have been designated as nonattainment of the 1-hour national ambient air quality standard (NAAQS) for ozone. The measured levels of ozone in these areas were high enough that these areas were classified as having a ''severe'' ozone problem. These nonattainment areas are the portion of New Jersey in the New York, Northern New Jersey, Long Island ozone nonattainment area, and the portion of New Jersey in the Philadelphia, Wilmington, Trenton ozone nonattainment area. For the purposes of this action, these areas will be referred to as, respectively, the Northern New Jersey nonattainment area and the Trenton nonattainment area. These two severe nonattainment areas involve 18 of New Jersey's 21 counties and contain approximately 95 percent of the State's population. The counties located within the Northern New Jersey nonattainment area are: Bergen, Essex, Hudson, Hunterdon, Middlesex, Monmouth, Morris, Ocean, Passaic, Somerset, Sussex, and Union. The counties within the Trenton nonattainment area are: Burlington, Camden, Cumberland, Gloucester, Mercer, and Salem.

Ground level ozone, often known as smog, is the air pollution that blankets many urban areas during the summer. When inhaled, even at low levels, ozone can cause temporary respiratory problems and aggravate asthma in children, the elderly, those with respiratory disease, and even otherwise healthy adults who are working or exercising outside on a smoggy day. Children are exposed to ozone more often because they tend to be out doors during summer. Long-term exposures to ozone may lead to premature aging of the lungs and chronic respiratory illnesses. Ozone also damages crops, rubberized materials and fabrics. A more complete description of the health effects of ozone and EPA's 8-hour ozone standard is available at the following EPA web site: http://ttnwww.rtpnc.epa.gov/naaqsfin/. State plans to meet this new standard are not due to EPA until 2003. Today's proposal will bring the State closer to meeting the previously established one-hour ozone standard which remains in effect for areas such as the two New Jersey nonattainment areas. Today's proposal will also, in turn, bring New Jersey closer to meeting the new more stringent 8-hour standard.

Ground-level ozone is formed by the atmospheric reaction of VOCs and nitrogen oxides in the presence of sunlight. The primary source of VOC emissions are: exhaust from automobiles, sport utility vehicles, trucks and other gasoline burning engines, solvent evaporation from paints and coatings, evaporation of petroleum products, and industrial manufacturing and surface coating operations. While nitrogen oxides also contribute to the formation of ozone they are not a part of today's action, as the 15 Percent ROP requirement in the CAA applies only to VOC emissions. There are separate CAA requirements for nitrogen oxides.

The CAA provides a framework that the states must follow in order to attain the ozone NAAQS as expeditiously as possible. This framework requires, at a minimum, the early adoption of specific control measures to achieve Reasonable Further Progress—including a 15 percent reduction in VOC emissions between 1990 and 1996. The CAA also provides that EPA has an obligation to develop a FIP if EPA disapproves a SIP for failing to provide the required VOC emission reduction strategies needed to make progress towards meeting the health-based standard.

New Jersey's federally-approved 15 Percent ROP Plans for the two severe ozone nonattainment areas relied on the emission reductions from several control measures including the implementation of a State enhanced inspection and maintenance (I/M) program. When implementation of this program was delayed, these emission reductions could not be achieved on schedule. Therefore, EPA's conditional approval of the New Jersey 15 Percent ROP Plans converted to a disapproval and EPA is now obligated to develop a FIP that will make up for the VOC emission reduction shortfall. This shortfall is 30.86 tons per day in the Northern New Jersey nonattainment

area and 10.24 tons per day in the Trenton nonattainment area.

In addition, EPA is under court order, as a result of a lawsuit by the American Lung Association of Northern Virginia, *et al.*, to promulgate a FIP which makes up the shortfall in the 15 Percent ROP Plan for the Trenton nonattainment area. Under the Consent Agreement, EPA has until January 15, 1999, to propose and August 15, 1999, to adopt the FIP.

B. FIP Proposal

EPA's FIP proposal for the Northern New Jersey and Trenton nonattainment areas relies on the emission reductions from three EPA-promulgated national air pollution control measures: the emission standards for new nonroad spark-ignition engines, the emission standards for automobile refinish coatings, and the emission standards for architectural coatings. In addition to the above measures, in the Trenton nonattainment area EPA's proposed FIP also includes emission reductions from the already-adopted national emission standard for benzene waste operations. These measures were selected because they are already adopted and will therefore, most expeditiously result in emission reductions.

The CAA and the Consent Agreement require EPA to develop a FIP to make up for shortfalls in New Jersey's 15 Percent ROP Plans. Another consequence of EPA's disapproval of the New Jersey 15 Percent ROP Plans is that a mandatory sanction process was started. The CAA provides for two mandatory sanctions: first, 18 months after notification, a requirement to offset the increased emissions from new or modified major sources of air pollution at a rate of two tons of reduction for every one ton of increased emissions; and second, 24 months after notification, restrictions on the receipt of federal highway funds. This sanctions process is only terminated by EPA approval of a new 15 Percent ROP SIP revision, not by promulgation of this FIP.

EPA is working closely with New Jersey so that the State can develop an approvable 15 Percent ROP Plan which will replace EPA's FIP and avoid these sanctions.

C. Public Involvement

EPA is today announcing a public hearing on this FIP proposal. The public comment period will begin upon publication of the FIP proposal and will remain open for 30 days following the public hearing. EPA encourages everyone who has an interest in this proposal to comment upon it. EPA will consider all comments received during the public comment period in preparing the final FIP.

II. Background

A. Clean Air Act Requirements

Section 182(b)(1) of the CAA requires each ozone nonattainment area with a classification of moderate or above to develop a plan to reduce area-wide VOC emissions by 15 percent from a 1990 adjusted baseline, known as a 15 Percent ROP Plan. These plans were to be submitted by November 15, 1993.

B. Chronology of Actions Related to New Jersey's 15 Percent ROP Plans

New Jersey's original submittal was determined to be incomplete on February 2, 1994, which started a sanction process and a federal obligation to promulgate a FIP within 24 months, unless New Jersey satisfactorily fulfills the CAA requirements. The original submittal was determined to be incomplete because it relied on emission reductions from an enhanced I/M program that New Jersey had not yet adopted. On July 10, 1995, New Jersey submitted a SIP revision containing an adopted enhanced I/M program that EPA subsequently determined to be complete on August 1, 1995. This stopped the sanction process, but EPA's FIP obligation would remain until EPA took final action to approve the 15 Percent ROP Plan. EPA did not act further on the State's submittals because subsequent to the July 10, 1995 enhanced I/M submittal the State decided to revise the enhanced I/M program to make use of the flexibility that Congress provided to states in the National Highway System Designation Act, which was enacted in November 1995.

EPA's FIP obligation continued, and, as a result of a lawsuit by the American Lung Association of Northern Virgina, *et al.*, relating to the Trenton nonattainment area, EPA entered into a consent agreement that contained a schedule for the promulgation of a FIP if New Jersey failed to submit a 15 Percent ROP SIP, or if EPA did not approve it, or if New Jersey failed to implement any conditions of the approved SIP. This consent agreement only applies to the Trenton nonattainment area.

On April 30, 1997 (62 FR 23410), EPA proposed conditional interim approval of New Jersey's 15 Percent ROP Plans and, on June 30, 1997 (62 FR 35100), EPA gave final conditional interim approval to the 15 Percent ROP Plans, as well as approving several other CAA SIP requirements. In this notice EPA found that the control measures included in the plans would achieve 15 Percent ROP by November 15, 1999, which is as soon as practicable. The conditions placed on the 15 Percent ROP Plan approval related only to the enhanced I/M program. No conditions regarding any of the other measures were included in EPA's approval. As a result of a delay in the start up of the conditionally approved enhanced I/M program, which delayed full implementation by more than one year, EPA made a finding that the State failed to implement the enhanced I/M program and disapproved New Jersey's 15 Percent ROP Plans on December 12, 1997.

EPA's FIP obligation with respect to the 15 Percent ROP Plans is limited to adopting control measures which will eliminate the resulting emission reduction shortfall caused by the delay in the enhanced I/M program since the other portions of New Jersey's 15 Percent ROP plan are still approved as part of New Jersey's SIP and are still producing VOC emission reductions that benefit the environment. Under the Consent Agreement, EPA has until January 15, 1999 to propose the FIP and has until August 15, 1999 to adopt a FIP.

C. Relation to the 8-hour Average Ozone Standard

In July 1997, EPA adopted a new, more protective 8-hour ozone standard. However, for the purposes of making progress toward this new eight-hour ozone standard, the requirements for the old one-hour standard remain in effect until areas attain the one-hour standard. The requirement for a 15 Percent ROP Plan in the Northern New Jersey and the Trenton nonattainment areas continues since neither location has yet attained the one-hour ozone standard. Today's action deals only with the implementation of measures to make progress towards attainment of the one-hour ozone standard.

III. FIP Development Process

A. New Jersey's Efforts To Make Up the 15 Percent Shortfall

New Jersey is now in the process of revising its 15 Percent ROP Plans to make up for the shortfall created by the delay in implementing its enhanced I/M program. As part of this effort, New Jersey identified its landfill control program which was State promulgated and SIP-approved but was not included in its original 15 Percent ROP Plans. In addition, New Jersey used more accurate landfill emission estimating techniques which lowered the 1990

emissions from this category. The revised landfill emissions result in lower 1990 baseline emissions and, therefore, lower the amount of reductions needed to show 15 Percent ROP. In a letter dated November 9, 1998, New Jersey provided revised landfill information to be used in the revised 15 Percent ROP Plans. EPA considers this information to be the latest and most accurate assessment of the base year emissions. This correction reduces the shortfall which the FIP needs to account for from 31.41 to 30.86 tons per day in the Northern New Jersey nonattainment area and from 10.55 to 10.24 tons per day in the Trenton nonattainment area. With the exception of the enhanced inspection and maintenance program, all control programs have been adopted, implemented, and approved by EPA in the SIP. The table in section IV.E., provides a summary of New Jersey's previously conditionally approved 15 Percent ROP Plan and the resulting shortfall after consideration of the revised landfill data.

Therefore, EPA is basing its FIP on the need to make up for an emission reduction shortfall of 30.86 tons per day in the Northern New Jersey nonattainment area and 10.24 tons per day in the Trenton nonattainment area by November 15, 1999, the date which EPA previously found to be as soon as possible in New Jersey.

B. Federal Implementation Plan Provisions

Section 110(c) of the CAA provides that:

(1) The Administrator shall promulgate a federal implementation plan at any time within 2 years after the Administrator—

(A) Finds that the state has failed to make a required submission or finds that the plan or plan revision submitted by the state does not satisfy the minimum criteria established under section 110(k)(1)(A),[1] or

(B) Disapproves a State Implementation Plan submission in whole or in part, unless the state corrects the deficiency, and the Administrator approves the plan or plan revision, before the Administrator promulgates such federal implementation plan.

EPA has wide-ranging authority under section 110(c) to fill in gaps left by a state failure. EPA's authority to prescribe FIP measures is of three types. First, EPA may promulgate any measure for which it has the authority under CAA provisions. Second, EPA may invoke section 110(c)'s general FIP authority and act to cure a planning inadequacy in any way not clearly prohibited by statute. Third, under section 110(c), the courts have held that EPA may exercise all authority that the state may exercise under the Act. For a more detailed discussion of these authorities and restrictions on EPA's FIP authorities, see 59 FR 23262, 23290–23292 (May 5, 1994).

C. FIP Selection Factors

In selecting proposed control measures to remedy the shortfall, EPA was guided by the following factors in evaluating potential control measures:

1. Existing SIP

EPA removed from further consideration any measure which was already approved as part of the SIP and where the State has credited that measure towards meeting rate of progress requirements.

2. Applicability to New Jersey

Before a measure can be considered as a potential FIP control measure, EPA must first determine if the measure would have any inherent potential to reduce VOC emissions in the affected nonattainment areas.

3. Legal Authority

EPA must have the legal authority under the CAA to promulgate, implement, and enforce a measure, and must not be preempted from promulgating, implementing, or enforcing it by other federal statutes, regulations, or court orders before it considers a measure reasonably available for implementation in a FIP. EPA's FIP authority under CAA section 110(c) is broad (see section II.A.3. above); however, the Agency is constrained in specific instances by the CAA itself. See e.g., CAA section 110(a)(5)(A)(i) (prohibition on indirect source review programs) and section 110(c)(2)(B) (prohibition on parking surcharges).

EPA's authority to promulgate measures in a FIP that require a state to enact legislation or expend state funds is limited. EPA may require a state to enact legislation or expend its funds if the FIP measures affect the pollution-creating activities of the State itself, but may not do so if the effect is to govern the pollution-creating activities of others. For example, EPA could not require a state to regulate buses within the state. EPA could, however, require a state to retrofit state-owned buses to reduce emissions from those buses as part of an EPA strategy to regulate buses in general. For a detailed discussion of this issue, see 52 FR 23263, 23291–23292 (February 5, 1994) (proposed ozone and carbon monoxide FIP for the South Coast Air Basin).

4. Method of Implementation

EPA considered the method of implementing the measure in determining whether a measure was available to EPA for promulgation under the FIP, i.e., (1) by rule requiring the owner/operator of the source to implement the control, (2) by direct action by EPA, or (3) by providing additional funding to the state or local agency to implement the measure.

5. Technological Feasibility

As the term is proposed to be used here, technological feasibility means that the control measure is currently available and being implemented elsewhere and that the measure can achieve VOC emission reductions.

6. Cost of Implementation

In considering the cost of implementing a measure in an area, the General Preamble for EPA action on SIPs under the 1990 amendments to the CAA (57 FR 13541) suggests that in case of public sector sources and control measures, the cost evaluation should consider the impact of the reasonableness of the measures on the governmental entity that must bear the responsibility for their implementation.

In promulgating a FIP, EPA is the primary implementing entity. As such, EPA must evaluate the reasonableness of potential control measures based on its financial and resource capabilities. The Agency notes that its duty to promulgate and implement FIPs is in addition to, rather than a replacement of, its other duties under the Clean Air Act. As such, where implementing a potential FIP measure would require the Agency to expend substantial efforts to acquire needed resources, including financial resources, EPA should take such factors into consideration in determining whether the measure is practicable and, thus, reasonable to implement.

IV. Description of the Measures Included in the Proposed FIP

The following control measures are being proposed to meet the shortfall in New Jersey's 15 Percent ROP Plans. In EPA's assessment, these measures will eliminate the shortfall in the most expeditious manner, with the least inconvenience to the public, and with

[1] Section 110(k)(1)(A) requires the Administrator to promulgate minimum criteria that any plan submission must meet before EPA is required to act on the submission. These completeness criteria are set forth at 40 CFR part 51, Appendix V.

the most effective use of available federal resources.

A. New Nonroad Spark-Ignition Engines

1. Background

Prior to 1990, EPA's regulatory programs for motor vehicles and engines dealt only with on-road vehicles. In the CAA as amended in 1990, section 213(a)(1) directed EPA to study the contributions to air quality from nonroad engines and vehicles. Section 213(a)(2) of the CAA directed the Administrator to determine whether the emissions from nonroad sources are significant contributors to ozone or carbon monoxide in more than one nonattainment area and, if so, directed the Administrator to promulgate regulations for nonroad engines. EPA determined that there are substantial summertime VOC emissions from nonroad sources in many nonattainment areas.

On May 16, 1994, EPA published a notice of proposed rulemaking for small nonroad engines (59 FR 25399). This **Federal Register** notice, ''Control of Air Pollution; Emission Standards for New Nonroad Spark-Ignition Engines at or Below 19 Kilowatts,'' proposed emission standards that are expected to result in a 32 percent reduction in VOC emissions and a 14 percent reduction in carbon monoxide emissions nationally by the year 2020 when complete fleet turnover is projected. In a July 3, 1995 **Federal Register** (60 FR 34581), EPA promulgated a first phase of the final regulations to control emissions from new nonroad spark-ignition engines. This regulation is contained in the Code of Federal Regulations (CFR), Title 40, ''Part 90—Control of Emissions From Nonroad Spark-Ignition Engines.'' A second phase will be adopted in the future. The FIP only relies on the emission reductions from this first fully promulgated phase. The reader is referred to these proposed and final **Federal Register** notices for greater detail.

2. Emission Standards

This regulation is applicable to nonroad spark-ignition engines and vehicles that have a gross power output at or below 19 kilowatts and is effective for the 1997 model year and beyond. These engines are used principally in lawn and garden equipment and include such equipment as lawn mowers, leaf blowers, trimmers, chainsaws, and generators. Section 90.1(b) of 40 CFR Part 90 specifies those engine applications which are exempt from these emission standards.

Section 90.103 specifies the exhaust emission standards. Such standards are based on both engine displacement and whether the equipment is handheld. There are emission standards for hydrocarbons (VOCs), carbon monoxides, and oxides of nitrogen.

3. Compliance and Recordkeeping

EPA has established certification procedures which engine manufacturers must comply with in order to obtain a ''Certificate of Conformity.'' These procedures include engine testing, data reporting, record keeping, and labeling.

The inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers. There will be no separate testing, record keeping, or reporting requirements under the New Jersey FIP. Compliance with the national rule (40 CFR Part 90) is sufficient to insure compliance and emission reductions in New Jersey or any other state.

4. Emission Reductions

EPA has determined that the new nonroad standards will reduce VOC emissions by 13.1 percent in 1997, 19.5 percent in 1998, and 23.9 percent in 1999 nationally. Applying these percentages to New Jersey's specific engine population, the resulting VOC emission reductions that will be achieved in 1999 will be 16.19 tons per day in the Northern New Jersey nonattainment area and 5.71 tons per day in the Trenton nonattainment area. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

B. Emission Standards for Automobile Refinish Coatings

1. Background

In the Clean Air Act as amended in 1990, section 183(e) directs EPA to study the emissions of VOCs into the ambient air from consumer and commercial products and determine their potential contribution to ozone levels. In this study EPA was to list the categories of consumer or commercial products that account for at least 80 percent of the VOC emissions from these products in ozone nonattainment areas and develop a schedule for regulating these categories over the next eight years.

Based on this study, EPA concluded that VOC emissions from automobile refinish coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone. On April 30, 1996 (61 FR 19005), EPA proposed the ''National Volatile Organic Compound (VOC) Emission Standards for Automobile Refinish Coatings (Autobody Refinishing).'' A supplemental proposal was published on December 30, 1997 (62 FR 67784). On September 11, 1998 (63 FR 48806), EPA promulgated final regulations at 40 CFR Part 59, Subpart B—''National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings'' (Subpart B).

2. Emission Standards

The promulgated rule is applicable to all entities nationally that manufacture or import automobile refinish coating components or complete refinish coatings. Regulated automobile refinish coatings are pretreatment wash primers, primers/primer surfacers, primer sealers, single/two-stage topcoats, topcoats of more than two stages, multi-colored top coats, and specialty coatings. The VOC content standards are dependent on the coating category and specify limitations in grams of VOC per liter of coating.

3. Compliance and Recordkeeping

Automobile refinish coatings and coating components manufactured on or after January 11, 1999 must be in compliance with 40 CFR Part 59, Subpart B. Containers must be labeled with the date of manufacture or a code for the date. An initial report must be filed with EPA by January 11, 1999 or within 180 days after becoming subject to the rule. For purposes of determining compliance, the VOC content of each coating or component may be determined using EPA's Reference Method 24—''Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings,'' found in 40 CFR part 60, appendix A.

It should be noted that the inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers or importers of automobile refinishing components or coatings. There will be no separate testing, record keeping or reporting requirements. Compliance with the national rule will be sufficient to insure compliance and emissions reductions in New Jersey or any other state.

4. Emission Reductions

EPA has determined that the automobile refinish coating standards will result in VOC emission reductions in 1999 of 13.23 tons per day in the Northern New Jersey nonattainment area and 3.44 tons per day in the Trenton nonattainment area using New Jersey specific data on the automobile

refinishing industry. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

C. Emission Standards for Architectural Coatings

1. Background

EPA developed national regulations for architectural coatings as part of a larger requirement to control VOC emissions from certain categories of consumer and commercial products. Based on this study, EPA concluded that VOC emissions from architectural coatings have the potential to contribute to ozone levels that violate the NAAQS for ozone.

EPA proposed the ''National Volatile Organic Compound Emission Standards for Architectural Coatings'' (Architectural rule) on June 25, 1996 (61 FR 32729) and September 3, 1996 (61 FR 46410), and the comment period was further extended on October 8, 1996 (61 FR 52735). On September 11, 1998 (63 FR 48848), EPA promulgated final regulations at 40 CFR Part 59, Subpart D—''National Volatile Organic Compound Emission Standards For Architectural Coatings.'' The reader is referred to these **Federal Register** notices for greater detail.

New Jersey developed its own architectural coatings regulation, Subchapter 23 ''Prevention of Air Pollution From Architectural Coatings and Consumer Products,'' which was originally adopted in 1989 and subsequently revised. The regulation took effect in January 1990 for Group 1 products and March 1990 for Group 2 products. The regulation allowed coatings manufactured before 1990 to be sold until 1993. Because of the uncertainty in determining when the emission reductions occurred, New Jersey treated this source category as uncontrolled in the 1990 base year emission inventory. By 1999, Subchapter 23 would have achieved emission reductions of as much as 4.9 tons per day in Northern New Jersey nonattainment area and 0.9 tons per day in the Trenton nonattainment area. However, EPA is not proposing to take credit for the reductions associated with New Jersey's regulation at this time because EPA was unable to verify the quantity of VOC emission reductions which occurred after 1990 and would be creditable towards the 15 Percent ROP Plan. Rather, EPA is taking credit only for the emission reductions associated with those categories of coatings where EPA's national rule goes beyond New Jersey's rule. This decision provides a cushion in the emission reduction estimates that addresses any uncertainty in EPA's proposed FIP.

2. Emission Standards

The national architectural coatings rule is applicable to all entities that manufacture or import for sale or distribution in the United States architectural coatings. Architectural coatings include, but are not limited to, such coatings as: primers and sealers, flat and nonflat paints, stains, enamels, and wood preservatives. A complete list of coatings subject to this rule is contained in 40 CFR part 59, subpart D, Table 1. The VOC content standards are dependent on the coating category and specify limitations expressed as grams of VOC per liter of coating. The rule contains a tonnage exemption for exempting limited quantities of coatings. EPA also included an exceedance fee provision in the national rule. Under this provision, manufacturers or importers would have the option of paying a fee, based on the amount that VOC content levels are exceeded, instead of actually achieving the VOC content limitations. The fee is $0.0028 per gram or $2,500 per ton. EPA believes this will provide an option where the cost of reformulating low volume specialty coatings is high, while still providing an incentive to reformulate. EPA took this option into consideration in calculating the emission reduction potential of this rule as it would be used in the FIP.

3. Compliance and Recordkeeping

Architectural coatings manufactured on or after September 11, 1999 for sale or distribution in the United States must meet the VOC content limitations of 40 CFR part 59, table 1 (the compliance date for coatings subject to the Federal Insecticide, Fungicide, and Rodenticide Act is May 10, 2000). Containers must be labeled with the date of manufacture or a code for the date and the VOC content in the coating. An initial report must be filed with EPA no later than September 13, 1999 or within 180 days after becoming subject to the rule. Manufacturers must maintain records for a period of three years. For purposes of determining compliance, the VOC content of each coating or component may be determined using EPA's Reference Method 24—''Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings,'' found in 40 CFR part 60, appendix A (or an alternate method approved by EPA), formulation data, or other appropriate means. In the event of a discrepancy, however, the results from Method 24 (or the approved alternative method) govern.

It should be noted that the inclusion of this control measure in the New Jersey FIP does not require any additional effort or burden to the manufacturers or importers of architectural coatings. There will be no separate testing, recordkeeping or reporting requirements. Compliance with the national rule will be sufficient to ensure emission reductions and compliance in New Jersey or any other state.

4. Emission Reductions

EPA calculated the additional benefit from applying the national architectural coating rule, which has more stringent emission limits than New Jersey's current rule for some categories. The national rule will result in additional VOC emission reductions of 2.31 tons per day in the Northern New Jersey nonattainment area and 0.89 tons per day in the Trenton nonattainment area using New Jersey specific population data. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

D. National Emission Standard for Benzene Waste Operations

1. Background

On March 7, 1990 (55 FR 8292), the EPA promulgated the national emission standards for hazardous air pollutants (NESHAPS) for benzene emissions from benzene waste operations, 40 CFR part 61, Subpart FF (the rule). EPA initially issued a stay of effectiveness for this rule on March 5, 1992. EPA published a final rule on January 7, 1993 (58 FR 3072) that clarified the provisions and lifted the stay. The final benzene waste operations rule became effective on January 7, 1993.

2. Emission Standards

The rule is applicable to owners or operators of chemical manufacturing plants, manufacturing plants, coke by-product recovery plants, and petroleum refineries nationally and includes facilities with waste management units that treat, store or dispose of waste containing benzene. The final amendments clarify points on compliance that give owners and operators increased flexibility in meeting the requirements of the rule while meeting the NESHAPS goals for risk protection.

The rule requires control of benzene emissions from waste that is placed in storage tanks; surface impoundments; containers; individual drain systems; oil-water separators; treatment

processes; and closed vent systems. (See 40 CFR part 61, subpart FF and 58 FR 3071 for more details on these regulations.) For this 15 Percent ROP FIP action, EPA is only claiming credit for wastewater treatment processes at one facility covered by this rule. While the rule has resulted in real additional emission reductions, these emission reductions are not included as part of EPA's emission reduction calculations because they are not needed to fulfill the shortfall in the New Jersey 15 Percent ROP Plan.

Owners and operators of wastewater streams meeting the applicability requirements in sections 61.340 and 61.342 are required to comply with the following wastewater stream and process vent control requirements:

Such operators must install and operate a treatment process that removes benzene from the wastewater stream either to a level less than 10 parts per million by weight (ppmw) on a flow weighted annual average basis; or by at least 99 percent on a mass basis; or, by incinerating the waste in a combustion unit that achieves a destruction efficiency of at least 99 percent.

3. Compliance and Recordkeeping

Owners and operators subject to Subpart FF Sections 61.340 and 61.342 were required to comply with the control requirements outlined in sections 61.348 and 61.349 by April 7, 1993. Provisions under these sections require the owner or operator to report and maintain records which both identify each waste stream at a facility for streams controlled and uncontrolled for benzene emissions and include emission test results, emission measurements, annual waste quantity and other documentation related to wastewater processes. Records must be kept for at least 2 years from the date the information is recorded.

4. Emission Reductions

As mentioned earlier, Subpart FF requires control of benzene emissions from waste placed in storage tanks, surface impoundments, containers, individual drain systems, oil-water separators, treatment processes, and closed vent systems. However, EPA is only crediting emission reductions from the wastewater treatment processes at one of several petroleum refineries in the Trenton nonattainment area although additional reductions could be documented if needed to meet the shortfall. Complying with these provisions has resulted in VOC emission reductions of 2.37 tons per day in the New Jersey portion of the Trenton nonattainment area. EPA's technical analysis supporting these numbers is contained in the docket for this rulemaking.

E. Summary of New Jersey's 15 Percent ROP Plan and FIP

	Northern New Jersey NAA (tons/day)	Trenton NAA (tons/day)
15 Percent ROP Plan Required Reductions		
Originally required reductions	129.82	37.18
Changes to required reductions due to lower landfill emissions in base year inventory	−1.09	−0.49
New required reductions	128.73	36.69
Reductions from New Jersey Control Measures		
Originally approved New Jersey control measure reductions	130.82	38.28
Benefit from landfill controls	0.13	0.08
Removal of enhanced I/M reductions	−33.08	−11.91
Currently achieved reductions	97.87	26.45
Shortfall Calculations		
New required reductions	128.73	36.69
Currently achieved reductions	97.87	26.45
SIP shortfall	30.86	10.24
Proposed FIP Control Measures		
New Nonroad Spark-Ignition Engines	16.19	5.71
Automobile Refinish Coatings	13.23	3.44
Architectural Coatings	2.31	0.89
Benzene Waste NESHAPS	.....	2.37
Total FIP Measures	31.73	12.41
Excess Reductions	0.87	2.17

Additional emissions reductions have been achieved from New Jersey's architectural coatings regulation and the national emission standard for benzene waste operations, but have not been specifically enumerated in this notice since sufficient reductions have already been identified to achieve the 15 Percent ROP requirement.

V. Conclusion

EPA's proposed FIP addresses shortfalls in New Jersey's 15 Percent ROP Plans using measures with real air pollution reductions that are either already fully implemented or are fully adopted and in the process of being achieved. These measures will continue New Jersey's progress toward meeting the federal air quality one-hour ozone standard and will result in cleaner, healthier air for all New Jersey residents.

Specifically, EPA is proposing a FIP for New Jersey to address the shortfall in the 15 Percent ROP Plans for the two severe ozone nonattainment areas—the Northern New Jersey area and the Trenton area. EPA'S FIP relies on

emission reductions from three EPA adopted control measures for the Northern New Jersey and Trenton nonattainment areas, emission standards for new nonroad spark-ignition engines, emission standards for automobile refinish coatings, emission standards for architectural coatings, and one additional EPA promulgated control measure for the Trenton nonattainment area, the national emission standard for benzene waste water operations at refineries. When added to those control measures already included in New Jersey's 15 Percent ROP Plans, these measures will result in sufficient VOC emission reductions to achieve the rate of progress required by the CAA.

VI. Administrative Requirements

In order to meet the requirement of section 182(b)(1) of the Act, the proposed FIP for New Jersey relies on the VOC emission reductions which will result from the implementation of four national control programs, each of which has already been adopted by EPA. The control measures are:

Control of Emissions from Nonroad Spark-ignition Engines, 40 CFR Part 90—adopted, July 3, 1995 (60 FR 34581);

National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings, 40 CFR Part 59—adopted, September 11, 1998 (63 FR 48806);

National Volatile Organic Compounds Emission Standards for Architectural Coatings, 40 CFR Part 59—adopted, September 11, 1998 (63 FR 48848), and

National Emission Standard for Benzene Waste Operations, 40 CFR Part 61—adopted January 7, 1993 (58 FR 3072).

With these four control measures, the New Jersey FIP will be able to make up the emission reduction shortfall in the disapproved New Jersey 15 Percent ROP Plans without imposing any new regulatory burdens, since these regulations have already been adopted and are currently applicable nationally. These measures will expeditiously achieve the reductions with the least disruption and cost to the general public without the need for developing, proposing and adopting additional individual regulations for other source categories.

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is ''significant'' and therefore subject to OMB review and the requirements of Executive Order 12866 to prepare a regulatory impact analysis (RIA). The Executive 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.

Since this FIP rulemaking will not add to or change any of the requirements of the previously promulgated rules, including record keeping or reporting, and will not result in any additional costs, this FIP rulemaking is not ''significant'' under Executive Order 12866 and it is therefore not subject to the requirements of the Executive Order. Due to potential novel policy issues this action is being sent to OMB for 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. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is economically significant as defined under Executive Order 12866, and (2) for which the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the EPA 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 EPA.

Since the FIP is not adding any additional economic burden, and since no new requirements are being imposed, this FIP is not economically significant under Executive Order 12866. The FIP also does not impose any new requirements that address any risk which may have a disproportional effect on children, and, as a result Executive Order 13045 is not applicable.

D. 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.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. It does not create a mandate on tribal governments, nor imposes any enforceable duties on

these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act/Small Business Regulatory Enforcement Fairness Act of 1996

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), requires the EPA to give special consideration to the effect of Federal regulations on small entities and to consider regulatory options that might mitigate any such impacts. The EPA is required to prepare a regulatory flexibility analysis, including consideration of regulatory options for reducing any significant impacts, unless the Agency determines that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and small governmental jurisdictions.

For the purposes of analyzing whether the proposed FIP will have ''a significant economic impact,'' EPA assumes that sources subject to the previously adopted rules are complying with them. The appropriate inquiry then is whether the terms of EPA's proposed FIP would impose a significant economic impact beyond that already imposed by the terms of the existing rules. The proposed FIP does not change the nature of the already applicable rule requirements in any way. There should, therefore, be no additional burden on regulated sources because they are already legally required to comply with the relevant federal rules. When EPA originally promulgated the four federal measures it is relying on in this FIP, EPA fully complied with the applicable provisions of the RFA and SBREFA with respect to small entities. Because today's action neither proposes any additional specific regulatory requirements, nor obligates EPA to propose requirements necessarily applicable to small entities, it will not, by itself have a significant economic impact on a substantial number of small entities.

For these reasons, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed FIP will not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

F. Unfunded Mandates Reform Act

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

Since this FIP rulemaking will not add to or change any of the requirements, including record keeping or reporting and will not result in any additional costs, it will not result in expenditures by state, local, and tribal governments or the private sector of $100 million or more in any one year. Thus, this FIP is not subject to the requirements of the Unfunded Mandates Reform Act.

G. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standard bodies. The NTTAA requires the EPA to provide Congress, through OMB, with explanations when the EPA decides not to use available and applicable voluntary consensus standards.

Since this FIP does not create any new technical standards, no analysis under the NTTAA is required. It should be noted, however, that EPA performed an analysis under the NTTAA when it promulgated the final Architectural Coatings and Automobile Refinish rules which were subject to the NTTAA when promulgated. (See 63 FR 48876 and 63 FR 48814.) EPA determined that the methods proposed by EPA at that time were more appropriate than any of the analyzed alternatives.

H. Paperwork Reduction Act

The individual control measures that make up this FIP have information collection requirements which were submitted to the Office of Management and Budget (OMB) when the underlying measures were published. All Paperwork Reduction Act requirements were complied with at that time. There are no additional information collection requirements in this proposed FIP and therefore, submittal of this action to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is not required.

List of Subjects in 40 CFR Part 52

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

Dated: January 15, 1999

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is proposed to be amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart FF—New Jersey

2. Subpart FF is proposed to be amended by adding new section 52.1585 to read as follows:

§ 52.1585 Ozone 15 Percent ROP Federal Implementation Plan

(a) The volatile organic compound emission reductions from the following control measures are used towards meeting the rate of progress requirements of the 15 percent plans.

(1) New York, Northern New Jersey, Long Island nonattainment area:

(i) Title 40, ''Part 90—Control of Emissions From Nonroad Spark-Ignition Engines,''

(ii) Title 40, Part 59, Subpart B—''National Volatile Organic Compound Emission Standards for Automobile Refinishing Coatings,''

(iii) Title 40, Part 59, Subpart D—''National Volatile Organic Compound Emission Standards For Architectural Coatings,'' and

(2) Philadelphia, Wilmington, Trenton nonattainment area: Title 40, ''Part 90—Control of Emissions From Nonroad Spark-Ignition Engines,''

(i) Title 40, Part 59, Subpart B—''National Volatile Organic Compound

Emission Standards for Automobile Refinishing Coatings,''

(ii) Title 40, Part 59, Subpart D—''National Volatile Organic Compound Emission Standards For Architectural Coatings,'' and

(iii) Title 40, Part 61, Subpart FF—''National Emission Standard for Benzene Waste Operations.''

(b) Pursuant to the federal planning authority in section 110(c) of the Clean Air Act (CAA), the Administrator finds that the applicable implementation plans for the New Jersey portions of the New York, Northern New Jersey, Long Island nonattainment area, and the Philadelphia, Wilmington, Trenton nonattainment area demonstrate the 15 percent VOC rate of progress required under section 182(b)(1)(A)(1) of the CAA.

[FR Doc. 99–1482 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1002–NOI]

RIN 0938–AI72

Medicare Program: Ambulance Fee Schedule; Intent To Form Negotiated Rulemaking Committee

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of Intent to form negotiated rulemaking committee and notice of meeting

SUMMARY: Section 4531(b) of the Balanced Budget Act (BBA) of 1997 requires that the Secretary establish a fee schedule for the payment of ambulance services under the Medicare program by negotiated rulemaking. We are required to establish a Negotiated Rulemaking Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose will be to negotiate this fee schedule for ambulance services. The Committee will consist of representatives of interests that are likely to be significantly affected by the proposed rule. The Committee will be assisted by a neutral facilitator.

This notice announces our intent to establish a Negotiated Rulemaking Committee and outlines the scope of issues to be negotiated by the Committee as specified by section 4531(b)(2) of the BBA. We request public comment on whether we have properly identified the key issues to be negotiated by the committee as well as the interests that will be affected by those issues.

DATES: Comments: Comments and requests for representation or for membership on the Committee will be considered if we receive them at the appropriate address provided below, no later than 5 p.m. on February 22, 1999.

Meetings: The first meeting will be held at Turf Valley Hotel in Ellicott City, Maryland at 9 a.m. on February 22, 23, and 24, 1999 (410) 465–1500.

ADDRESSES: Mail written comments and requests for representation or for membership on the Committee, or nominations of another person for membership on the Committee (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1002–NOI, P.O. Box 7517, Baltimore, MD 21207–5187.

If you prefer, you may deliver your written comments, applications, or nominations (1 original and 3 copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201; or Room C5–09–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

FOR FURTHER INFORMATION CONTACT:

Bob Niemann (410) 786–4569 or Margot Blige (410) 786–4642 for general issues related to ambulance services.

Lynn Sylvester (202) 606–9140 or Elayne Tempel (207) 780–3408, Conveners.

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1002–NOI. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's offices at 300 Independence Avenue, SW, Washington, DC., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**. This **Federal Register** document is also available from the **Federal Register** online database through GPO Access, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Document home page address is http://www.access.gpo.gov/su__docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

I. Balanced Budget Act of 1997

Section 4531(b)(2) of the Balanced Budget Act of 1997 (BBA), Public Law 105–33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

II. Negotiated Rulemaking Process

Section 1834(l)(1) of the Act provides that these negotiations take place within the framework of the Negotiated Rulemaking Act of 1990 (Public Law 101–648, 5 U.S.C. 561–570). Under the Negotiated Rulemaking Act, the head of an agency generally must consider whether—

- There is a need for a rule;
- There are a limited number of identifiable interests that will be significantly affected by the rule;
- There is a reasonable likelihood that a committee can be convened with a balanced representation of persons who—
- Can adequately represent the interests identified; and
- Are willing to negotiate in good faith to reach a consensus on the proposed rule;
- There is a reasonable likelihood that a committee will reach a consensus on the proposed rule within a fixed period of time;
- The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking and the issuance of a final rule;
- The agency has adequate resources and is willing to commit such resources, including technical assistance, to the committee; and
- The agency, to the maximum extent possible consistent with the legal obligations of the agency, will use the consensus of the committee with respect to the proposed rule as the basis for the rule proposed by the agency for notice and comment.

We note that the Congress has determined that the above conditions have been met and has mandated that the negotiated rulemaking process is appropriate.

Negotiations are conducted by a committee chartered under the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2). The committee includes an agency representative and is assisted by a neutral facilitator. The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the agency's proposal. The process does not affect otherwise applicable procedural requirements of the FACA, the Administrative Procedure Act, and other statutes.

The Negotiated Rulemaking Act permits (but does not require) an agency to use the services of an impartial convener to assist the agency in identifying interests that will be significantly affected by the proposed rule, including residents of rural areas, and in conducting discussions with persons representing the identified interests to ascertain whether the establishment of a negotiated rulemaking committee is feasible and appropriate in the particular rulemaking. At the agency's request, the convener also ascertains the names of persons who are willing and qualified to represent interests that will be significantly affected by the rule. The agency may also ask the convener to recommend a process for the negotiations. The convener submits a written report, which is available to the public. Pursuant to this procedure authorized by the Negotiated Rulemaking Act, Lynn Sylvester and Elayne Temple of the Federal Mediation and Conciliation Service (FMCS) will act as conveners for the negotiated rulemaking on the ambulance fee schedule. Over the last several months, they have interviewed a wide range of organizations that were identified as having a possible interest in this negotiated rulemaking. They submitted a report to HCFA based on those convening interviews, which serves as a basis for this notice. The report lists the proposed representatives on the Committee. The convening report is a public document and is available upon request from the HCFA contacts listed above.

III. Interaction With the Proposed Rule Published on June 17, 1997

On June 17, 1997, we published a proposed rule in the **Federal Register** to revise and update the Medicare ambulance regulations at 42 CFR 410.40 (62 FR 32715). Specifically, we proposed to base Medicare payment on the level of service required to treat the beneficiary's condition; to clarify and revise policy on coverage of nonemergency ambulance services; and to set national vehicle, staff, and billing and reporting requirements. As noted above, section 1834(l)(2) of the Act provides, in part, that in establishing the ambulance fee schedule, the Secretary will establish definitions for ambulance services that link payments to the types of services provided. One of the provisions of the June 17, 1997 proposed rule would have defined ambulance services as either advanced life support (ALS) or basic life support (BLS) services and linked Medicare payment to the type of service required by the beneficiary's condition. We received an extremely large number of comments on this issue and, in general, commenters were very concerned about our proposal. In light of that concern, and because service definition is a required element of the negotiated rulemaking, we have decided not to proceed with a final rule on the definition of ALS and BLS services. We will include this issue as a matter for the negotiating committee.

We note that section 1834(1)(3) of the Act provides that, in establishing the fee schedule, the Secretary must ensure that the aggregate payment amount made for ambulance services in calendar year (CY) 2000 does not exceed the aggregate payment amount that would have been made absent the fee schedule. Although we are foregoing final agency action on the ALS/BLS definition proposal and including the issue as a part of the negotiations, we believe that the savings that would have been realized through implementation of that policy should not be lost to the Medicare program. We have estimated that $65 million would have been realized if the ALS/BLS proposal had been published as a final rule. Therefore, we intend to set the spending target for CY 2000 (the first year that the fee schedule will be in effect) $65 million lower than budget neutrality to reflect these savings. We intend to proceed with a final rule for those provisions of the June 17, 1997 proposed rule that are unrelated to the ALS/BLS issue. In addition, that rule will implement the provisions of section 4531(c) of the BBA, which authorizes the Secretary to include, under certain specified conditions, ALS services provided by a paramedic intercept service in a rural area as a covered ambulance service.

IV. Subject and Scope of the Rule

A. General

Currently, the Medicare program pays for ambulance services on a reasonable cost basis when they are provided by a hospital, skilled nursing facility, or home health agency and on a reasonable charge basis when provided by an outside supplier. Section 4531(b)(1) of the BBA requires that ambulance services covered under the Medicare program be paid based on the lower of the actual charge or the fee schedule amount. The fee schedule is limited in that payments may not exceed what would have been paid if the fee schedule were not put into effect. As discussed above, we intend to set spending for the first year at $65 million less than budget neutrality.

The effective date for the fee schedule is January 1, 2000, but the Secretary has the authority under section 1834(l)(2)(E) of the Act to provide for a phase-in period. In addition, section 1834(l)(2) requires that in developing the fee schedule the Secretary:

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences; and
- Consider adjustments to payment rates to account for inflation and other relevant factors.

While we recognize that it is difficult to predict the end product of negotiated rulemaking on the ambulance fee schedule, we anticipate that the proposed rule resulting from negotiations will include a specific recommended schedule of relative values for ambulance services, any adjustments or add-on amounts for particular types of services, and possibly a mechanism for controlling expenditures and a phase-in schedule. While section 1834(l)(2)(D) of the Act requires that we include an inflation adjustment in the considerations, section 1834(l)(3)of the Act prescribes the inflation factor to be used for future years. Therefore, we are not including the inflation factor as part of the negotiation process. Medicare billing data will be available for use in the negotiations and we will share that information with Committee participants.

B. Issues and Questions To Be Resolved

Issues that we anticipate being resolved are outlined below. We also invite public comment on other issues not identified that may be within the scope of this rule.

We believe the issues to be the following:

1. The type of services furnished. That is, how services are grouped for payment purposes and the minimum services that must be furnished in order to meet the definition of each payment group. For example, what is an ALS versus BLS service? How many gradations of service are required? For example, should there be three levels of care: BLS, ALS and critical care transport? What are the relative values of each level of care and what are the projected utilizations of each?

2. Definition(s) of type of provider and how that affects the payment rate. For example, should volunteer, municipal and private ambulance services be treated differently?

3. Definition(s) of appropriate regional differences and how they affect the payment rate. For example, the use of a geographic wage adjustment.

4. Definition(s) of appropriate operational differences and how they affect the payment rate. For example:

—ALS versus BLS;
—Ground versus air;
—Fixed wing versus helicopter;
—Hospital-based versus independent;
—For-profit versus volunteer;
—Rural versus urban; or
—Isolated essential ambulance source (that is, only one ambulance source in a given geographical area)

5. Whether mileage should be paid separately from the base rate, and if so, what components of the ambulance service should be included in the base rate and what should be included in mileage.

6. Phase-in methodology of the fee schedule from the existing payment method, both method and time period.

7. Mechanism to control expenditures, for example, a volume performance measure such as the number of trips per beneficiary or the ratio of ALS to BLS that is used to adjust the conversion factor for the following year.

C. Issues That Are Outside the Scope of This Negotiation

Based on the convening report, several issues were identified that we have determined are outside the scope of this rule. The following is a list of some, although not necessarily all, of the issues that we have determined are outside the scope of this negotiation.

1. Program policies with respect to the coverage, as distinguished from payment, of ambulance services. For example, the definition of ''bed-ridden'' and ''medically necessary,'' physician certification for the use of ambulance, coverage of paramedic intercept services, and ambulance waiting time (which is not covered by Medicare).

2. The aggregate amount of Trust Fund dollars available for payment during the first year. This amount will be based on the amount the program would have paid in the year 2000 absent the fee schedule, reduced by the $65 million dollar savings that would have been realized through publication of a final rule on the ALS/BLS definition.

3. The way items and services are grouped in terms of the Billing Codes used to bill Medicare.

4. The base year, which will be the latest year for which complete HCFA ambulance claims data exist.

5. Local or State ordinances requiring certain ambulance staffing or all ALS ambulance.

6. The choice of an appropriate coding system to implement the fee schedule; section 1834(l)(7) of the Act gives HCFA the authority to specify the coding system.

V. Affected Interests and Potential Participants

In addition to our participation on the Committee, the Conveners have proposed and we agree to accept representatives from the following organizations as negotiation participants:

- American Health Care Association (AHCA).
- American Ambulance Association (AAA).
- Association of Air Medical Services (AAMS).
- International Association of Fire Chiefs (IAFC).
- International Association of Fire Fighters (IAFF).
- National Association of State Emergency Medical Services Directors (NASEMSD).
- American Hospital Association (AHA).
- National Volunteer Fire Council (NVFC).

In addition to this list, we note that we have requested that the American College of Emergency Physicians (ACEP) and the National Association of EMS Physicians (NAEMSP) form a coalition and send one representative to be a negotiation participant. We invite public comment on this list of Committee participants.

We note that Medicare contractors, which are those entities that adjudicate claims in local regions, will provide technical information to the negotiator representing HCFA. Since we consider the contractors to be agents of HCFA, we believe that they are most efficiently and effectively utilized in this manner rather than as negotiators in the process.

This document gives notice of this process to other potential participants and affords them the opportunity to request that they be considered for membership on the Committee. Persons who will be significantly affected by this rule may apply for or nominate another person for membership on the Committee to represent such interests by submitting comments on this notice. Any application or nomination must include:

- The name of the applicant or nominee and a description of the interests such person represents;
- Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent;
- A written commitment that the applicant or nominee will actively participate in the negotiations in good faith; and
- The reasons that the applicant or nominee believes its interests are sufficiently different from the persons or entities listed above so that those interested would not be adequately represented on the Committee as currently proposed.

Individuals representing the proposed organizations and health industry sectors should have practical experience, be recognized in their particular community, have the ability to engage in negotiations that lead to consensus, and be able to fully represent the views of the interests they represent.

We reserve the right to refuse representatives who do not possess these characteristics. Given the limited time frame for the development of this rule, we expect that the negotiations will be intensive. Representatives must be prepared and committed to fully participate in the negotiations in an attempt to reach consensus on the issues discussed.

The intent in establishing the Committee is that all interests are represented, not necessarily all parties. We believe the proposed list of participants represents all interests associated with adoption of a national fee schedule for ambulance services. In determining whether a party had a significant interest and was represented, we considered groups who have and will continue to actively represent the main interest groups. Lastly, while we are obligated to ensure that all interests that are significantly affected are adequately represented, it is critical to the Committee's success that it be kept to a manageable size, particularly because of the short time frame in which the Committee must complete its task.

Groups or individuals who wish to apply for a seat on the Committee should respond to this notice and provide the detailed information described above.

VI. Schedule for the Negotiations

We have set a deadline of 5–6 months beginning with the date of the first meeting for the negotiated rulemaking Committee to complete work on the proposed rule. We anticipate 4 or 5 additional meetings, to be scheduled by the Committee, with the final meeting no later than the end of June 1999. The first meeting of the Committee is scheduled for February 22, 23, and 24, 1999 at the Turf Valley Hotel in Ellicott City, Maryland beginning at 9 a.m. The purpose of this meeting is to discuss in detail how the negotiations will proceed, the schedule for subsequent meetings, and how the Committee will function. The Committee will agree to ground rules for Committee operations, will determine how best to address the principal issues, and, if time permits, will begin to address those issues.

VII. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal Government is required to comply with the requirements of FACA when it establishes or uses a group that includes non-Federal members as a source of advice. Under FACA, an advisory committee begins negotiations only after it is chartered. This process is underway.

B. Participants

The number of participants in the group is estimated to be 10 and should not exceed 15 participants. A number larger than this could make it difficult to conduct effective negotiations within the time frame required by the statute. One purpose of this notice is to determine whether the proposed rule would significantly affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, each interest must be adequately represented. Moreover, the group as a whole should reflect a proper balance or mix of interests.

C. Requests for Representation

If, in response to this notice, an additional individual or representative of an interest requests membership or representation on the Committee, we will determine, in consultation with the conveners, whether that individual or representative should be added to the Committee. We will make that decision based on whether the individual or interest—

- Would be significantly affected by the rule, and
- Is already adequately represented in the negotiating group.

D. Establishing the Committee

After reviewing any comments on this Notice and any requests, applications or nominations for representation, we will take the final steps to form the Committee.

VIII. Negotiation Procedures

The following procedures and guidelines will apply to the Committee, unless they are modified as a result of comments received on this notice or during the negotiating process.

A. Facilitators

We will use neutral facilitators to conduct the negotiations. The facilitators will not be involved with the substantive development or enforcement of the regulation. The facilitators' role will be to—

- Chair negotiating sessions in an impartial manner;
- Help the negotiation process run smoothly;
- Help participants define issues and reach consensus; and
- Manage the keeping of the Committee's minutes and records.

Lynn Sylvester and Elayne Tempel of the Federal Mediation and Conciliation Service (FMCS) will serve as facilitators.

B. Good Faith Negotiations

Participants must be willing to negotiate in good faith and be authorized to do so. We believe this may best be accomplished by selecting senior officials as participants. We believe senior officials are best suited to represent the interests and viewpoints of their organizations. This applies to us as well, and we are designating Nancy Edwards, Deputy Director of the Division of Acute Care, in our Center for Health Plans and Providers, to represent us.

C. Administrative Support

We will supply logistical, administrative, and management support. We will provide technical support to the Committee in gathering and analyzing additional data or information as needed.

D. Meetings

Meetings will be held in the Baltimore/Washington area. Unless announced otherwise, meetings are open to the public.

E. Committee Procedures

Under the general guidance and direction of the facilitators, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meetings that they consider most appropriate.

F. Defining Consensus

The goal of the negotiating process is consensus. Under the Negotiated Rulemaking Act, consensus generally means that each interest concurs in the result unless the term is defined otherwise by the Committee. We expect the participants to fashion their working definition of this term.

G. Failure of Advisory Committee To Reach Consensus

If the Committee fails to reach consensus, the Committee may transmit a report specifying any areas on which consensus was reached and may include in the report any information, recommendations, or other materials that it considers appropriate. Additionally, any Committee member may include such information in an addendum to a report.

If any Committee member withdraws, the remaining Committee members will evaluate whether the Committee should continue.

H. Record of Meetings

In accordance with FACA's requirements, minutes of all committee meetings will be kept. The minutes will be placed in the public rulemaking record and Internet site on our home page.

I. Other Information

In accordance with the provisions of Executive Order 12866 this notice was reviewed by the Office of Management and Budget.

Authority: Section 1834(l)(1) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 17, 1998.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: December 23, 1998.

Donna E. Shalala,

Secretary.

[FR Doc. 99–1615 Filed 1–21–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 20

[CC Docket No. 94–102; DA 98–2631]

Compatibility of Wireless Services With Enhanced 911; Guidelines for Waiver of Phase II Automatic Location Identification Requirements

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: The Wireless Telecommunications Bureau released a Public Notice announcing guidelines to be followed in filing petitions for waiver of § 20.18(e) of the rules governing wireless Enhanced 911(E911) service. The Public Notice also establishes a schedule for filing such waiver requests. Section 20.18(e) requires that covered wireless carriers deploy Automatic Location Identification (ALI) beginning October 1, 2001. The action is taken to provide interested parties with guidance in filing requests for waiver of this requirement. Filings in response to the Public Notice will be included in the pending wireless E911 docket and may be utilized by the Commission in its further development of policies and rules for wireless E911 deployment.

DATES: Waiver petitions are requested to be filed by February 4, 1999. Comments on the waivers requests are due on February 16, 1999, and reply comments are due on or before February 22, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Dan Grosh, 202–418–1310, or Won Kim, 202–418–1310. For additional information concerning the information collection aspects contained in the Public Notice, contact Les Smith at 202–418–0217, or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Public Notice in CC Docket No. 94–102, DA 98–2631, released December 24, 1998. The complete text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Synopsis of the Public Notice

1. The Public Notice sets out guidelines and a filing schedule to assist those interested in filing waivers of 20.18(e) of the E911 regulations which state that covered wireless carriers must deploy Automatic Location Identification (ALI) as part of E911 service beginning October 1, 2001, provided certain conditions are met. This rule was adopted in the First Report and Order (61 FR 40348, August 2, 1996) and provides that subject carriers must provide the location of all 911 calls by longitude and latitude such that the accuracy for all calls is 125 meters or less using a Root Mean Square methodology. The Commission, in the Memorandum Opinion and Order (MO&O) in this proceeding (63 FR 2631, January 16, 1998) responded to concerns that the effect of § 20.18(e) might not be technologically and competitively neutral for some technologies that might be used to provide ALI, in particular handset-based technologies such as those using the GPS satellite system. The MO&O stated that the Commission would be willing to consider such issues either in the E911 rulemaking or in response to requests for waivers.

2. In response to the MO&O, the Wireless Telecommunications Bureau received inquiries regarding the terms of waivers that might be granted and the type of information that should accompany requests for such waivers. Thus, the Public Notice sets out guidelines and a filing schedule to assist those interested in filing such waivers, as well as other interested parties. Parties should be aware that these filings will be included in the pending wireless E911 docket, and may be utilized by the Commission in its further development of policies and rules for wireless E911 deployment in the pending reconsideration proceeding or in other actions in the E911 rulemaking proceeding.

3. The Commission's intention in this proceeding is to adopt general performance criteria, rather than extensive technical standards, to guide the development of wireless E911 services. The Commission's goal in this proceeding is to ensure the rapid, efficient, and effective deployment of ALI as part of E911, in order to promote the public safety and welfare. Because of the significant benefits the ALI requirements established in § 20.18(e) will provide to the public safety, any requests for waiver of the rule should be consistent with that intent and goal. The carriers who would seek waiver of ALI requirements must demonstrate their commitment to, and plans for achieving, the goals of § 20.18(e).

4. There are several aspects to achieving these goals for handset-based approaches to ALI. One of the most critical factors in providing help to 911 callers in emergency situations is the accuracy of the location information. A commitment by a carrier to provide a significantly higher level of accuracy could help justify a phase-in of ALI over time, through upgrading or replacing handsets.

5. Another way in which the goals of the rules might be achieved would be if the carrier began implementation of ALI capabilities before the October 1, 2001, deadline, by offering ALI capable handsets to customers at an earlier date, and offering only ALI capable handsets no later than the date when all conditions for Phase II requirements are met. Early implementation could be especially useful for wireless customers travelling in areas where Public Safety Answering Points (PSAPs) have acted to be able to receive the ALI information.

6. One concern the Commission has regarding carriers employing handset-based ALI technologies is that they might not be able to provide reliable ALI service to ''roamer'' customers whose home carrier adopts a network-based solution. In light of this concern, it will be important for carriers seeking waiver of the Commission's Phase II requirements to address any factors and steps they will be in a position to take that will minimize this roamer problem to the fullest extent practicable.

Terms and Scope of Waiver Petitions; Information Requested

7. Any carrier seeking a waiver of the Commission's rules and requirements relating to Phase II implementation shall include in its petition for waiver a specific statement and explanation of the scope and terms of the waiver sought by the carrier. Under the general waiver standard set forth in WAIT Radio,[1] the Commission may exercise its discretion to waive a rule where waivers are founded upon an ''appropriate general standard,'' ''show special circumstances warranting a deviation from the general rule,'' and ''such deviation will serve the public interest.'' [2]

8. In order to meet the *WAIT Radio* waiver standard, it is necessary for waiver petitions to provide with sufficient particularity the following information. This information will assist the Commission in assessing whether a particular waiver is likely to meet the Commission's objective of being technologically and competitively neutral with respect to enforcement compliance with its Phase II rules, while promoting the deployment of wireless E911 in an efficient and effective manner:

(1) The level of ALI accuracy and reliability the carrier plans to offer with its ALI technologies. This information should include field test results of such technologies in various geographical environments, such as ''urban canyons,'' suburban and rural locations, mountainous and other similar terrain, and inside buildings.

(2) When the carrier plans to start offering ALI-capable handsets to its customers. This information should include documented timetables and milestones regarding the deployment projections for ALI-capable handsets. In particular, we would find it useful to have information on the expected implementation rate for ALI under the requested waiver, including the likely rate at which non-ALI capable handsets would be replaced or upgraded.

(3) Steps the carrier will take with respect to minimizing problems associated with non-ALI capable handsets. This information should include an analysis of estimated cost of upgrading or replacing existing handsets based on the options explored by the carrier.

(4) Steps the carrier plans to take to address roamer situations, together with any available information regarding the volume of 911 calls made by roamer customers in the carrier's service area.

9. Because the ALI technology issue is one that affects all wireless carriers subject to the E911 requirements, it is possible that a general waiver or set of waiver options may be one way of addressing the handset-based technology issue. The grant of interim waivers pending the adoption of permanent rule changes may also be appropriate. Waiver requests and comments should address any legal or other issues that might be raised by the grant of either individual or general waivers, on an interim or permanent basis.

Filing Schedules and Instructions

10. To assist the Commission in evaluating these issues in a comprehensive manner, we recommend that waiver requests be filed not later than February 4, 1999. Oppositions should be filed not later than February 16, 1999. Replies should be filed not later than February 22, 1999. Waiver requests may be filed before or after the date established in this schedule, but adherence to such filing date should facilitate more efficient and expeditious treatment of pending petitions. The Commission also notes that application for or grant of a waiver does not obligate the carrier to use the waiver; if a carrier wishes, it may decide to comply with the rules in effect rather than employ a granted waiver.

Administrative Information

11. To file formally in this proceeding, participants must file an original and five copies of all petitions, oppositions, and replies. If participants want each Commissioner to receive a personal copy of their comments, an original and ten copies must be filed. All pleadings should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Washington, D.C., 20554, referencing CC Docket No. 94–102. Paper filings will also be received at a designated counter located at TW–A325 in the 12th Street lobby of the Portals II Office Building from 8:30 a.m. to 5:30 p.m., Monday through Friday, except holidays. During the transition period of the Commission's relocation to the Portals II Office Building, the Office of the Secretary will accept paper filings at 1919 M Street, N.W., Room 222, but only from 4:00 p.m. to 5:30 p.m., Monday through Friday, except holidays.

12. Requests for waiver that are formally opposed are generally treated as restricted proceedings, where *ex parte* presentations are prohibited.[3] The Commission may modify its *ex parte* rules, however, if it determines that the public interest would be served.[4] Because these waiver petitions and responsive comments will be included in CC Docket No. 94–402, and may be considered in the context of the ongoing wireless E911 rulemaking, the Commission believes that it is appropriate to treat these as ''permit but disclose'' proceedings. Pursuant to our delegated authority,[5] we have determined that it is in the public interest to permit *ex parte* presentations relating to petitions for waiver of § 20.18(e), so long as the presentations are disclosed in accordance with § 1.1206 of the Commission's Rules.[6]

Paperwork Reduction Act

13. This Public Notice contains new information collections subject to the Paperwork Reduction Act of 1995 (PRA). The Office of Management and Budget (OMB) has reviewed and approved these collections. The expiration date for this approval is April 30, 1999. Because the Commission sought and OMB granted emergency approval of these collections, and because the Public Notice originated from comments filed in response to the Memorandum Opinion and Order (63 FR 2631, January 16, 1998) for which a comment period was provided and OMB approval was received (OMB No. 3060–0813), the Commission has been granted an exception to the 60-day public comment requirement.

OMB Approval Number: 3060–0878.

Title: Wireless Telecommunications Bureau Outlines Guidelines For Wireless E911 Rule Waivers For Handset-Based Approaches To Phase II Automatic Location Identification (ALI) Requirements, Public Notice, CC Docket No. 94–102.

Type of Review: New Collection.

Respondents: Covered Wireless Carriers Seeking Waiver of § 20.18 (e) of the Commission's E911 Rules Requiring That Covered Carriers Deploy ALI As Part Of E911 Service Beginning October 1, 2001.

Number of Respondents: Approximately 50 carriers will submit a one-time request for waiver of the E911 ALI regulations.

[1] WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), *cert. denied,* 409 U.S. 1027 (1972) (WAIT Radio).

[2] Northeast Cellular Telephone Co. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990), *citing WAIT Radio,* 418 F.2d at 1159.

[3] Section 1.1208 of the Commission's Rules, 47 CFR 1.1208.

[4] Section 1.1200(a) of the Commission's Rules, 47 CFR 1.1200(a).

[5] *See* §§ 0.131 and 1.331 of the Commission's Rules, 47 CFR 0.131, 1.331.

[6] 47 CFR 1.1206.

Burden Per Respondent: 4 hours.

Total Annual Burden Hours: 2,000 hours.

Total Annual Cost: 0.

Frequency of Response: One-time filing requirement.

Needs and Uses: The information filed as part of a petition for waiver will be used to ensure timely compliance with the Commission's E911 regulations, provide the Commission with current information on the status of ALI technology, and thus ensure the dependability and responsiveness of critical E911 services.

Federal Communications Commission.

Kathleen O'Brien Ham,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 99–1589 Filed 1–20–99; 1:24 pm]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 98–182, PR Docket No. 92–235, DA 98–2651]

1998 Biennial Regulatory Review; Private Land Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rules; extension of time for comments.

SUMMARY: This document extends the time to file comments on the *Notice of Proposed Rulemaking* adopted September 30, 1998. Comments on this notice were due January 4, 1999, and reply comments were due on or before January 22, 1999. Pursuant to a request by Land Mobile Communications Council (LMCC), the Commission is extending the time to file comments to afford interested parties the necessary time to coordinate and file substantive comments for the record.

DATES: Comments must be filed on or before January 19, 1999, and reply comments on or before February 3, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, The Portals II, 445 12th St., SW, Washington, D.C. 20554

FOR FURTHER INFORMATION CONTACT: Ghassan Khalek, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–2771 or via E–Mail to gkhalek@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Safety and Private Wireless Division's Order, WT Docket No. 98–182, DA 98–2651, adopted December 30, 1998, and released December 31, 1998. The full text of this Order is available for inspection and copying during normal business hours in the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 2025 M Street, N.W., Room 8010, Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, Suite 140, Washington, D.C. 20037, telephone (202) 857–3800.

Summary of Order

1. On September 30, 1998, the Commission adopted A Notice of Proposed Rulemaking (Notice) in the above-captioned proceeding. Comments on the Notice were due on or before January 4, 1999, and Reply Comments were due on or before January 22, 1999. On December 23, 1998, the Commission received a request for Extension of Time to File Comments filed by the Land Mobile Communications Council.

2. LMCC requests an extension until January 18, 1999, to file comments. It states that this would afford interested parties adequate time to prepare full and complete comments in order that the Commission may develop as complete a record as possible. LMCC indicates that it files comments in proceedings before the Commission with the consensus of, and on behalf of, the vast majority of public safety, business, industrial, private, commercial and land transportation radio users. LMCC points out that the comment deadline falls immediately after an extended holiday period making it difficult for LMCC to develop consensus comments because of the unavailability of many of its members due to travel.

3. It is the policy of the Commission that extensions of time are not routinely granted. Upon review, however, we agree that an extension would afford parties the necessary time to coordinate and file substantive comments for the record. We believe, that a 15 day extension of time, until January 19, 1999, within which to file comments on the Notice should be sufficient. This extension should provide an adequate opportunity for all parties to prepare and file responsive and complete comments in this proceeding,

Ordering Clauses

4. Accordingly, *it is hereby ordered* that the Request for Extension of Time to File Comments filed by LMCC on December 23, 1998, is hereby granted. Parties shall file comments on the Notice no later than January 19, 1999. Reply comments are due on or before February 3, 1999.

List of Subjects in 47 CFR Part 90

Administrative practice and procedure, Communications equipment, Radio.

Federal Communications Commission.

John Clark,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 99–1458 Filed 1–21–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 011399A]

Fisheries of the Northeastern United States; Northeast Multispecies and Monkfish Fisheries; Amendment 1 to the Monkfish Fishery Management Plan (FMP) to Designate Essential Fish Habitat (EFH)

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

ACTION: Notice of availability of Amendment 1 to the Monkfish FMP; request for comments.

SUMMARY: NMFS announces that the New England and Mid-Atlantic Fishery Management Councils have submitted for review and approval by the Secretary of Commerce (Secretary) Amendment 1 to the Monkfish FMP prepared jointly by the New England Fishery Management Council (NEFMC) and the Mid-Atlantic Fishery Management Council. The amendment includes the EFH provisions which implement the requirements of section 303(a)(7) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The amendment describes and identifies EFH for the monkfish fishery, discusses measures to address the effects of fishing on EFH, and identifies other actions for the conservation and enhancement of EFH. The amendment includes no new fishery management measures, so no regulations are proposed. Amendment 1 to the Monkfish FMP is included in the NEFMC's omnibus EFH amendment, which also includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Atlantic Sea Scallop FMP, Amendment

1 to the Atlantic Salmon FMP, and the EFH components of the pending Atlantic Herring FMP.

DATES: Public comments must be received on or before March 23, 1999.

ADDRESSES: Comments on this amendment should be sent to Jon C. Rittgers, Acting Regional Administrator, One Blackburn Drive, Gloucester, MA 01930–2298. Please mark the outside of the envelope: ''Comments on Monkfish Amendment 1.''

Copies of the omnibus amendment, which includes Amendment 1 to the Monkfish FMP and the environmental assessment, are available from Paul Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036.

FOR FURTHER INFORMATION CONTACT: Jonathan M. Kurland, Assistant Habitat Program Coordinator, 978–281–9204.

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Act requires that each Regional Fishery Management Council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or FMP amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment. Therefore, NMFS solicits comments on the approval, disapproval, or partial approval of Amendment 1 to the Monkfish FMP.

Amendment 1 to the Monkfish FMP is included as a part of an omnibus EFH amendment prepared by the NEFMC, which addresses the Magnuson-Stevens Act EFH provisions. The omnibus amendment discusses fishing- and nonfishing-related impacts to NEFMC designated EFH, including monkfish EFH; measures to minimize adverse impacts to EFH; and conservation and enhancement measures for EFH. The monkfish EFH portion of the amendment also addresses research and information needs.

This omnibus amendment also includes Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Sea Scallop FMP, Amendment 1 to the Atlantic Salmon FMP, and EFH designations and information for Atlantic herring. A Notice of Availability for Amendment 11 to the Northeast Multispecies FMP, Amendment 9 to the Sea Scallop FMP, and Amendment 1 to the Atlantic Salmon FMP was published in the **Federal Register** on December 1, 1998 (63 FR 66110) and the comment period ends on February 1, 1999. EFH designations and information for Atlantic herring will be considered for Secretarial approval, disapproval, or partial approval in a future notice of availability, in conjunction with the NEFMC's pending FMP for Atlantic herring.

NMFS solicits comments on the approval, disapproval, or partial approval of Amendment 1 to the Monkfish FMP. To be considered, comments must be received by close of business on March 23, 1999; that does not mean postmarked or otherwise transmitted by that date.

In addition to Amendment 1, the Monkfish FMP is currently under Secretarial review. A Notice of Availability inviting public comment on the FMP was published in the **Federal Register** on December 2, 1998 (63 FR 66524). Comments on the Monkfish FMP must be received by February 1, 1999.

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

Dated: January 15, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1419 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 64, No. 14

Friday, January 22, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 98–124–1]

Availability of a Supplement to the Horse Protection Strategic Plan

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: We are advising the public of the availability of a supplement to the Animal and Plant Health Inspection Service Horse Protection Strategic Plan and are inviting comments on it. The supplement concerns the Horse Protection Act operating plan for the 1999 show season for Tennessee Walking Horses and other gaited horses.

DATES: Consideration will be given only to comments received on or before January 29, 1999.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–124–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–124–1. Copies of the supplement to the Animal and Plant Health Inspection Service Horse Protection Strategic Plan may be obtained either by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**, or electronically at http://www.aphis.gov/ac. A copy of the supplement and comments received on the supplement are also available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect the supplement or comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Watkins, Initiatives Coordinator, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1234, (301) 734–4981; or e-mail: richard.h.watkins@usda.gov.

SUPPLEMENTARY INFORMATION: The practice known as ''soring'' is the causing of pain in Tennessee Walking Horses and other gaited horses, in order to affect their performance. The Horse Protection Act (HPA) (11 U.S.C. *et seq.*) was enacted for the purpose of eliminating soring by prohibiting the showing, exhibition, transport or sale of sore horses. Exercising its rulemaking and enforcement authority under the HPA, the Animal and Plant Health Inspection Service (APHIS) issues and enforces regulations regarding horse protection at title 9, chapter I, part 11, of the Code of Federal Regulations.

In 1995, APHIS initiated development of a Horse Protection Strategic Plan, designed to achieve the elimination of soring by strengthening APHIS's relationship with the walking horse industry. A notice of the availability of the final Horse Protection Strategic Plan was published in the **Federal Register** on December 1, 1997 (62 FR 63510, Docket No. 97–105–1). Based on our experience using the Horse Protection Strategic Plan during the 1998 show season for Tennessee Walking Horses and other gaited horses, we determined that a supplement to the Horse Protection Strategic Plan, explaining and clarifying operating procedures, would be useful for the 1999 show season. This notice announces the availability of that supplement and invites comment from the horse industry and other interested members of the public.

Done in Washington, DC, this 14th day of January 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–1417 Filed 1–21–99; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from Procurement List.

SUMMARY: The Committee has received proposal to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and service previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 22, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action will result in authorizing small entities to furnish the commodity and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Insignia, Embroidered
8455–01–388–8485
NPA: Westmoreland County Branch, PAB, Greensburg, Pennsylvania

Services

Administrative/General Support Services, GSA, Federal Supply Service (3FS), Northeast Distribution Center, Burlington, New Jersey
NPA: Bestwork Industries for the Blind, Inc., Westmont, New Jersey
Base Supply Center, Mountain Home Air Force Base, Idaho
NPA: Envision, Inc., Wichita, Kansas
Base Supply Center, Naval Air Station Fallon, Fallon, Nevada
NPA: The Lighthouse for the Blind, Inc., Seattle, Washington
Operation of Individual Equipment Element, Mountain Home Air Force Base, Idaho
NPA: Envision, Inc., Wichita, Kansas

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46—48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and service have been proposed for deletion from the Procurement List:

Commodities

Easel, Display & Training
7520–00–579–7013
Easel, White Board, Dry Erase
7520–01–127–4192
Reel, Cable
8130–L9–015–3520
8130–L9–015–3420
Box, Filing
7520–00–240–4831
7520–00–139–3743
7520–00–240–4839

Service

Janitorial/Grounds Maintenance, Department of Agriculture, Coshocton, Ohio

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–1470 Filed 1–21–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Connecticut Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Connecticut Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 4:00 p.m. on February 11, 1999, at the Holiday Inn Hotel and Conference Center, 1070 Main Street, Bridgeport, Connecticut 06604. The Committee will (1) review the draft report, ''Civil Rights Issues In Connecticut: A Summary Report of the 1997 Civil Rights Leadership Conference'', (2) plan future activities; and (3) hold a briefing with local government officials and advocacy group representatives on civil rights issues in the Bridgeport area.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Neil Macy, 860–242–7287, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, January 14, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–1442 Filed 1–21–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[I.D. 011399B]

Notice of Availability of Final Environmental Impact Statement/ Environmental Impact Report and Habitat Conservation Plan/ Sustained Yield Plan for the Headwaters Forest Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce; Fish and Wildlife Service (FWS), Interior.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a joint final Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) and Habitat Conservation Plan (HCP)/ Sustained Yield Plan (SYP) relating to several proposed actions by the Secretary of the Interior, FWS, NMFS, California Wildlife Conservation Board, the California Department of Forestry and Fire Protection (CDF), and the California Department of Fish and Game (CDFG), and alternatives to those actions intended to achieve the following: to protect, in accordance with the Federal and state Endangered Species Acts (ESAs), species listed as threatened or endangered under one or both of the ESAs; to provide permanent protection for the Headwaters Forest and Elk Head Springs Forest through their transfer into public ownership; to provide for sustained production of timber products, consistent with Federal and state laws, on lands owned by The Pacific Lumber Company and its wholly owned subsidiaries, Scotia Pacific Company, L.L.C., and Salmon Creek Corporation (hereafter collectively referred to as ''PALCO''); and to reduce public controversy regarding PALCO's management of its timberlands, particularly the Headwaters Forest.

DATES: Decisions on the above actions will occur no sooner than February 22, 1999.

ADDRESSES: Comments regarding the final EIS/EIR or HCP should be addressed to Mr. Bruce Halstead, Field Supervisor, Fish and Wildlife Service, 1125 16th Street, Room 209, Arcata, CA 95521-5582. Written comments may be sent by facsimile to (707) 822-8411. Comments on the SYP may be mailed to Jon Munn, California Department of

Forestry and Fire Protection, State Headquarters, P.O. Box 944246, Sacramento, California 94244–2460. Please see Additional addresses in the SUPPLEMENTARY INFORMATION section for additional information on the availability of the final EIS/EIR, HCP, and SYP.

FOR FURTHER INFORMATION CONTACT: Bruce Halstead, FWS, (707) 822-7201, Craig Wingert, NMFS, (562) 980-4020, or Allen Robertson, CDF, (916) 657–0300.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior, California Wildlife Conservation Board, FWS, NMFS, CDF, and CDFG propose the following actions: (1) Acquisition by the United States and the State of California from PALCO of the approximately 4,500-acre Headwaters Forest, which includes 2,700 acres of old-growth redwood trees, and the approximately 1,125-acre Elk Head Springs Forest, which includes about 425 acres of old-growth redwood trees; (2) funding by the United States and the State of California of the purchase of approximately 9,600 acres of Elk River Timber Company property, about 7,755 acres of which will be transferred to PALCO as part of the consideration to PALCO for the Headwaters and Elk Head Springs Forests, and 1,845 acres of which will be transferred to the United States and the State of California and preserved as a buffer for the Headwaters Forest. The combined area of the acquired Headwaters and Elk Head Springs Forests, plus the Elk River property to be transferred to the United States and the State of California, is approximately 7,500 acres; (3) payment by the United States and the State of California of $300 million to PALCO as payment for the Headwaters and Elk Head Springs Forest, and up to $80 million to the Elk River Timber Company as payment for the Elk River Property; (4) issuance by FWS and NMFS of Federal incidental take permits under section 10(a) of the Federal ESA covering take of threatened and endangered species on PALCO's timberlands based on an HCP that meets the requirements of the Federal ESA and other applicable laws and regulations; (5) approval by CDF of PALCO's SYP, including measures and plans addressing state-listed and federally listed species; (6) issuance by CDFG of a state incidental take permit that meets the requirements of the California ESA and other applicable laws and regulations; and (7) execution by CDFG of a streambed alteration agreement pursuant to Fish and Game Code, section 1600 to 1607.

On December 27, 1996, a notice was published in the **Federal Register** (61 FR 68285) announcing the intent to prepare a joint EIS/EIR on actions associated with the Headwaters transaction, including issuance of incidental take permits under the Federal ESA, and inviting comments on the scope of the EIS/EIR. Comments were received and considered and were reflected in the draft EIS/EIR. By a **Federal Register** notice dated July 14, 1998 (63 FR 39700), NMFS and FWS (the Services) announced the availability for public review and comment of applications for Federal incidental take permits filed by PALCO under section 10(a) of the Federal ESA. The applications include a proposed HCP and a proposed Implementation Agreement (IA) that addressed species conservation and ecosystem management on approximately 211,700 acres of land, primarily in the coastal redwood zone of Humboldt County, California, currently owned by PALCO or to be acquired as part of the Headwaters transaction. PALCO has requested permits to incidentally take six federally listed species: the northern spotted owl (*Strix occidentalis caurina*), marbled murrelet (*Brachyramphus marmoratus*), American peregrine falcon (*Falco peregrinus anatum*), bald eagle (*Haliaeetus leucocephalus*), western snowy plover (*Charadrius alexandrinus nivosus*), and coho salmon (*Oncorhynchus kisutch*) and requested that 30 currently proposed and other unlisted species be included on the permits.

The proposed HCP, among other things, was also intended to satisfy the requirements for a SYP under California state law and the requirements for an incidental take permit under section 2081(b) of the California ESA. In a subsequent September 23, 1998, **Federal Register** notice (63 FR 50883), the Services announced that the public comment period on PALCO's proposed HCP and SYP, scheduled to close on October 13, 1998, had been extended until November 16, 1998, to coincide with the public comment period on the draft EIS/EIR. The notice also advised the public of several additional provisions being considered by FWS, CDFG, and NMFS for inclusion in the incidental take permits as a result of the enactment of Assembly Bill 1986 by the California State Legislature. By a **Federal Register** notice dated October 2, 1998 (63 FR 53089), the Services announced the availability of the draft EIS/EIR for public review and comment.

The Services and CDF received approximately 18,000 comments on the HCP, SYP, and draft EIS/EIR. Changes have been made to the documents in response to public comments, agency concerns, and the enactment of AB 1986. Nineteen species proposed for coverage under the HCP initially submitted by PALCO have been dropped, and additional measures to minimize and mitigate the impacts of take of the 17 remaining covered species and to improve monitoring and enforcement of the permits have been added. The species identified for permit coverage in the final proposed HCP include the 6 federally listed species named above, 3 of which are also listed under the California ESA, 1 species listed solely under the California ESA, and 10 species which are currently not listed under either Federal or California ESAs.

Other changes made to the HCP submitted by PALCO address mitigation for both terrestrial and aquatic covered species. With respect to the marbled murrelet, the final proposed HCP adds 270 acres to the Owl Creek Marbled Murrelet Conservation Area (MMCA) and 350 acres to the Grizzly Creek tract. The HCP also provides for protection of the Owl Creek MMCA for the life of the incidental take permits (ITPs), prohibits all timber harvest activities in the Grizzly Creek tract for a period of 5 years, and provides for protection of the Grizzly Creek tract as an MMCA for the life of the ITPs if necessary to avoid jeopardy to the marbled murrelet. The final proposed HCP also includes additional daily and seasonal restrictions on timber harvest activities to minimize impacts to the murrelet. Additional provisions to minimize impacts to the northern spotted owl and other terrestrial species have been included in the HCP.

With respect to the coho salmon and other covered aquatic species, the final proposed HCP requires measures including a 100–foot (30.5 meter) no cut buffer on all Class I streams and a 30–foot (9.1 meter) no cut buffer on all Class II streams pending completion of watershed analysis and a minimum 30–foot (9.1 meter) no cut buffer on Class I streams and a maximum 170–foot (51.8 meter) no cut buffer on Class I and Class II streams after watershed analysis has been completed. Additional measures designed to minimize impacts from mass wasting, wet weather road use, road construction and other activities, and to address cumulative impacts have also been included in the HCP.

Detailed monitoring plans have been developed and included in the final HCP that will assist FWS, NMFS, and CDFG in evaluating the effectiveness of the HCP's conservation and management measures and PALCO's

compliance with terms and conditions of the HCP. The IA also requires that PALCO fund an independent on-site HCP monitor approved by FWS, NMFS, and CDFG to oversee the company's compliance with the terms and conditions of the HCP.

The final EIS/EIR analyzes the environmental impacts of the HCP submitted by PALCO with the added minimization and mitigation measures summarized above and four alternatives to the HCP, including the ''no action'' alternative. The final EIS/EIR also analyses the impacts of the SYP submitted by PALCO.

The final EIS/EIR is intended to accomplish the following: (1) Inform the public of the final proposed action and alternatives; (2) address public comments received during the comment period; (3) disclose the direct, indirect, and cumulative environmental effects of the final proposed action and each of the alternatives; and (4) indicate any irreversible commitment of resources that would result from implementation of the final proposed action.

This notice is provided pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500 through 1508).

Additional Addresses

Copies of the final EIS/EIR, HCP, and SYP or portions thereof, can be obtained at the following copy centers for duplication and mailing charges: Sir Speedy, 601 North Market Boulevard, Room 350, Sacramento, California 95834, (916) 927-7171; Kinko's, 2021 Fifth Street, Eureka, California 95501, (707)-445-3334; Kinko's, Stanyan Street and Geary Boulevard, San Francisco, California 94118, (415) 750-1193; and Kinko's, 835 Wilshire Boulevard, Suite 100, Los Angeles, California 90017, (213) 892-1700. The final EIS/EIR, HCP and SYP will be available at The California Environmental Resources Evaluation System website at http://ceres.ca.gov/ and through the FWS website at http://www.r1.fws.gov/text/species.html. Copies of the final document can be obtained by contacting FWS, 911 NE 11th Avenue, Portland, Oregon 97232, (503) 231-2068. The document will also be available for review at the following Government offices and libraries:

Government Offices

California Department of Forestry and Fire Protection, Humboldt-Del Norte Ranger Unit, 118 South Fortuna Boulevard, Fortuna, California 95540, (707) 725-4413; California Department of Forestry and Fire Protection, Coast-Cascade Region Headquarters, 135 Ridgeway Avenue, P.O. Box 670, Santa Rosa, California 95401, (707) 576-2959; California Department of Forestry and Fire Protection, State Headquarters, P.O. Box 9442446, Sacramento, California 94244-2460, (916) 653- 5843; Fish and Wildlife Service, Coastal California Fish and Wildlife Office, 1125 16th Street, Room 209, Arcata, California 95521-5582, (707) 822-7201; Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 120, Sacramento, California 95821-6310, (916) 979-2710; National Marine Fisheries Service, 777 Sonoma Avenue, Room 325, Santa Rosa, California 95404-6515, (310) 980-4001; and California Department of Fish and Game, 619 Second Street, Eureka, California 95501, (707) 441-5672.

Libraries

Alameda Free Library, 2264 Santa Clara Avenue, Alameda, California 94501-4506, (510) 748-4669; Alameda County Library, 2450 Stevenson Boulevard, Fremont, California 94538-2326, (510) 505-7001; Anaheim Public Library, 500 W. Broadway, Anaheim, California 92805-3699, (714) 765-1810; Berkeley Public Library, 2090 Kittredge Street, Berkeley, California 94704-1491, (510) 644-6100; California State Library, Information and Reference Center, 914 Capitol Mall, Room 301, Sacramento, California 95814, (916) 654-0261; Colusa County Free Library, 738 Market Street, Colusa, California 95932-2398, (530) 458- 7671; Contra Costa County Library, 1750 Oak Park Boulevard, Pleasant Hill, California 94523-4497, (510) 646-6423; Del Norte County Library District, 190 Price Mall, Crescent City, California 95531-4395, (707) 464-9793; Humboldt County Library, 1313 Third Street, Eureka, California 95501-1088, (707) 269-1900; Humboldt State University Library, Humboldt State University, Arcata, California 95521, (707) 826-4939; Lake County Library, 1425 N. High Street, Lakeport, California 95453-3800, (707) 263-8816; Long Beach Public Library, 101 Pacific Avenue, Long Beach, California 90822-1097, (562) 570-6291; Los Angeles Public Library, 630 W. Fifth Street, Los Angeles, California 90071-2097, (213) 228-7515; County of Los Angeles Public Library, 7400 E. Imperial Highway, Downey, California 90242-7011, (562) 940-8462; Marin County Free Library, 3501 Civic Center Drive, San Rafael, California 94903-4188, (415) 499-6051; Mendocino County Library, 105 N. Main Street, Ukiah, California 95482-4482, (707) 463-4491; Menlo Park Public Library, 800 Alma Street, Menlo Park, California 94025-3460, (650) 858-3460; Mountain View Public Library, 585 Franklin Street, Mountain View, California 94041-1998, (650) 903-6335; National City Public Library, 200 E. 12th Street, National City, California 91950-3314, (619) 336-4280; Newport Beach Public Library, 1000 Avocado Avenue, Newport Beach, California 92660, (714) 717-3800; Oakland Public Library, 125 14th Street, Oakland, California 94612-4397, (510) 238-3633; Ontario City Library, 215 E. C Street, Ontario, California 91764-4198, (909) 988-8481;Orange Public Library (under renovation), El Modena Branch Library (alternative), 380 S. Hewes, Orange, California 92869, (714) 288-2471; Orange County Public Library, 1501 E. St. Andrew Place, Santa Ana, California 92705, (714) 566-3000; Oxnard Public Library, 251 South A Street, Oxnard, California 93030-5750, (805) 385-7500; Palo Alto City Library, 1213 Newell Road, Palo Alto, California 94303-2999, (650) 329-2516; Pasadena Public Library, 285 E. Walnut Street, Pasadena, California 91101-1598, (626) 744-4033; Redwood City Public Library, 1044 Middlefield Road, Redwood City, California 94063-1868, (650) 780-7061; Sacramento Public Library, 828 In Street, Sacramento, California 95814-2589, (916) 264-2770; San Bruno Public Library, 701 Angus Avenue W., San Bruno, California 94066-3490, (650) 877-8878; San Francisco Public Library, 100 Larkin Street, San Francisco, California 94102-4796, (415) 557-4400; San Jose Public Library, 180 W. San Carlos Street, San Jose, California 95113-2096, (408) 277-4822; San Mateo Public Library, 55 W. Third Avenue, San Mateo, California 94402-1592, (650) 377-4685; San Mateo County Library, 25 Tower Road, San Mateo, California 94402-4000, (650) 312-5258; San Rafael Public Library, 1100 E Street, San Rafael, California 94901-1907, (415) 485-3323; Santa Barbara Public Library, 40 E. Anapamu Street, Santa Barbara, California 93101, (805) 962-7653; Santa Clara Public Library, 2635 Homestead Road, Santa Clara, California 95051-5322, (408) 984-3236; Santa Clara County Library, 1095 N. Seventh Street, San Jose, California 95112-4446, (408) 293-2326; Santa Cruz Public Library, 224 Church Street, Santa Cruz, California 95060-3873, (408) 429-3532; Santa Monica Public Library, 1343 Sixth Street, Santa Monica, California 90401-1610, (310) 458-8608; Shasta County Library, 1855 Shasta Street, Redding, California 96001-0460, (530) 225-5769; Siskiyou County Free Library, 719 Fourth Street, Yreka, California 96097-3381, (530) 842-8175; Sonoma County

Library, Third and E Streets, Santa Rosa, California 95404-4400, (707) 545-0831; South San Francisco Public Library, 840 W. Orange Avenue, South San Francisco, California 94080-3124, (650) 829-3872; Tehama County Library, 645 Madison Street, Red Bluff, California 96080-3383, (530) 527-0607; Trinity County Free Library, 211 N. Main Street, Weaverville, California 96093-1226, (530) 623-1373; Ventura County Library Services, 800 S. Victoria Avenue, Ventura, California 93009, (805) 662-6756; Central Library, 801 SW. 10th Avenue, Portland, Oregon 97205, (503) 248-5123; Houston Public Library, 500 McKinney Street, Houston, Texas 77002, (713) 247-2222; National Clearinghouse Library, 624 Ninth Street, NW, 600, Washington, D.C. 20425, (202) 376-8110; and New York Public Library, 455 Fifth Avenue, New York, New York 10016, (212) 340-0849.

Dated: January 11, 1999.

Michael J. Spear,

Manager, California Nevada Operation Office, Fish and Wildlife Service, Region 1, Sacramento, California.

Dated: January 15, 1999.

Kevin Collins,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–1457 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011499C]

Atlantic Tuna Fisheries; Public Hearings; Advisory Panel Meetings

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

ACTION: Notice of public hearings and Advisory Panel meetings; request for comments.

SUMMARY: NMFS will hold 26 public hearings to receive comments from fishery participants and other members of the public regarding proposed regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (Billfish Amendment).

NMFS previously published Notices of Availability for the HMS FMP (63 FR 57093) and for the Billfish Amendment (63 FR 54433). NMFS extends the comment period for the HMS FMP and reopens the comment period for the Billfish Amendment to coincide with the comment period on the forthcoming proposed rule.

To accommodate people unable to attend a hearing or wishing to provide additional comments, NMFS also solicits written comments on the proposed rule.

NMFS will hold consecutive meetings of the Atlantic Highly Migratory Species (HMS) and Billfish Advisory Panels (APs), with a half-day joint meeting, to discuss comments and advise NMFS on the HMS FMP and Billfish Amendment, respectively.

DATES: The HMS AP meeting will be held from 1:00 p.m. to 6:00 p.m. on Monday, February 22, from 8:00 a.m. to 6:00 p.m. on Tuesday, February 23, and from 8:00 a.m. to 1:00 p.m. on Wednesday, February 24. The Billfish AP meeting will be held from 8:00 a.m. to 6:00 p.m. on Thursday, February 25, and from 8:00 a.m. to 1:00 p.m. on Friday, February 26. A joint session of the HMS and Billfish APs will be held from 2:00 p.m. to 6:00 p.m. on Wednesday, February 24.

See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the public hearings. Written comments on the proposed rule must be received on or before March 4, 1999.

ADDRESSES: The APs will meet at the NOAA Science Center, 1301 East-West Highway, Silver Spring, Maryland 20910. Informational materials related to the AP meetings are available from Alicon Morgan, Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, Maryland 20910.

See **SUPPLEMENTARY INFORMATION** for the public hearing locations. Written comments on the proposed rule should be sent to Rebecca Lent, Chief, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Clearly mark the outside of the envelope ''FMP comments.''

FOR FURTHER INFORMATION CONTACT: Alicon Morgan at 301–713–2347, or Sarah McLaughlin at 978–281–9146.

SUPPLEMENTARY INFORMATION: The proposed regulatory amendments, draft HMS FMP and draft Billfish Amendment that are the subject of the hearings are necessary to address requirements of the Magnuson-Stevens Fishery Conservation and Management Act, implement recommendations of the International Commission for the Conservation of Atlantic Tunas as required by the Atlantic Tunas Convention Act, and consolidate existing regulations, organized by species, for the conservation and management of highly migratory species into one part of the Code of Federal Regulations (CFR), organized by theme, as part of the President's Regulatory Reinvention Initiative.

A complete description of the measures, and the purpose and need for the proposed actions, is contained in the proposed rule, to be published February 20, 1999 and is not repeated here. Copies of the proposed rule may be obtained by writing (see **ADDRESSES**) or calling one of the contact persons (see **FOR FURTHER INFORMATION CONTACT**).

Dates, Times, and Locations of Public Hearings

The public hearing schedule is as follows:

Wednesday, February 3, 1999, Charleston, SC, 6:30–9:30 p.m.

Department of Natural Resources
Marine Research Institute Auditorium
217 Fort Johnson Road
Charleston, SC 29412

Wednesday, February 3, 1999, St. Augustine, FL, 6:30–9:30 p.m.

Northeast Florida Marlin Association Clubhouse
30 Harbor Drive
St. Augustine, FL 32095

Wednesday, February 3, 1999, Old San Juan, PR, 6:30–9:30 p.m.

Club Nautico
482 Fernandez Juncos Avenue
Old San Juan, PR 00905
[Note: This public hearing will be conducted in English]

Thursday, February 4, 1999, Red Hook, St. Thomas, USVI, 6:30–9:30 p.m.

U.S.V.I. Game Fishing Club
6501 Red Hook Plaza, Suite 201
Red Hook, St. Thomas, USVI 00802

Friday, February 5, 1999, Brunswick, GA, 7–10 p.m.

Comfort Inn I–95
5308 New Jesup Highway
Brunswick, GA 31523

Monday, February 8, 1999, Miami, FL, 6:30–9:30 p.m.

Sheraton Biscayne Bay Hotel
495 Brickell Avenue
Miami, FL 33131
[Note: This public hearing will cover the Billfish Amendment only.]

Tuesday, February 9, 1999, Key West, FL, 6:30–9:30 p.m.

Holiday Inn Beachside Resort and Convention Center

3841 N. Roosevelt Boulevard
Key West, FL 33040

Tuesday, February 9, 1999, Houma, LA, 6:30–9:30 p.m.

Holiday Inn Holidome
210 S. Hollywood Road
Houma, LA 70360

Wednesday, February 10, 1999, New Orleans, LA, 6:30–9:30 p.m.

Crowne Plaza
333 Poydras Street
New Orleans, LA 70130

Thursday, February 11, 1999, Port Aransas, TX, 6:30–9:30 p.m.

University of Texas at Austin
Marine Science Institute
750 Channel View Drive
Port Aransas, TX 78337

Monday, February 15, 1999, Fairhaven, MA, 7–10 p.m.

Seaport Inn
110 Middle Street
Fairhaven, MA 02719

Monday, February 15, 1999, Madeira Beach, FL, 6:30–9:30 p.m.

City Hall
300 Municipal Drive
Madeira Beach, FL 33708

Tuesday, February 16, 1999, Nags Head, NC, 6:30–9:30 p.m.

Ramada Inn
1701 S. Virginia Dare Trail
Nags Head, NC 27948

Tuesday, February 16, 1999, Panama City, FL, 6:30–9:30 p.m.

Panama City Laboratory
National Marine Fisheries Service
3500 Delwood Beach Road
Panama City, FL 32408

Wednesday, February 17, 1999, Fort Pierce, FL, 6:30–9:30 p.m.

Radisson Resort North Hutchinson Island
2600 North A1A
Fort Pierce, FL 34949

Wednesday, February 17, 1999, Norfolk, VA, 7–10 p.m.

Quality Inn Lake Wright Resort
6280 Northampton Boulevard
Norfolk, VA 23502

Wednesday, February 17, 1999, Orange Beach, AL, 6:30–9:30 p.m.

Hilton Garden Inn
23092 Perdido Beach Boulevard
Orange Beach, AL 36561

Thursday, February 18, 1999, Montauk, NY, 6:30–9:30 p.m.

Montauk Fire Department
12 Flamingo Avenue
Montauk, NY 11954

Thursday, February 18, 1999, Barnegat Light, NJ, 7–10 p.m.

Barnegat Light Firehouse
corner of West 10th Street and Central Avenue
Barnegat Light, NJ 08006

Friday, February 19, 1999, Freeport, NY, 7–10 p.m.

Freeport Recreational Center
130 East Merrick Road
Freeport, NY 11520

Friday, February 19, 1999, Toms River, NJ, 7–10 p.m.

Quality Inn
290 State Highway 37 East
Toms River, NJ 08753

Wednesday, February 24, 1999, Silver Spring, MD, 7–10 p.m. NOAA Science Center

1301 East-West Highway
Silver Spring, MD 20910

Tuesday, March 2, 1999, Gloucester, MA, 6:30–9:30 p.m.

Sawyer Free Library
2 Dale Avenue
Gloucester, MA 01930

Wednesday, March 3, 1999, West Bath, ME, 7–10 p.m.

New Meadows Inn
360 Bath Road
West Bath, ME 04530

Wednesday, March 3, 1999, Ocean City, MD, 7–10 p.m.

City Hall
Third Street and Baltimore Avenue
Ocean City, MD 21842

Thursday, March 4, 1999, Rockport, ME, 7:00–10:00 p.m. Maine Fishermen's Forum

Samoset Resort
220 Warrenton Street
Rockport, ME 04856

Special Accomodations

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Rebecca Lent (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days prior to the hearing.

Dated: January 15, 1999.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1418 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 011299A]

New England Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a number of public meetings of its oversight committees and advisory panels in February, 1999 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between February 4 and February 9, 1999. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Peabody, MA, Warwick, RI, and New London, CT. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (781) 231–0422. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, February 4, 1999, 9:30 a.m.—Joint meeting of the Habitat Oversight Committee and Advisors

Location: Holiday Inn, One Newbury Street (Rt. 1 North), Peabody, MA 01960, telephone: (978) 535–4600; fax: (978) 535–8238

The Habitat Committee and their Advisors will discuss the approach and content of the Habitat Annual Review Report. Council staff will provide an update on the status of the essential fish habitat amendment submission.

Monday, February 8, 1999, 9:30 a.m. - 5:00 p.m.—Scallop Advisory Panel meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000

Recommendations for management options for opening groundfish closed areas to fishing for scallops. The Scallop Plan Development Team will

summarize the available data and give preliminary estimates of stock biomass, yield, and bycatch.

Tuesday, February 9, 1999, 9:30 a.m. - 5:00 p.m..–-Scallop Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886, telephone: (401) 739–3000

Initial consideration of management options for re-opening groundfish closed areas to fishing for scallops. The Scallop Plan Development Team and Scallop Advisory Panel will give progress reports.

Although other issues not contained in this agenda may come before these groups for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: January 13, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–1383 Filed 1–21–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Department of the Army

Electronic Transportation Acquisition

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice (Request for Comments).

SUMMARY: The Military Traffic Management Command (MTMC), Product Management Office (PMO), CONUS Freight Management (CFM) System is proposing to migrate its business operating system from an aged DOS-based, batch architecture to a real-time, internet-based software design. Concurrently, the PMO CFM proposes to incorporate streamlined, simplified transportation and payment procedures. These procedures mirror current Department Of Defense (DOD) transportation policy initiatives, i.e., the re-engineering of Defense transportation and payment documentation processes identified within Dr. John Hamre's (Deputy Secretary of Defense) Management Reform Memorandum (MRM) #15.

To replace CFM's current operating system (Field Module), we propose a unique suite of internet-based functionality, referred to as Electronic Transportation Acquisition (ETA). ETA is a DOD electronic commerce resource capable of generating shipment requirements, acquiring carrier rates, and transmitting transportation and payment information for DOD freight shipments. The focus of this **Federal Register** notice applies to the two functional areas currently undergoing testing. The first functional area is CFM's newly developed , web-based transportation acquisition methodology called Spot Bid. Spot Bid provides users with the initial automated support for freight movements allowing participating carriers to bid on freight movements other than Negotiated and Guaranteed Traffic (GT) shipments. The second functional area talks to the CFM interface with Usbank's payment system called Power Track. Power Track is a 3rd party payment system that facilitates the transfer of transportation payment information contained in an electronic bill-of-lading between the shipper, carrier, USbank, and the appropriate Defense Finance and Accounting Service (DFAS) payment center. A description of ETA's suite of functionality and specific details, business procedures, and preliminary results of the tests regarding spot bid and Power Track are identified in the Supplementary Information.

Before the effective date of any proposed procurement policy or procedure, 41 U.S.C. 418b requires an agency to give members of the public up to 60 days to comment on the proposed policy or procedure. Although Electronic Transportation Acquisition is in essence a technical change to an already existing spot bid procurement process and thus **Federal Register** publication may not be required, we believe it is important to provide the transportation industry and members of the public an opportunity to assist us in developing, improving, and streamlining transportation procurements and processes.

DATES: Comments must be submitted on or before March 23, 1999.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP–TS, 5611 Columbia Pike, Falls Church, VA 22041–5050.

FOR FURTHER INFORMATION CONTACT: Mr. Steve Lord, e-mail, lords@baileys-emh5.army.mil, Telephone (703) 681–1185, Fax (703) 681–9871.

SUPPLEMENTARY INFORMATION:

Background of ETA

Approximately two years ago, it became apparent that the next logical step in CFM's incremental development strategy was to migrate the CFM architecture from a rapidly aging DOS-based, batch process, fat client-server system to an Internet-based, real-time, on-line transaction process. The rapid advent of Internet technologies, applications, new dynamic software languages (such as Java), coupled with the rapid advancement of interactive databases, and tremendous growth of on-line electronic commerce made it clear that the benefits of an Internet-based CFM far outweighed the potential disadvantages. Moreover, the ETA modernization strategy directly supports DOD objectives. Although this notice will focus on Spot Bid and the use of USbank's Power Track payment system, we believe it is beneficial to provide freight carriers a brief description of what current functions CFM proposes to move to the web.

In summary, ETA's suite of functionality includes three core freight-shipping applications: (1) Tenders (Guaranteed, Negotiated and Voluntary); (2) Spot Bid; (3) and Worldwide Small Package. In addition, it includes a variety of transportation support tools and references such as GT Bid Submission, Transportation Facilities Guide, Transportation Discrepancy Reports, and Carrier Added Value Suite (CAVS). CAVS consists of three sub-components: (1) tender view; (2) completed shipments; (3) and bill-of-lading view.

Spot Bid Procedures

Definition

The PMO CFM is currently developing a spot bid implementation schedule which identifies a proposed phased roll-out to begin in Spring 99. Spot Bid is a single consignment of one or more pieces from one consignor at one time, at one origin address receipted for in one lot and moving to one consignee at one destination address. Included within this definition are; split pickup at origin and destination points and stop in transit to partially load and/or unload.

The Spot Bid function supports the DOD shipper's ability to provide movement requirements for a single shipment on the Internet. Shippers can elect to offer the shipment to one or all modes i.e., Spot Bid supports all modes. Following the posting of the requirement on the web, MTMC-approved freight carriers can access the shipper's movement request, review it, and elect to bid on it.

As part of the shipment movement request, a ''closing date and time'' is provided which prevents carriers from bidding on shipments after a certain time identified by the shipper. Carriers can submit their bid, cancel the original bid, and resubmit a new bid during the indicated open period. Bids are only accessible by the shipper following the closing date/time. Once the bids have been reviewed, the shipper can elect to award the shipment. The shipper/MTMC then posts the award information on the web and all participating bidding carriers can review their competitors' bids and identify which carrier, if any, was awarded the traffic. The Spot Bid system then provides the shipper/MTMC with the needed tools to generate the bill-of-lading data and hardcopy that accompanies the conveyance. Presently, all bid times are based on Eastern Time. Therefore, it is critical that bidding carriers outside EST account for the time difference(s). It is MTMC's objective to provide our freight shippers/customers with an easy, effective and robust tool that will help them acquire rates and services while providing our industry partners with a simplified rate structure. In meeting those objectives, we will potentially increase new business opportunities and allow carriers to identify and capitalize on back-haul opportunities.

The Spot Bid function can be used for all freight shipments other than Negotiated and GT business. Following the Spot Bid process, the shipper has the discretion to use either Spot Bid or an existing voluntary tender rate—if available. The ''bid'' serves as the carrier's offered rate; therefore the submission of a 364-R tender is no longer required. Instead, the carrier is required to submit a single factor rate that is inclusive of linehaul, accessorial services, and/or special-permit charges (if applicable). Additionally, Spot Bid does not require the shipper/MTMC to request specific equipment from the carrier. If there is a need to do so, the shipper/MTMC will annotate the equipment requirement in the bid proposal's ''Remarks'' block. However, the business process is changing somewhat in that we are requiring the transportation providers, in lieu of the shippers, to assess what type of equipment is appropriate and/or available for the shipment.

Technical Requirements

Quite simply, both shippers and carriers only require hardware capable of running the latest generation of web browsers (available freely on the Internet) and access to the Internet. Specifically, a laptop or Personal Computer (PC), a minimum of 486, with modem or network access to the Internet is required. Java-capable Internet browsers, e.g. Netscape Navigator or Communicator 4.0 or Microsoft Internet Explorer 4.0, are required. Versions lower than 4.0 should not be used and browser upgrades are available for free on the Internet. A current and operational e-mail address will be required as a means of communication between MTMC/CFM, the shippers and carriers. E-mail will be utilized to transfer user password information. In that light, the suite of functions within ETA will be accessible through a single login identification and password process. In summary, rights and privileges to access ETA's functions, e.g., Spot Bid, will be granted through the issuance of digital certificates to both Government and industry representatives. Further information and procedures will be provided to all CFM ETA users in the next few months.

Spot Bid Tests

MTMC continues to, test CFM Spot Bid at eight CONUS sites. Specifically, Anniston Army Depot, AL; DCMC Boston, MA; Ft Bragg, NC; Sunnypoint, NC; USPFOs Oklahoma, Kansas, and Texas; and Nellis AFB, NV are currently using Spot Bid. CFM is coordinating test procedures with Navy's Fleet Industrial Supply Center (FISC), Norfolk, VA and Naval Weapons Station (NWS), Yorktown, VA. Eighteen carriers are participating in the test (13 motor, 3 rail, and 2 air carriers) and to date, approximately 100 shipments have moved under Spot Bid while over 300 bid offers have occurred. The balance of offers that did not move under Spot Bid were attributable to either technical or administrative start-up problems, too little time for carriers to prepare a bid, i.e., bid window was too short, or bids were higher than existing tender rates.

Feedback from the test sites has been very positive from both carriers and shippers. Spot bid has been described as a flexible, user-friendly, and effective tool for acquiring rates and services via the Internet. Admittedly, due to the small population of test sites and carriers, it is premature to project cost savings in the form of transportation costs. Many test sites indicated that they believe the overall effectiveness of Spot Bid will increase vastly when we offer the system to all MTMC-approved carriers and expand the Government user base. Consequently, the issues alluded to above, regarding higher costs and lack of bidding carriers, will be offset by greater participation and competition. In addition, test carriers' comments have been very encouraging as well. The reduced administration in providing a bid, the ability to price based on an order versus a forecast, and ease of use, are just a few of the positive descriptions. Test carriers' concerns have focused on the short bid window that is afforded them by the shipper and the lack of notification of a bid. Coordination and training with the shipping community coupled with MTMC management oversight and CFM technology will remedy these problems. The CFM PMO is working closely with the MTMC Deputy Chief of Staff for Operations to coordinate Spot Bid management oversight and customer support issues. MTMC personnel will support both Government and industry users of Spot Bid. In addition, CFM is actively incorporating many of the specific recommendations that both Government and carrier representatives have provided throughout the test period.

In summary, both Government and industry participants have so far fully embraced the migration of this business process to the internet, and most importantly, have validated to us that the internet is the next logical area to conduct freight transportation acquisition business. Clearly, we encourage comments from the entire carrier industry to help us identify all issues associated with our Web-based spot bid process.

USBank PowerTrack Payment System

Background

This system is currently undergoing an evaluation process for implementation. MTMC is continuing to evaluate the test results. Based upon the results of this evaluation, MTMC will determine the implementation parameters in concert with prototype efforts. In Management Reform Memorandum #15, Dr. John Hamre identified a series of initiatives to address perceived shortcomings of the transportation and payment processes. One of the initiatives included developing an improved payment mechanism for surface transportation. The goal is to reduce data requirements that are currently necessary for payment, and increase data accuracy. At the same time, Dr. Hamre envisioned paying commercial carriers for services provided as soon as possible.

Description

Power Track is an automated on-line payment processing and transaction tracking system that supports logistical transactions. Power Track consists of five primary functions: (1) electronic

data transmission; (2)-payment approval process; (3) electronic payment and billing; (4) communication for dispute resolution; (5) and customized data analysis.

Technical Requirements

Power Track software requires a 486 or higher laptop or PC (Pentium and higher is preferred). Internet connectivity is needed. Currently, Power Track supports a single browser only, i.e., Microsoft Internet Explorer 4.0 or higher. USbank is planning to modify their browser requirement to include multiple browser options in the near future. Lastly, the file size that Power Track loads on each user's computer is no more than 4MB. Questions pertaining to Power Track's technical requirements should be addressed to: Everett Doolittle, Vice President, Business Development, USbank, 1010 South Seventh Street, Minneapolis, MN 55415, telephone 612–973–6156, or www.usbank.com/powertrack.

Test Procedures and Business Process

In summary, the Power Track software is resident with the shipper(s), carrier(s), and USbank. How does Power Track integrate with the Defense transportation payment process? The CFM shipper generates a bill-of-lading (BOL) and transmits the data to the CFM Host. The CFM Host transmits a rated BOL to Power Track. Following the delivery of the shipment, the carrier is required to provide Power Track with Notification of Delivery—either electronically or telephonically. The notification elevates the shipment to a specific status level in Power Track. Shipment status are viewed regularly by both Government and carrier personnel. Once the shipment is delivered, the shipper and carrier can review the transportation payment amount that Power Track is preparing to pay the carrier. Again, this amount is based on the original rated BOL from CFM. If either party disagrees with the amount, they can notify the other party and reconcile the dispute on-line *prior* to payment. Early resolutions to payment disputes reduces greatly the number of carrier rebuttals, promotes dialogue between the applicable stakeholders, i.e., shippers and carriers, and results in an accurate payment the first time. Once the shipper certifies the shipment for payment, USbank pays the carriers without the need of an invoice. The carrier's costs associated with processing and managing invoices is dramatically reduced due to this automated payment process. If a change in payment is required following the original payment, the Power Track system generates an Electronic-bill (E-bill) and initiates payment based upon that amount agreed upon between the carrier and shipper. Monthly, USbank summarizes the shipments and payments, stemming from a specific site, and provides the information to the shipper(s)-authorized designee, for review and approval. Upon approval, the shipper forwards the information to the appropriate DFAS payment center, which in turn pays USbank. Therefore, DFAS issues a single payment that reflects numerous shipments. Consequently, carriers are paid in 1–3 days and the carrier and Government resources needed to generate and pay, a number of invoices is greatly reduced.

The PMO CFM has been testing Power Track at SPAWAR, San Diego, CA; DCMC Seattle, and DCMC Cleveland since September 1998. We began testing at Ft Campbell, KY in December 1998. Approximately eleven motor and air carriers are participating in the test. Each participating carrier pays Power Track a percentage of each freight bill. To date, approximately 175 shipments have been generated and on the average, test carriers have successfully received payments between 24–72 hours following delivery. The feedback from both carriers and government users has been very positive. Shippers have indicated that Power Track is extremely user-friendly, and embrace their newly empowered authority to certify payments. Shippers' have requested a larger population of carriers to participate with Power Track. USbank is working the issue. Test carriers' feedback has been very positive as well. They have acknowledged receiving payments between 24–72 hours and, similarly, have found the Power Track system to be very user friendly.

Conclusion

We encourage you to access the CFM website and view the latest information. It is a very functional homepage, i.e.; it is kept up-to-date with the latest CFM News and ETA applications used by Government and industry. The site is accessible through either MTMC homepage www.mtmc.army.mil—click on ETA) or directly to CFM homepage at *www.mtmc.army.mil/transys/cfm*. Under ''What's New'', we have provided a **Federal Register** Comments Form. Feel free to utilize this form in providing your response to us.

The PMO CFM will host a Carriers Symposium on February 8–10, 1999, in Atlanta, GA. The symposium is intended to provide commercial carriers with the latest status of our web development efforts, provide you with the knowledge and tools needed to use ETA's functions (as applicable), and solicit your feedback to ensure we are moving forward smartly. This educational effort will continue at the 1999 MTMC Symposium to be held at the Adam's Mark hotel in Denver, CO, March 29 through April 1, 1999. Reservations are now being accepted through MTMC's Conference Contractor ''Connections'' at 404–842–0000. Connections hours are Monday through Friday, 9:00 AM to 5:30 PM EST. Do not call The Adam's Mark Hotel for reservations, as they will refer you directly to Connections.

In addition, we will be posting a ''Playground'' on our website for both Government and carrier representative's to access and use. The intent of the playground is to familiarize and train users of ETA on the different CFM applications/functions that either are, or will be, available. Most importantly, it provides users with a platform to provide feedback to the CFM PMO so we can ensure we are programming a system that is aligned with your interests and needs.

Regulatory Flexibility Act

Implementation of this proposed procurement procedure concerning the movement of DOD freight involves public contracts and is exempt from the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed procurement procedure is not rule making within the meaning of the Administrative Procedure Act or the Regulatory Flexibility Act.''

Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3051 *et seq.* does not apply because no information collection requirement or records keeping responsibilities are imposed on offerors, contractors, carriers, or other members of the public.

John Piparato,

Deputy, DCSOPS.

[FR Doc. 99–1453 Filed 1–21–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the East St. Louis and Vicinity, Illinois, Interior Flood Control and Ecosystem Restoration Project General Reevaluation Report

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The St. Louis District of the Corps of Engineers is preparing an integrated Draft Environmental Impact Statement and General Reevaluation Report for proposed measures to provide interior food control and ecosystem restoration for East Louis and Vicinity, Madison and St. Clair Counties, Illinois. The interior drainage system currently does not have sufficient capacity to handle local and upland runoff from rainfall events greater than 5-year storms, and sediment from upland tributaries not only reduces the channel capacity of the drainage system but causes environmental degradation. The purpose of the reevaluation study is to investigate measures that blend flood control with ecosystem restoration. Measures to be investigated will be designed to restore and enhance natural habitats, with a focus on wetlands as temporary storage areas for stormwater. The goal will be to develop strategies for the control of various storm events, with emphasis on the 100-year event. Likewise, strategies will be investigated to significantly reduce sedimentation within the drainage system and environmentally sensitive areas.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DEIS can be addressed to Ms. Deborah Roush, (314) 331–8033, or Mr. Timothy George, (314) 331–8459; Planning, Programs, and Project Management Division, U.S. Army Corps of Engineers, St. Louis District, 1222 Spruce Street, St. Louis, Missouri 63103–2833.

SUPPLEMENTARY INFORMATION:

1. *Authorization.* The reevaluation study is being conducted under the authorities of Section 204 of the Flood Control Act of 1965 and Section 137 of the Water Resources Development Act of 1976 (Public Law 94–587).

2. *General Information.* a. *Location and Land Use of the Study Area.* The study area is in southwestern Illinois in Madison and St. Clair Counties, and lies within the Metro East St. Louis area along the east bank of the Mississippi River. It encompasses about 106,000 acres (166 square miles). About 55,000 acres are bottomland on the Mississippi River floodplain (locally called the American Bottoms), and upland watersheds that drain into these bottoms comprise the remaining 51,000 acres of the study areas. After New Orleans, the American Bottoms is the second largest concentration of residential, commercial, and industrial land use on the Mississippi River floodplain. Agriculture is also a significant land use in the bottoms. The floodplain is scarred with ox-bow lakes and marshes that are remnants of former meanders of the Mississippi River. An urban design levee protects the bottoms from Mississippi River flooding. Runoff from the upland or hill areas reaches the bottoms through numerous individual streams and ditches, and traverses the relatively flat floodplan through an old agricultural ditch system built at the turn of the century. The American Bottoms was a heartland of the prehistoric Mississippian culture, which today is represented most dramatically by the Cahokia Mounds World Heritage Site.

b. *Interior Flooding.* The floodplain of the Mississippi River in the Metro East St. Louis area has experienced interior flooding from hillside runoff and local rainfall for many years. The interior drainage ditch system is inadequate to handle more than minor rainfall events. Past efforts by the Corps to develop an economically justified project in this area have been unsuccessful. The benefits required to justify improvements could not be achieved because of the low value of flood-damaged housing and business structures within this economically depressed area. Areas of frequent flooding contains a large community of minority citizens and low-income citizens. For four consecutive years (1993 through 1996), the project area received a National Disaster Declaration due to flooding. Flooding during the 1995 and 1996 closed transportation routes, including interstate highway ramps. The Federal Emergency Management Agency is estimated to have expended in excess of $60 million for disaster relief over this four-year period.

c. *Sedimentation.* Upland watersheds adjacent to the bottoms are experiencing rapid residential and commercial development. Land clearing and other factors have led to high rates of soil loss from the uplands, more intense upland runoff, and more frequent overtopping of drainage ditches in the bottoms. High rates of sedimentation have also caused a significant drain on scarce budgets of the local communities to operate and maintain the drainage system. Sedimentation over the years has also extinguished or degraded many existing wetlands and natural water bodies in the bottoms and currently threatens additional harm. Further, the historical loss of swamps, marshes, and wet prairies located in topographic depressions in the bottoms—places that previously acted as temporary storage areas for local rainfall and upland runoff—to drainage improvements, agricultural conversion, and development appears to have been extensive.

3. *Proposed Alternatives.* Alternatives to be considered will address both bottomlands and uplands. Within the bottoms, measures will be investigated to divert and temporarily store stormwater from the interior drainage system for enhancement of existing wetlands and restoration of historic wetlands. These measures will address the 10-, 25-, 50-, 100-, and 500-year rainfall events. Bottomland sediment detention basins will also be investigated to capture sediment from upland runoff and minimize its deposition within the interior drainage system and existing as well as proposed wetlands for temporary storage of stormwater. Typical structures used to achieve these goals are detention basins, dikes, and berms. Upland sediment control measures will also be investigated to reduce erosion at its source.

4. *Significant Issues and Resources.* Significant issues and resources identified to date for discussion in the DEIS are (1) erosion, sedimentation, and interior flooding; (2) natural resources including fisheries, wildlife, vegetation, wetlands, and riparian areas; (3) cultural resources; (4) water quality and groundwater; and (5) social and economic resources. Additional issues and resources of significance may be identified through public and agency meetings.

5. *Environmental Review and Consultation.* Our environmental review will be conducted according to the requirements of the National Environmental Policy Act of 1969, National Historic Preservation Act of 1966, Council on Environmental Quality Regulations, Endangered Species Act of 1973, Section 404 of the Clean Water Act, and other applicable laws and regulations.

6. *Scoping Process.* The purpose of this notice is to solicit suggestions and information from Federal, State, and local agencies; the general public; interested private organizations and

parties on the scope of the reevaluation study and the alternatives, issues, and resources to be addressed in the DEIS. Comments and participation in this process are encouraged. An informal scoping workshop will be held on Monday, February 1, 1999, from 1 PM until 8 PM within the project area at the State of Illinois Building (Illinois Department of Transportation) located at 1100 Eastport Plaza Drive in Collinsville, Illinois (telephone 618–346–3100). A notice of this meeting will be provided to interested parties and to the local news media.

7. *Availability* The Draft EIS is scheduled to be available for public review in late 1999.

Dated: January 12, 1999.

Thomas J. Hodgini,

COL, EN, Commanding.

[FR Doc. 99–1452 Filed 1–21–99; 8:45 am]

BILLING CODE 3710–55–M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.162A]

Emergency Immigrant Education Program

AGENCY: Department of Education.

ACTION: Notice inviting applications for new awards for fiscal year (FY) 1999.

Purpose of Program: This program provides grants to State educational agencies (SEAs) to assist local educational agencies (LEAs) that experience unexpectedly large increases in their student population due to immigration. These grants are to be used to provide high-quality instruction to immigrant children and youth and to help those children and youth make the transition into American society and meet the same challenging State performance standards expected of all children and youth.

Eligible Applicants: State educational agencies.

Deadline for Transmittal of Applications: March 16, 1999.

Deadline for Intergovernmental Review: May 15, 1999.

Applications Available: January 20, 1999.

Available Funds: $150 million.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 17 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 76, 77, 79, 80, 81, 82, and 85; and (b) 34 CFR Part 299.

SUPPLEMENTARY INFORMATION: An SEA is eligible for a grant if it meets the eligibility requirements specified in sections 7304 and 7305 of the Elementary and Secondary Education Act of 1965 (the Act), as amended by the Improving America's School's Act of 1994 (Pub. L. 103–382, enacted October 20, 1994). (20 U.S.C. 7544 and 7545). In order to receive an award under this program, an SEA must provide a count, taken during February 1999, of the number of immigrant children and youth enrolled in public and nonpublic schools in eligible LEAs in accordance with the requirements specified in section 7304 of the Act. An eligible LEA is one in which the number of immigrant children and youth enrolled in the public and nonpublic elementary and secondary schools within the district is at least either 500 or 3 percent of the total number of students enrolled in those public and nonpublic schools. (20 U.S.C. 7544(b)(2)). Under section 7501(7) of the Act, the term ''immigrant children and youth'' means individuals who are aged 3 through 21, were not born in any State, and have not been attending one or more schools in any one or more States for more than 3 full academic years. (20 U.S.C. 7601(7)).

FOR APPLICATIONS OR INFORMATION CONTACT: Ms. Harpreet Sandhu, U.S. Department of Education, 600 Independence Avenue, SW, Room 5086, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9808. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

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: 20 U.S.C. 7541–7549.

Dated: January 19, 1999.

Delia Pompa,

Director, Office of Bilingual Education and Minority Language Affairs.

[FR Doc. 99–1484 Filed 1–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Availability of Product Energy Efficiency Recommendations

AGENCY: Energy Efficiency and Renewable Energy Office, Federal Energy Management Program, Department of Energy.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of seven new Product Energy Efficiency Recommendations, covering distribution transformers, electric motors, residential windows, clothes washers, fluorescent luminaires, unitary air conditioners, and commercial heat pumps, and the revision of one existing Recommendation on room air conditioners. These Recommendations, along with 21 others previously released, have been published by the Department of Energy's (DOE) Federal Energy Management Program (FEMP) to help agencies comply with Executive Order 12902, which directs each Federal agency to increase, to the extent practicable and cost-effective, the purchase of products that are in the upper 25 percent of energy efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets national standards.

ADDRESSES: The Recommendations are available on the internet at http://www.eren.doe.gov/femp/procurement. Paper copies of the Recommendations may be obtained by calling 1–800–363–

3732 and requesting the Buying Energy Efficient Products binder.

FOR FURTHER INFORMATION CONTACT: Katie Kroehle McGervey, Federal Energy Management Program, U.S. Department of Energy, EE–90, 1000 Independence Avenue SW, Washington, DC 20585–0121, 202–586–4858, katie.mcgervey@hq.doe.gov.

SUPPLEMENTARY INFORMATION: The Energy Policy Act of 1992 (42 U.S.C. 8262g) directed Federal supply agencies, along with DOE and the Department of Defense, to include energy-efficient products in their procurement and supply functions. On March 8, 1994, Executive Order 12902, Energy Efficiency and Water Conservation at Federal Facilities (59 FR 11463, 3 CFR 1994 Comp. p 869), defined energy-efficient products as those that are in the upper 25 percent of energy efficiency for all similar products or that are at least 10 percent more efficient than national standards. Executive Order 12902 directed federal agencies to purchase these higher-efficiency products whenever they are cost-effective and meet agencies' functional requirements. The Federal Acquisition Regulations (48 CFR 23.704) mirrors the Executive Order, requiring agencies to implement cost-effective contracting preference programs favoring the acquisition of environmentally preferable and energy efficient products and services, with products that are in the upper 25 percent of energy-efficiency for all similar products, or products that are at least 10 percent more efficient than the minimum level that meets Federal standards.

Recommendations currently exist for the following products: room air conditioners, refrigerators, clothes washers, dishwashers, residential central air conditioners, residential air-source heat pumps, residential furnaces, residential electric and gas water heaters, faucets, showerheads, toilets, urinals, exit signs, fluorescent tube lamps, fluorescent ballasts, computer monitors, personal computers, computer printers, copiers, fax machines, commercial ice cube machines, and large electric chillers. Recommendations continue to be developed at the rate of about ten per year and will include other commercial building equipment and construction materials.

Each of the two-page Recommendations describes where to find energy-efficient models through Federal supply sources (General Services Administration and Defense Logistics Agency), includes guidance on cost-effectiveness, and offers other energy-saving tips for selecting and using these products. In all cases the recommended efficiency levels have been set to be consistent with those of the Environmental Protection Agency/DOE Energy Star® labeling program. Purchasing products that carry an Energy Star® label will ensure that Federal purchasers are meeting the requirements of Executive Order 12902.

Issued in Washington, DC, on January 15, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–1455 Filed 1–21–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–5–000]

Argent Energy, Inc.; Notice of Petition for Adjustment

January 15, 1999.

Take notice that on November 5, 1998, Argent Energy, Inc. (Argent) filed a petition for staff adjustment in Docket No. SA99–5–000, pursuant to Section 502(c) of the Natural Gas Policy Act of 1978, in which Argent requests to be relieved from having to pay Kansas ad valorem tax refunds to Northern Natural Gas Company (Northern). Argent seeks to be relieved from having to pay the refunds attributable to leases/wells previously owned by Kiwanda Energy, Inc. (Kiwanda) and Energy Exploration and Production, Inc. (EE&P). Argent purchased the Kiwanda and EE&P leases/wells from Kiwanda in 1993. Northern, in its May 18, 1998 Refund Report, in Docket No. RP98–39–005, reported that Argent owes $258,490.23 with respect to the Kiwanda leases/wells, and $596,657.37 with respect to the EE&P leases/wells. Argent contends that it does not owe either refund, because: 1) Argent only bought the leases/wells that generated Northern's refund claims; 2) Argent is not affiliated with Kiwanda or EE&P; and 3) Argent did not hold an interest in any of the subject leases/wells prior to the 1993 purchase from Kiwanda. Argent's petition is on file with the Commission and open to public inspection.

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 of this notice in the **Federal Register**, file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.W., Washington, D.C. 20426, 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.

David P. Boergers,

Secretary.

[FR Doc. 99–1410 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MT99–4–000]

Gulf States Transmission Corporation; Notice of Filing

January 15, 1999.

Take notice that on January 12, 1999, Gulf States Transmission Corporation (Gulf States), tendered for filing, FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 35 and Second Revised Sheet No. 57. Gulf States requests that the referenced sheets be made effective February 12, 1999.

Gulf States state that it is making this filing in order to comply with Section 250(b)(1) of the Commission's Regulations and the Commission's Order on Standards of Conduct (Order) issued on December 22, 1998 in Docket No. MG98–12–001. Specifically, Gulf States asserts that the referenced tariff sheets have been changed to affirmatively state that Gulf States shares no operating personnel or facilities with any of its marketing or brokering affiliates.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party

must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1400 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–10–000]

City of Las Cruces, New Mexico v. El Paso Electric Company; Notice of Filing

January 14, 1999.

Take notice that on December 21, 1998, the City of Las Cruces, New Mexico (City), filed a supplement to its Complaint filed on November 12, 1998, in the above-docketed proceeding seeking a Commission order directing El Paso Electric Company (EPE) to provide wholesale power to the City.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before January 22, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1401 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–142–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 15, 1999.

Take notice that on January 7, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–142–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212 and 157.216) for authorization to operate an existing delivery point upgraded pursuant to the emergency provisions of Part 284 Subpart I of the Commission's Regulations; and for authorization to upgrade eight existing delivery points, including the delivery point upgraded pursuant to the emergency provisions, to accommodate incremental natural gas deliveries to UtiliCorp United, Inc. (UCU) under Northern's blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that the upgrade of the Farmington 1B TBS, installed pursuant to emergency regulations, was required due to extreme winter weather conditions and fear of facility failure in order to assure the protection of approximately 2,180 residential customers served by this station.

Northern states that it also requests authorization to further upgrade the Farmington 1B TBS and seven other existing delivery points and appurtenant facilities, all located in Iowa, Nebraska and Minnesota, to accommodate incremental natural gas deliveries to UCU under currently effective throughput service agreement(s). All construction activities will be confined to within the existing TBS yards. Northern states that UCU has requested the proposed upgrades in order to provide incremental natural gas service to the existing delivery points.

The estimated incremental volumes proposed to be delivered to UCU at the upgraded delivery points are: 1,185 Dth on peak day and 142,687 Dth annually at Arnolds Park #1 TBS; 182 Dth on peak day and 20,621 Dth annually at North Bend #1A TBS; 242 Dth on peak day and 26,531 Dth annually at Eagle #1 TBS; 1,632 Dth on peak day and 177,814 Dth annually at Elkhorn #1A TBS; 285 Dth on peak day and 30,601 Dth annually at Valley #1A TBS; 85 Dth on peak day and 8,379 Dth annually at Mead #1 TBS; 184 Dth on peak day and 19,892 Dth annually at Waverly #1 TBS and 408 Dth on peak day and 59,554 Dth annually at Farmington #1B TBS.

The total cost to upgrade facilities at the Farmington #1B TBS under the emergency regulations was approximately $1,150 which will be paid for by UCU in accordance with Section 284.264(a)(6)(ii) of the Commission's Regulations. Northern states that the total estimated cost to further upgrade the Farmington #1B TBS and seven other existing delivery points is $922,000 which will be financed in accordance with the General Terms and Conditions of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern states that the proposed activity is not prohibited by its existing tariff and that it has sufficient capacity to accommodate the proposed changes without detriment or disadvantage to Northern's other customers. The total volumes to be delivered to the customer after the request do not exceed the total volumes authorized prior to the 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.

David P. Boergers,

Secretary.

[FR Doc. 99–1403 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–144–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

January 15, 1999.

Take notice that on January 11, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–144–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon and remove the Hugo #1 Town Border Station, including appurtenant facilities and approximately 250 feet of 2-inch upstream pipeline, located in

Washington County, Minnesota. Northern makes such request under its blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Northern states that the facilities that it proposes to abandon and remove were previously used to serve Northern States Power Company, the Local Distribution Company (LDC). Northern indicates that service downstream of the Hugo #1 Town Border Station is served through an alternative Town Border Station and that the shipper does not object to the proposed abandonment. In support of Northern's request, Northern States Power provided Northern with written consent for 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.

David P. Boergers,

Secretary.

[FR Doc. 99–1404 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–202–000]

Northwest Alaskan Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

January 15, 1999.

Take notice that on January 12, 1999, Northwest Alaskan Pipeline Company (Northwest Alaskan) tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 2, Forth-Fifth Revised Sheet No. 5, with an effective date of January 1, 1999.

Northwest Alaskan states that it is submitting Forty-Fifth Revised Sheet No. 5 to correct an error in the Forty-Third Revised Sheet No. 5 which was filed November 17, 1998, in Docket No. RP99–151–000 and approved on December 18, 1998 to be effective January 1, 1999. Said Forty-Third Revised Sheet No. 5 was filed pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and Pan-Alberta Gas (U.S.), Inc. (APAG–US) and Pacific Interstate Transmission Company (APIT), and pursuant to the Rate Schedules X–1, X–2, X–3 and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1999 through January 30, 1999) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that Forty-Third Revised Sheet No. 5 was subsequently replaced by the Forty-Fourth Revised Sheet No. 5 which was filed January 6, 1999, in Docket No. CP98–603–00 in accordance with the direction of the Commission in its Order on Settlement and Authorizing Abandonments, Acquisition of Facilities, Waiving Tariff Provisions, and Granting Motion for Consolidation issued December 17, 1998 (the Order) to reflect the changes caused by the termination of the purchase agreement between Northwest Alaskan and PIT and the related tariff, Rate Schedule X–4.

Subsequent to the November 17, 1998 filing of the Forty-Third Revised Sheet No. 5, Pan-Alberta notified Northwest Alaskan that the schedules provided by Pan-Alberta and included in the November 17, 1998 filing contained an error. The Nova transportation charges listed in the Demand Charge Adjustment as filed included only the Nova charges billed directly to Pan-Alberta by Nova and did not include the Nova charges that were paid to Nova by Pan-Alberta via their producers during the period from November 1996 to August 1998.

Northwest further states that Forty-Fifth Revised Sheet No. 5 reflects the increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta and resold to PAG–US unde rate schedule X–1 which results from the inclusion of the Nova transportation charges previously omitted by Pan-Alberta in its calculations. Rate Schedules X–2 and X–3 are not affected by the error, and therefore those demand charges remain unchanged.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.11 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Secretary.

[FR Doc. 99–1411 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–147–000]

Southern Natural Gas Company; Notice of Request Under Blanket Authorization

January 15, 1999.

Take notice that on January 11, 1999, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–147–000, a request pursuant to Section 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 a delivery point located in Rankin County, Mississippi for service to Pennzoil Exploration and Producing Company (Pennzoil), under Southern's blanket certificate issued in Docket No. CP82–406–000, pursuant to 18 CFR Part 157, Subpart F of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to construct, install and operate a meter station consisting of one two-inch rotary meter, one 2-inch tap, one 2-inch regulator station, indirect waterbath heater, and other appurtenant facilities. Southern states that the estimated proposed volumes delivered through the new delivery points would be approximately 110 Mcf per day and 40,150 Mcf annually. Southern further states that the estimated cost of the facility is $67,900. Southern states that Pennzoil has agreed to reimburse Southern for the construction and installation cost pursuant to the general terms and conditions of Southern's tariff.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–1405 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–51–000, et al.]

Commonwealth Edison Company, et al.; Electric Rate and Corporate Regulation Filings

January 11, 1999.

Take notice that the following filings have been made with the Commission:

1. Commonwealth Edison Company

[Docket No. ER99–51–000]

Take notice that on January 5, 1999, the Commonwealth Edison Company (ComEd), tendered for filing an amended Service Agreement in compliance with the Federal Energy Regulatory Commission's order in Commonwealth Edison Company, 85 FERC ¶ 61,288 (1998) (the Order). In that Order, the Commission authorized ComEd, pursuant to the amended Service Agreement, to sell power under its existing cost-based rate schedule PSRT–1, to one or more affiliated retail energy services companies and to reassign transmission rights to such companies in accordance with the PSRT–1 rate schedule.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Chesapeake Company, L.L.C.

[Docket No. ER99–415–001]

Take notice that on January 5, 1999, Commonwealth Chesapeake Company, L.L.C., tendered for filing with the Federal Energy Regulatory Commission a revised market-based rate tariff and a Code of Conduct in compliance with Commission's December 21, 1998, Order in this Docket.

Copies of said filing has been served upon the Virginia State Corporation Commission.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Sierra Pacific Power Company

[Docket No. ER99–945–000]

Take notice that on January 6, 1999, Sierra Pacific Power Company (Sierra Pacific), tendered for filing a fully executed Operating and Scheduling Agreement for the Alturas Intertie Project between Bonneville Power Company (Bonneville), PacifiCorp and Sierra Pacific, dated December 22, 1998. The agreement supersedes the partially executed agreement filed with the Commission on December 17, 1998. The present filing reflects only minor changes in the agreement from the December 17th filing.

Sierra Pacific has requested a waiver of the sixty-day prior notice requirement so that the agreement may take effect on January 7, 1999.

Copies of the filing were served on the parties to the agreement and the relevant state commissions.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Southwestern Public Service Company

[Docket No. ER99–1161–000]

Take notice that on January 5, 1999, New Century Services, Inc., on behalf of Southwestern Public Service Company (SPS), tendered for filing an electric power sales agreement with Central & South West Services, Inc. (CSW). This service agreement provides for SPS's sale and CSW's purchase of power at market-based rates pursuant to SPS's market-based sales tariff.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Carolina Power & Light Company

[Docket No. ER99–1162–000]

Take notice that on January 5, 1999, Carolina Power & Light Company (CP&L), tendered for filing a Service Agreement for Short-Term Firm Point-to-Point Transmission Service with Oglethorpe Power Corporation requesting an effective date of December 15, 1998 and a Service Agreement for Non-Firm Point-to-Point Transmission Service with American Municipal Power—Ohio, Inc., requesting an effective date of December 22, 1998. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER99–1163–000]

Take notice that on January 5, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Holyoke Water Power Company (including Holyoke Power and Electric Company), tendered for filing pursuant to Section 205 of the Federal Power Act and § 35.13 of the Commission's Regulations, a rate schedule change for sales of electric power to Princeton Municipal Light Department.

NUSCO states that a copy of this filing has been mailed to Princeton Municipal Light Department and the Massachusetts Department of Public Utilities.

NUSCO requests that the rate schedule change become effective on January 1, 1999.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Commonwealth Edison Company

[Docket No. ER99–1164–000]

Take notice that on January 5, 1999, Commonwealth Edison Company (ComEd), tendered for filing a service agreement establishing The Michigan Companies (Consumers Power Company and Detroit Edison Company) (TMC) and New Energy Ventures Inc. (NEVI) as customers under ComEd's FERC Electric Market Based-Rate Schedule for power sales.

ComEd requests an effective date of January 5, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

ComEd states that a copy of the filing was served on the Illinois Commerce Commission and on the affected customers.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Southern Company Services, Inc.

[Docket No. ER99–1165–000]

Take notice that on January 5, 1999, Southern Company Services, Inc., acting

on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, filed a revision to lower the existing return on common equity components incorporated in separate Unit Power Sales (UPS) Agreements with Florida Power & Light Company, Florida Power Corporation and Jacksonville Electric Authority from 13.75 percent to 12.50 percent. In accordance with governing procedures set forth in each contract, the revisions are proposed to become effective from the date of filing (January 5, 1999), with the resulting charges being subject to refund from that date forward.

Copies of the filing were sent to each of the UPS customers.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Select Energy, Inc.

[Docket No. ER99–1167–000]

Take notice that on January 6, 1999, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with Cinergy Corp. (Cinergy) under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the Cinergy.

Select requests that the Service Agreement become effective January 1, 1999.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Select Energy, Inc.

[Docket No. ER99–1168–000]

Take notice that on January 6, 1999, Select Energy, Inc. (Select), tendered for filing, a Service Agreement with Delmarva Power & Light Company under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., states that a copy of this filing has been mailed to the Delmarva Light & Power Company.

Select Energy, Inc., requests that the Service Agreement become effective January 1, 1999.

Comment date: January 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Virginia Electric and Power Company

[Docket No. ER99–1169–000]

Take notice that on January 6, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an executed Generation Imbalance Agreement with North Carolina Electric Membership Corporation. This executed agreement replaces the unexecuted agreement filed on December 17, 1998 in Docket No. ER99–902–000.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER99–1170–000]

Take notice that on January 6, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service with Tractebel Energy Marketing, Inc. (Tractebel), and an executed agreement for Firm Point-to-Point Transmission Service with DTE Energy Trading, Inc., (DTE). Both agreements were pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The Tractebel agreement has an effective date of December 17, 1998, and the DTE agreement has an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, Tractebel and DTE.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER99–1171–000]

Take notice that on January 6, 1999, Consumers Energy Company (Consumers), tendered for filing executed service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison) with the following transmission customers:

The American Electric Power Service Corporation and various AEP entities
CMS Marketing, Services and Trading
The Cincinnati Gas & Electric Company, PSI Energy, Inc. and Cinergy Services, Inc. as their agent
Consumers Energy Company—Transmission Transactions; and Electric Sourcing and Trading
Detroit Edison Merchant Operation
DTE Energy Trading, Inc.
Duke Energy Trading & Marketing, LLC
Duke Power, a Division of Duke Energy Corporation
Entergy Power Marketing Corporation
Griffin Energy Marketing, L.L.C.
Illinois Power Company
Minnesota Power & Light Company
Morgan Stanley Capital Group, Inc.
New York State Electric & Gas Corporation
Northern Indiana Public Service Company
OGE Energy Resources, Inc.
PECO Energy Company
PP&L, Inc.
Public Service Electric and Gas Company
Tennessee Valley Authority
Tenaska Power Services Company
Virginia Electric And Power Company; and Western Resources

The agreements have effective dates of January 1, 1999.

Copies of the filed agreements were served upon the Michigan Public Service Commission, Detroit Edison and the respective transmission customers.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. ER99–1172–000]

Take notice that on January 6, 1999, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Energy Transfer Group, L.L.C., (2 agreements, dated December 17, 1998 for Non-Firm and Short-Term Firm Service). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Power Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1173–000]

Take notice that on January 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 43, to add Merrill Lynch Capital Services, Inc., Statoil Energy Trading, Inc., and Tennessee Power Company to Allegheny Power Open Access Transmission Service Tariff which has been submitted for filing by the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreements is January 5, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania

Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1174–000]

Take notice that on January 6, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 42 to add Ameren Services Company to Allegheny Power's open Access Transmission Service Tariff which has been submitted for filing with the Federal Energy Regulatory Commission in Docket No. OA96–18–000.

The proposed effective date under the Service Agreement is January 5, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Ameren Services Company

[Docket No. ER99–1175–000]

Take notice that on January 6, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Market Based Rate Power Sales between ASC and Otter Tail Power Company (OTP). ASC asserts that the purpose of the Agreement is to permit ASC to make sales of capacity and energy at market based rates to OTP pursuant to ASC's Market Based Rate Power Sales Tariff filed in Docket No. ER98–3285–000.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Ameren Services Company

[Docket No. ER99–1176–000]

Take notice that on January 6, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Non-Firm Point-to-Point Transmission Service between ASC and PanCanadian Energy Services Inc., (PES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective December 7, 1998.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Ameren Services Company

[Docket No. ER99–1177–000]

Take notice that on January 6, 1999, Ameren Services Company (ASC), tendered for filing a Service Agreement for Firm Point-to-Point Transmission Services between ASC and PanCanadian Energy Services Inc., (PES). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to PES pursuant to Ameren's Open Access Transmission Tariff filed in Docket No. ER96–677–004.

ASC requests that the Service Agreement be allowed to become effective December 7, 1998, the date of said agreement.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Tampa Electric Company

[Docket No. ER99–1178–000]

Take notice that on January 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with PECO Energy Company—Power Team (PECO), for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on PECO and the Florida Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Delmarva Power & Light Company

[Docket No. ER99–1179–000]

Take notice that on January 6, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing an executed umbrella service agreement with Select Energy, Inc., under Delmarva's market rate sales tariff.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Tampa Electric Company

[Docket No. ER99–1180–000]

Take notice that on January 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with the Tennessee Valley Authority (TVA) for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on TVA and the Florida Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Tampa Electric Company

[Docket No. ER99–1181–000]

Take notice that on January 6, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an amendment to its contract with Southern Company Energy Marketing, L.P., (SCEM) for the purchase and sale of power and energy.

Tampa Electric proposes an effective date of January 8, 1999, for the contract amendment, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on SCEM and the Florida Public Service Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99–1182–000]

Take notice that on January 6, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, Service Agreements for Network Integration Service and Operating Agreements for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with FPL Energy Services, Incorporated, Green Mountain Energy Resources, L.L.C., NEV East, L.L.C.—New Energy Ventures, PSEG Energy Technologies, Incorporated, Statoil Energy Services, Incorporated, and Strategic Energy Partners Ltd., pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is January 1, 1999.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Rochester Gas and Electric Corporation

[Docket No. ER99–1183–000]

Take notice that on January 6, 1999, Rochester Gas and Electric Corporation (RG&E), tendered for filing a Market Based Service Agreement between RG&E and Tractebel Energy Marketing, Inc., (Customer). This Service Agreement specifies that the Customer has agreed to the rates, terms and conditions of RG&E's FERC Electric Rate Tariff, Original Volume No. 3 (Power Sales Tariff) accepted by the Commission in Docket No. ER97–3553 (80 FERC ¶ 61,284) (1997)).

RG&E requests waiver of the Commission's sixty (60) day notice requirements and an effective date of December 11, 1998, for Tractebel Energy Marketing, Inc.''s Service Agreement.

RG&E has served copies of the filing on the New York State Public Service Commission and on the Customer.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Minnesota Agri-Power, L.L.C.

[Docket No. ER99–1184–000]

Take notice that on January 6, 1999, Minnesota Agri-Power, L.L.C. (MAP), petitioned the Commission for acceptance of Minnesota Agri-Power's Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

MAP intends to engage in the wholesale sale of electric power and energy generated by a biomass power generation facility. Such sales will begin on or about April 30, 2001.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Southwest Power Pool

[Docket No. ER99–1185–000]

Take notice that on January 6, 1999, Southwest Power Pool (SPP), tendered for filing six executed service agreements for short-term firm point-to-point and non-firm point-to-point firm transmission service under the SPP Tariff with British Columbia Power Exchange Corporation (Powerex), Merrill Lynch Capital Services, Inc. (Merrill), and Williams Energy Marketing & Trading Company (Williams).

SPP requests an effective date of December 16, 1998, for the agreements with Powerex, December 17, 1998, for the agreements with Merrill, and January 2, 1999, for the agreements with Williams.

Copies of this filing were served upon each of the parties to these agreements.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. California Independent System Operator Corporation

[Docket No. ER99–1186–000

Take notice that on January 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Scheduling Coordinator Agreement between the ISO and Aquila Power Corporation (Aquila Power Corp.) for acceptance by the Commission.

The ISO states that this filing has been served on Aquila Power Corp., and the California Public Utilities Commission.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. California Independent System Operator Corporation

[Docket No. ER99–1187–000]

Take notice that on January 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Participating Generator Agreement between Sunlaw Cogeneration Partners I (Sunlaw Cogeneration) and the ISO for acceptance by the Commission.

The ISO states that this filing has been served on Sunlaw Cogeneration and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Participating Generator Agreement to be made effective as of December 22, 1998.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. California Independent System Operator Corporation

[Docket No. ER99–1188–000]

Take notice that on January 6, 1999, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for ISO Metered Entities (Meter Service Agreement) between the ISO and Sunlaw Cogeneration Partners I (Sunlaw Cogeneration) for acceptance by the Commission.

The ISO states that this filing has been served on Sunlaw Cogeneration and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of December 22, 1998.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. San Gorgonio Westwinds, LLC

[Docket No. QF85–8–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, tendered for filing with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 100 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 17.365 Mw. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 71.448% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. San Gorgonio Westwinds, LLC

[Docket No. QF85–188–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, filed with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 220 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 11.2 Mw. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 100% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. San Gorgonio Westwinds, LLC

[Docket No. QF85–610–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, filed with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 321 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 34.94 MW. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 28.05% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. San Gorgonio Westwinds, LLC

[Docket No. QF89–344–001]

Take notice that on January 5, 1999, San Gorgonio Westwinds, LLC (Westwinds), a California Limited Liability Partnership, tendered for filing with the Federal Regulatory Commission an Application for Certification of a facility as a Qualifying Small Power Production Facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a small power production plant consisting of approximately 141 wind turbine generators located in Riverside County, California. The original generators were installed in 1984, many of which are being replaced by new wind turbine generators. The rated capacity of the facility after repowering will be approximately 9.8 MW. The electric power output of the facility is sold to Southern California Edison Company, Rosemead, California.

Westwinds owns 100% of the facility. Westwinds intends to transfer ownership of its interest in the facility to San Gorgonio Westwinds II, LLC (Westwinds II), in March, 1999. No more than 50% of Westwinds or Westwinds II is owned by an affiliate of an electric utility holding company.

Comment date: February 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–1399 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–25–000, et al.]

NP Energy Inc. and Duke Energy Trading and Marketing, L.L.C.,et al.; Electric Rate and Corporate Regulation Filings

January 13, 1999.

Take notice that the following filings have been made with the Commission:

1. NP Energy Inc. and Duke Energy

[Docket No. EC99–25–000]

Trading and Marketing, L.L.C.)

Take notice that on January 11, 1999, NP Energy Inc. and Duke Energy Trading and Marketing, L.L.C., both brokers and marketers of electric power, filed a request for approval of the sale of all common stock of NP Energy Inc. to Duke Energy Trading and Marketing, L.L.C.

Comment date: February 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. American Power Exchange, Inc., Bruin Energy, Inc., Eclipse Energy, Inc., and SEMCO Energy Services, Inc.

[Docket Nos. ER94–1578–017, ER98–538–005, ER94–1099–019, ER97–4352–004]

Take notice that on January 6, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. Duquesne Light Company

[Docket No. ER97–1543–000]

Take notice that on January 4, 1999, Duquesne Light Company submitted for filing an Arbitration Award (Award) of $400,000 to replace the Stranded Cost Amendment contained in Duquesne's initial filing in this case.

Comment date: January 25, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Constellation Power Source, Inc.

[Docket No. ER97–2261–002]

Take notice that on December 22, 1998, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

5. Quark Power L.L.C.

[Docket No. ER97–2374–007]

Take notice that on January 5, 1999, the above-mentioned power marketer filed quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

6. Pelican Energy Management, Inc.

[Docket Nos. ER98–3084–001 and ER98–3084–002]

Take notice that on January 4, 1999, the above-mentioned power marketer

filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

7. Commonwealth Edison Company

[Docket No. ER98–4335–000]

Take notice that on January 8, 1999, in response to a December 9, 1998 letter from the Commission's Division of Rate Application, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (ComEd), tendered for filing a revised service agreement under ComEd's open access transmission tariff between ComEd and the Wholesale Marketing Department of Commonwealth Edison Company (WMD).

ComEd requests an effective date of March 1, 1998 and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of the filing have been served on WMD and the Illinois Commerce Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Duke Solutions, Inc., Phibro Inc., AMVEST Power, Inc., AMVEST Coal Sales, Inc., Energetix, Inc., NICOR Energy Management Services Company, Global Petroleum Corp., Global Energy Services, LLC, Burlington Resources Trading Inc., CHI Power Marketing, Inc., South Jersey Energy Company

[Docket Nos. ER98–3813–002, ER95–430–018, ER97–2045–007, ER97–464–009, ER97–3556–006, ER97–1816–006, ER96–359–014, ER97–1177–007, ER96–3112–009, ER96–2640–009, and ER97–1397–004]

Take notice that on January 7, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

9. Duquesne Light Company

[Docket No. ER99–1146–000]

Take notice that on January 6, 1999, Duquesne Light Company (Duquesne), tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Constellation Energy Source, Inc., (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of December 30, 1998.

Copies of this filing were served upon Customer.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Consumers Energy Company

[Docket No. ER99–1197–000]

Take notice that on January 7, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement with Consumers Energy Company—Electric Sourcing & Trading for Network Integration Transmission Service, pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison), with an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison and the transmission customer.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Energy Company

[Docket No. ER99–1198–000]

Take notice that on January 6, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to the Commonwealth Edison Company pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Consumers Energy Company

[Docket No. ER99–1199–000]

Take notice that on January 7, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service to Commonwealth Edison Company pursuant to its Open Access Transmission Service Tariff filed on July 9, 1996.

The agreement has an effective date of January 1, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission and the transmission customer.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Lakewood Cogeneration, L.P.

[Docket No. ER99–1213–000]

Take notice that on January 8, 1999, Lakewood Cogeneration, L.P. (Lakewood), tendered for filing pursuant to Rule 205, 18 CFR 385.205, petition for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rate Schedule No. 1, to be effective at the earliest possible time, but no later than 60 days from the date of its filing.

Lakewood intends to engage in electric power and energy purchases and sales. In transactions where Lakewood sells electric energy, it proposes to make such sales on rates, terms and conditions to be mutually agreed to with the purchasing party. As outlined in Lakewood's petition, Lakewood is an affiliate of CMS Energy, a public utility holding company and the parent company of Consumers Energy.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER99–1214–000]

Take notice that on January 8, 1999, Cinergy Services, Inc. (Cinergy) and Vastar Power Marketing, Inc. (Vastar), now a predecessor company of Southern Company Energy Marketing L.P., tendered for filing Notice of cancellation of Service Agreement No. 120, under Cinergy Operating Companies, FERC Electric Power Tariff, First Revised Volume No. 4.

Cinergy requests an effective date of one (1) day after the date of this filing.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER99–1215–000]

Take notice that on January 8, 1999, Cinergy Services, Inc. (Cinergy) and NGE Generation, Inc. (NGE), formerly part of New York State Electric & Gas Corporation, tendered for filing a Notice of cancellation of Service Agreement No. 39, under Cinergy Operating Companies, FERC Electric Power Tariff, First Revised Volume No. 4.

Cinergy requests an effective date of one (1) day after the date of this filing.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–1216–000]

Take notice that on January 8, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 13 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of January 5, 1999, to Sonat Power Marketing L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Select Energy, Inc.

[Docket No. ER99–1217–000]

Take notice that on January 8, 1999, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Cinergy Capital & Trading, Inc., under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select Energy, Inc., requests that the Service Agreement become effective December 31, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to Cinergy Capital & Trading, Inc.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Select Energy, Inc.

[Docket No. ER99–1218–000]

Take notice that on January 8, 1999, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Central Maine Power Company (CMP), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

NUSCO requests an effective date of December 8, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to CMP.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Select Energy, Inc.

[Docket No. ER99–1219–000]

Take notice that on January 8, 1999, Select Energy, Inc. (Select), tendered for filing a Service Agreement with the Unitil Power Corp. (UPC), under the Select Energy, Inc., Market-Based Rates, Tariff No. 1.

Select requests an effective date of December 22, 1998.

Select Energy, Inc., states that a copy of this filing has been mailed to UPC.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER99–1220–000]

Take notice that on January 8, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. New Century Services, Inc.

[Docket No. ER99–1221–000]

Take notice that on January 8, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and British Columbia Power Exchange Corporation.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Virginia Electric and Power Company

[Docket No. ER99–1222–000]

Take notice that on January 8, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of January 1, 1999, the date of the first transaction under the Service Agreement.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Minnesota Power, Inc.

[Docket No. ER99–1223–000]

Take notice that on January 8, 1999, Minnesota Power, Inc. tendered for filing signed Non-Firm and Short-term Firm Point-to-Point Transmission Service Agreements with PG&E Energy Trading—Power, L.P., under its Firm and Non-Firm Point-to-Point Transmission Service to satisfy its filing requirements under this tariff.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Portland General Electric Company

[Docket No. ER99–1224–000]

Take notice that on January 8, 1999, Portland General Electric Company (PGE), tendered for filing a Rate Schedule and Form of Service Agreement for the Sale, Assignment, and Transfer of Transmission Rights pursuant to the Commission's direction in Order Nos. 888 and 888-A.

PGE respectfully requests that the Commission grant a waiver of the notice requirements of 18 CFR Section 35.3 to allow the Rate Schedule to become effective January 8, 1999.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. Florida Power & Light Company

[Docket No. ER99–1225–000]

Take notice that on January 8, 1999, Florida Power & Light Company (FPL), tendered for filing proposed service agreements with Georgia Transmission Corporation for Short-Term Firm and Non-Firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements be permitted to become effective on January 1, 1999.

FPL states that this filing is in accordance with Part 35 of the Commission's Regulations.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Peco Energy Company

[Docket No. ER99–1226–000]

Take notice that on January 8, 1999, PECO Energy Company (PECO), tendered for filing a Service Agreement dated December 31, 1998 with FPL Energy Power Marketing, Inc. (FPL–EPM) under PECO's FERC Electric Tariff Original Volume No. 1, (Tariff). The Service Agreement adds FPL–EPM as a customer under the Tariff.

PECO requests an effective date of December 31, 1998, for the Service Agreement.

PECO states that copies of this filing have been supplied to FPL–EPM and to the Pennsylvania Public Utility Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. Peco Energy Company

[Docket No. ER99–1227–000]

Take notice that on January 8, 1999, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated December 3, 1998 with Allegheny Electric Cooperative, Inc. (Allegheny Electric Cooperative), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of January 1, 1999, for the Agreement.

PECO states that copies of this filing have been supplied to Allegheny Electric Cooperative and to the Pennsylvania Public Utility Commission.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Storm Lake Power Partners II LLC

[Docket No. ER99–1228–000]

Take notice that on January 8, 1999, Storm Lake Power Partners II LLC (Storm Lake II), tendered for filing its initial Rate Schedule FERC No. 2, governing sales of electric energy and capacity at market-based rates. Storm Lake II is developing a wind-powered generation facility in Buena Vista County, Iowa. Following construction of the facility, Storm Lake II will make sales of capacity and energy at market-based rates to IES Utilities, Inc. (IES), pursuant to an Alternative Energy Production Electric Service Agreement (the PPA).

The PPA was originally executed by IES and Northern Alternative Energy Allendorf L.L.C. (NAEA) on May 14, 1997. NAEA assigned the PPA to Storm Lake II pursuant to an Agreement dated November 19, 1998.

Copies of the filing were served upon IES, Storm Lake II's jurisdictional customer.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. California Power Exchange Corporation

[Docket No. ER99–1229–000]

Take notice that on January 8, 1999, the California Power Exchange Corporation (PX), tendered for filing Amendment No. 8, to its Operating Agreement and Tariff (PX Tariff) and the accompanying PX Settlement and Billing Protocol (PSABP). Amendment No. 8, proposes discrete changes to implement a December 11, 1998, filing by the California Independent System Operator (ISO) relating to the treatment of ''TO Debits'' for derated Hour-Ahead transmission capacity.

The PX proposes to make Amendment No. 8, effective on February 9, 1999, concurrently with the ISO's corresponding changes.

The PX states that it has served copies of its filing on the PX Participants and on the California Public Utilities Commission. The filing also has been posted on the PX website at http://www.calpx.com.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. PP&L, Inc.

[Docket No. ER99–1250–000]

Take notice that on January 7, 1999, PP&L, Inc. (PP&L), tendered for filing its proposed accounting for stranded costs and related revenues for payment received from the Borough of Ephrata (Ephrata) in compliance with the Commission's May 29, 1998, order in Docket No. SC97–1–001.

PP&L requests an effective date of December 28, 1998, for the proposed accounting.

PP&L states that copies of this filing have been supplied to Ephrata and to the Pennsylvania Public Utility Commission.

Comment date: January 27, 1999, in accordance with Standard Paragraph E at the end of this notice.

31. Carr Street Generating Station, L.P.

[Docket No. ER99–1251–000]

Take notice that on January 8, 1999, Car Street Generating Station, L.P. (Carr Street), tendered for filing a long-term service agreement between Carr Street and Constellation Power Source, Inc. Carr Street requests confidential treatment of the agreement pursuant to 18 CFR 388.112.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

32. Carolina Power & Light Company

[Docket No. ER99–1254–000]

Take notice that on January 8, 1999, Carolina Power & Light Company tendered for filing its quarterly report summary of short-term transactions that occurred under its Market-Based Wholesale Power Sales Tariff during the third quarter of 1998.

Comment date: January 28, 1999, in accordance with Standard Paragraph E at the end of this notice.

33. Maine Public Service Company

[Docket No. ER99–1255–000]

Take notice that on January 12, 1999, Maine Public Service Company submitted a Quarterly Report of Transactions for the period October 1 through December 31, 1998. This filing was made in compliance with Commission orders dated May 31, 1995 (Docket No. ER95–851) and April 30, 1996 (Docket No. ER96–780).

Comment date: February 1, 1999, in accordance with Standard Paragraph E at the end of this notice.

34. Idaho Power Company

[Docket Nos. OA97–455–001 and OA97–590–001]

Take notice that on January 6, 1999, Idaho Power Company (IPC), tendered for filing with the Federal Energy Regulatory Commission a compliance filing regarding the Company's revised OASIS posting of the Company's Corporate Structure.

Comment date: January 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the

Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1398 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–404–013, et al.]

Questar Energy Trading Company, et al.; Electric Rate and Corporate Regulation Filings

January 14, 1999.

Take notice that the following filings have been made with the Commission:

1. Questar Energy Trading Company, Energy Clearinghouse Corporation Vanpower, Inc., New Jersey Natural Energy Company, and SCANA Energy Marketing, Inc.

[Docket Nos. ER96–404–013, ER98–2020–002, ER96–552–001, ER96–2627–008, and ER96–1086–011]

Take notice that on January 11, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

2. EMC Gas Transmission Company, Edgar Electric Cooperative, d/b/a/ EnerStar Power Corporation), Cleco Energy LLC, CoEnergy Trading Company, Western States Power Providers, Inc., and JMF Power Marketing

[Docket Nos. ER96–2320–010, ER98–2305–002, ER98–1170–002, ER96–1040–013, ER95–1459–013, and ER98–3433–002]

Take notice that on January 8, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the internet under Records Information Management System (RIMS) for viewing and downloading.

3. American Electric Power Service Corporation

[Docket Nos. ER99–1256–000 and EL98–52–000]

Take notice that on January 11, 1999, American Electric Power Service Corporation filed a Notice of Adoption of NERC'S TLR Alternative Transmission Tariff Amendment.

Comment date: February 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Idaho Power Company

[Docket No. OA97–455–003]

Take notice that on January 6, 1999, Idaho Power Company (Idaho Power) submitted a letter notifying the Commission that it has posted revised organizational charts and job descriptions on its OASIS to comply with the Commission's November 13, 1998 Order on Standards of Conduct.[1]

Comment date: January 29, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Secretary.

[FR Doc. 99–1402 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–P

[1] Alliant Services, Inc., *et al.*, 85 FERC ¶ 61,227 (1998).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2114–064]

Public Utility District No. 2 of Grant County; Notice of Availability of Draft Environmental Assessment and Solicitation of Comments

January 15, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47910), the Office of Hydropower Licensing (OHL) reviewed the proposal for implementing an Interim Protection Plan (IPP) for steelhead and chinook salmon at the Priest Rapids Project in Grant County, Washington. The Commission prepared a draft environmental assessment (DEA) for the proposed action. In the DEA, the Commission concludes that approval of the IPP will not constitute a major federal action significantly affecting the quality of the human environment.

This DEA was written by staff in the Office of Hydropower Licensing (OHL). As such, the DEA is OHL staff's preliminary analysis of the IPP. No final conclusions have been made by the Commission regarding this matter.

Should you wish to provide comments on the DEA, they should be filed within 30 days from the date of this notice. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (2114–064) on any comments filed.

Copies of the DEA are available for review in the Public Reference Room, Room 2A, of the Commission's offices at 888 First Street, NE., Washington, DC 20426.

David P. Boergers,

Secretary.

[FR Doc. 99–1407 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions; Requesting Reply Comments

January 15, 1999.

Take notice that the following hydroelectric application and Applicant Prepared Environmental Assessment (APEA) has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: P–1218–014.

c. Date filed: November 25, 1998.

d. Applicant: Georgia Power Company.

e. Name of Project: Flint River Hydroelectric Project.

f. Location: The project is located on the Flint River near the City of Albany, in Lee and Dougherty Counties, Georgia. The project would not utilize any federal lands or facilities.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. Applicant Contact: Mr. Mike Phillips, Georgia Power Company, Bin 10151, 241 Ralph McGill Boulevard, NE, Atlanta, GA 30308–3374, Tel. (404) 506–2392.

i. FERC Contact: Any questions on this notice should be addressed to Allan E. Creamer, E-mail address allan.creamer@ferc.fed.us, or telephone (202) 219–0365.

j. Deadline for filing motions to intervene, protests, comments, final terms and conditions, recommendations, and prescriptions: 60 days from the issuance date of this notice.

Deadline for applicant to file any final amendments to the application: 45 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 interveners 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 intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on the that resource agency.

k. Status of environmental analysis: On March 6, 1996, the Director, Office of Hydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated preparation of the license application and an APEA. Since then, the Commission has been working cooperatively in advising the applicant and its Consultation Team on studies or other information foreseeable required by the Commission.

Commission staff have reviewed the license application and APEA and have determined that the application is acceptable and no additional information or studies are needed to prepare the Commission's environmental assessment (EA). Comments, as indicated above, are now being requested from interested parties. The applicant will have 45 days following the end of this period to respond to those comments, or may elect to seek a waiver of this deadline. Because the issues in this relicensing have been resolved prior to the final license application being filed, Commission staff do not anticipate issuing a draft EA. Rather, comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in a final EA issued in the Spring of 1999.

l. Description of Project: The project consists of the following facilities: (1) the Muckafoonee Creek diversion dam, having (a) a 67-foot non-overflow section, (b) a 22-foot sluice section with two 6- by 8-foot sluices, and (c) a 133-foot gated spillway section with six 21-by 6-foot vertical lift gates; (2) a 500-foot-long reinforced concrete, free-crested auxiliary spillway and a 2,600-foot-long earthen dike; (3) the Flint River dam, having (a) a concrete intake structure, (b) a powerhouse (integral with the dam) containing three 1.8-megawatt (MW) generating units, for a total installed capacity of 5.4 MW, (c) a 464-foot-long spillway with 16 Taintor gates, and (d) a 1,700-foot-long earthen dike; (4) a 1,250-acre impoundment, impounding 10 miles of the mainstream Flint River and the lower reaches of the Kinchafoonee and Muckalee Creeks, at a water surface elevation of 181.8 feet plant datum, with a total storage capacity of 7,800 acre-feet; and (5) appurtenant facilities. The average annual generation is about 34.428 Gigawatt-hours.

m. Locations of the application and APEA: Copies of the application and APEA are 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 and APEA may be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the address in item h above.

n. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 C.F.R. sections 385.210, .211, .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 and APEA.

o. Filing and Service of Responsive Documents—The Commission is requesting comments, recommendations, terms and conditions, prescriptions, and reply comments.

The Commission directs, pursuant to 18 CFR section 4.34(b) of the regulations, that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

p. All filings must: (1) bear in all capital letters the title ''PROTEST,'' ''MOTION TO INTERVENE,'' ''COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' ''PRESCRIPTIONS,''or ''REPLY COMMENTS;'' (2) set forth in the heading the name of the applicant and the project number of the application and APEA to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set

forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application and APEA 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: Secretary, Federal Energy Regulatory Commission, 888 first Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Licensing and Compliance, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 3.34(b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–1406 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of New Major Licenses and Applicant Prepared Environmental Assessment

January 15, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Amendment of license.

b. Project No: 2307–045.

c. Date Filed: November 2, 1998.

d. Applicant: Alaska Electric Light and Power Company.

e. Name of Project: Salmon Creek Project.

f. Location: City & Borough of Juneau. Within the First Judicial District of the State of Alaska.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. Section 791(a)–825(r).

h. Applicant Contact: Tim McLeod, Vice President, Transmission & Distribution, Alaska Electric Light and Power Company, 5601 Tonsgard Court, Juneau, AK 99801, (907) 780–2222.

i. FERC Contact: Anum Purchiaroni, (202) 219–3297.

j. Comment Date: March 1, 1999.

k. Description of Project: Alaska Electric Light Power Company (AELP), license for the Annex Creek and Salmon Project, has filed an application to amend its license. AELP proposes to relocate approximately 1¼ mile of the Annex Creek transmission line from overhead to underground. It has 12 miles of 23-kV overhead transmission line extending from the Annex Powerhouse to the Thane Substation. The Annex Creek transmission line is situated in a remote area of the Tongs National Forest.

1. 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'', ''PROTEST'', OR ''MOTION TO INTERVENE'', as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washngton, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D3. Agent 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.

David P. Boergers,

Secretary.

[FR Doc. 99–1408 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Tendered for Filing; of Applications and Applicant Prepared Environmental Assessment Accepted for Filing; Requesting Interventions and Protests; Establishing Procedural Schedule and Final Amendment Deadline; and Requesting Comments, Final Terms and Conditions, Recommendations and Prescriptions

January 15, 1999.

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 licenses and Applicant Prepared Environmental Assessment (APEA).

b. Project Nos.: 2901–008 and 2902–009.

c. Date filed: December 29, 1998.

d. Applicant: Nekoosa Packaging Corporation (Nekoosa), a wholly-owned subsidiary of Georgia-Pacific Corporation.

e. Name of Projects: Holcomb Rock Hydroelectric Project, Project No. 2901 and Big Island Hydroelectric Project, Project No. 2902.

f. Location: James River, in Bedford and Amherst Counties, Virginia.

g. Filed Pursuant to: Federal Power Act, 16 USC §§ 791(a)—825(r).

h. Applicant Contact: Mr. P.J. Purdy, General Manager, Georgia-Pacific Corporation, Highway 501 North, Big Island, VA 24526, (804) 299–5911.

i. FERC Contact: Any questions on this notice should be addressed to James T. Griffin, E-mail address james.griffin@ferc.fed.us, or telephone (202) 219–2799.

j. Deadline for filing any final amendments to the application: 45 days from the date of this notice.

Deadline for filing interventions: 60 days from the date of this notice.

Deadline for filing any final comments, final recommendations, terms and conditions and prescriptions: 60 days from the date of this notice.

Deadline for applicant's response to final comments, final recommendations, terms and conditions and prescriptions: 105 days from the 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 ready for environmental analysis.

l. Description of the Projects: The existing facilities at the Holcomb Rock Hydroelectric Project include: (1) a stone masonry and wood crib diversion dam approximately 21 feet high and 644 feet long; (2) a canal of 2,700 feet in length; (3) a powerhouse containing three generating units, each rated at 625 kilowatts, for a total installed capacity of 1.875 megawatts, also the project's authorized capacity; (4) a reservoir with a surface area of 127 acres at normal pool elevation of 571.7 feet, mean sea level; (5) a 2.4/13.8 kilovolt, Delta-Delta, 3,570 KVA transformer; and (6) appurtenant facilities. The proposed project's average annual generation would be 9.8 gigawatthours.

The existing facilities at the Big Island Hydroelectric Project include: (1) a masonry and timber crib dam with a height of 15 feet, a total length of 657 feet, and a spillway length of 427 feet; (2) a dual purpose intake that also provides process water to the mill; (3) a concrete, steel, and brick powerhouse containing two generating units rated at 240 kilowatts each, for a total installed capacity of 480 kilowatts; (4) a 110-acre reservoir at the normal pool elevation of 604.7 feet, mean sea level; and (5) appurtenant facilities. The proposed project has an authorized capacity of 512 kilowatts, and would have an average annual generation of 1.7 gigawatthours.

m. 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, D.C. 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.

n. APEA Process and Schedule: The Energy Policy Act of 1992 gives the Commission the authority to allow the filing of an APEA with a license application, and directs the Commission to institute procedures, including pre-application consultations, to advise applicants of studies or other information foreseeable required by the Commission.

On February 25, 1997, the Director, Office of Hydropower Licensing, waived or amended certain of the Commission's regulations to allow for coordinated processing of the license applications and the APEA. Since then, the Commission has been working cooperatively in advising the Collaborative Team of studies or other information foreseeable required by the Commission.

Nekoosa has used a Collaborative Team approach to prepare the APEA for the Holcomb Rock and Big Island Projects. Consisting of members of federal, state, and local agencies, non-governmental organizations, and the public, the Collaborative Team has been meeting since February 1997 to guide the study process and prepare the APEA, and has reached agreement as to the preferred alternative for relicensing these projects.

National Environmental Policy Act scoping was conducted for the projects through scoping documents issued March 12, 1997, and April 27, 1998, and in public scoping meetings on April 16, 1997. Draft license applications and a preliminary DEA were issued by the Collaborative Team for comment on July 24, 1998. The final license applications and APEA were filed with the Commission on December 29, 1998. The APEA includes responses to all comments received on the preliminary DEA.

Commission staff have reviewed the APEA and license applications and have determined that the applications are acceptable and no additional information or studies are needed to prepare the Commission's draft EA. Item j., above provides the deadline for filing any final amendments to the application. Comments, final recommendations, terms and conditions and prescriptions are now being requested from interested parties.

In view of the high level of early involvement of the Collaborative Team, we expect the majority of comments to reflect the agreement presented in the DEA. Any comments received will be addressed in the EA to be issued by early April 1999.

o. With this notice, we are initiating consultation with the State Historic Preservation Officer as required by § 106, National Historic Preservation Act, and the regulations of the Advsiory Council on Historic Preservation, 36 CFR 800.4.

p. This notice also consists of the following standard paragraphs: B and D6.

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 to 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.

D6. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendatios, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, 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 Commssion, 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. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34 (b) and 385.2010.

David P. Boergers,

Secretary.

[FR Doc. 99–1409 Filed 1–21–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units That Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following continuing Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste, OMB Control Number 2050–0152, expiring 4/30/99. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, call Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download from the Internet at http:/ /www.epa.gov/icr/icr.htm and refer to EPA ICR No. 1608.02.

SUPPLEMENTARY INFORMATION:

Title: State Program Adequacy Determination—Municipal Solid Waste Landfills (MSWLFs) and Non-municipal, Non-hazardous Waste Disposal Units that Receive Conditionally Exempt Small Quantity Generator (CESQG) Hazardous Waste, OMB Control Number 2050–0152, EPA ICR Number 1608.02. This is a request for extension of a currently approved collection.

Abstract: Section 4010(c) of the Resource Conservation and Recovery Act (RCRA) of 1976 requires that EPA revise the landfill criteria promulgated under paragraph (1) of section 4004(a) and section 1008(a)(3). Section 4005(c) of RCRA, as amended by the Hazardous Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that MSWLFs and non-municipal, non-hazardous waste disposal units that receive household hazardous waste or CESQG hazardous waste are in compliance with the revised criteria for the design and operation of non-municipal, non-hazardous waste disposal units under 40 CFR part 257, subpart B and MSWLFs under 40 CFR part 258. (40 CFR part 257, subpart B and 40 CFR part 258 are henceforth referred to as the ''revised federal criteria.'') Section 4005(c) of RCRA further mandates the EPA Administrator to determine the adequacy of state permit programs to ensure owner and/or operator compliance with the revised federal criteria. A state program that is deemed adequate to ensure compliance may afford flexibility to owners or operators in the approaches they use to meet federal requirements, significantly reducing the burden associated with compliance.

In response to the statutory requirement in section 4005(c), EPA developed 40 CFR part 239, commonly referred to as the State Implementation Rule (SIR). The SIR describes the state application and EPA review procedures and defines the elements of an adequate state permit program.

The purpose of the ICR is to allow EPA to continue its evaluation of state permit program applications to determine whether they satisfy the statutory test reflected in the requirements of 40 CFR part 239. In all cases, the information will be analyzed to determine the adequacy of the state's permit program for ensuring compliance with the federal revised criteria. The analysis will also assist EPA in complying with the Government Performance and Results Act (GPRA) of 1993, by measuring progress toward goals and objectives detailed in the EPA Strategic Plan.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/2/98 (63 FR 58721); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 261 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to enable them to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States that seek approval of permit programs for MSWLFs and for non-municipal, non-hazardous waste disposal units that receive CESQG waste.

Estimated Number of Respondents: 38.

Frequency of Response: One-time only.

Estimated Total Annual Hour Burden: 6,510 hours.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques, to the following addresses. Please refer to EPA ICR No. 1608.02 and the OMB Control No. 2050–0152 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, OPPE Regulatory Information Division (2137), 401 M Street, SW, Washington DC 20460 (or E-Mail Farmer.Sandy@epamail.epa.gov);

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 19, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–1477 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; NESHAP, Benzene Emissions From Bulk Transfer Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP Benzene Emissions From Bulk Transfer Operations, Subpart BB, ICR Number 1154.05, OMB Control Number 2060–0182 ; expiration date January 31, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Contact Sandy Farmer at EPA by phone at (202) 260-2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1154.05

SUPPLEMENTARY INFORMATION:

Title: NESHAP, Benzene Emissions From Bulk Transfer Operations, 40 CFR Part 61, Subpart BB, (OMB Control No.2060–0182; EPA ICR No. 1154.05) expiring 01/31/99. This is a request for extension of a currently approved collection.

Abstract: The National Emission Standards for Benzene Emissions from Benzene Transfer Operations were proposed on September 14, 1989 and promulgated on March 7, 1990. The affected facility to which this subpart applies is the total of all loading racks, handling a liquid containing 70 weight-percent or more benzene, at which benzene is loaded into tank trucks, railcars, or marine vessels at each benzene production facility and each bulk terminal. However, specifically exempted from this regulation are loading racks at which only the following are loaded: Benzene-laden waste (covered under subpart FF of part 61), gasoline, crude oil, natural gas liquids, petroleum distillates (e.g., fuel oil, diesel, or kerosene), or benzene-laden liquid from coke by-product recovery plants. In addition, any affected facility which loads only liquid containing less than 70 weight-percent benzene or whose annual benzene loading is less than 1.3 million liters of 70 weight-percent or more benzene is exempt from the control requirements except for the record keeping and reporting requirements in 61.305(i). Marine vessels were given a one year industry wide waiver of compliance, which was later extended to July 23, 1991, in order to allow for concurrent compliance with U.S. Coast Guard regulations.

This information is being collected to assure compliance with 40 CFR part 61, subpart BB. Owners or operators of the affected facilities described must make one-time-only notifications. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Monitoring requirements specific to benzene transfer operations provide information on the operation of the emissions control device and compliance with the standards. Semiannual reports of excess emissions are required. These notifications, reports, and records are essential in determining compliance and are required, in general, of all sources subject to NESHAP Subpart BB. All reports are sent to the delegated State or Local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 09/04 /98 (63 FR 47279). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 45 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Benzene Emitters From Bulk Transfer Operations subject to NESHAP 40 CFR part 61, subpart BB.

Estimated Number of Respondents: 81.

Frequency of Response: Quarterly, Semi-Annually.

Estimated Total Annual Hour Burden: 14,685 hours.

Estimated Total Annualized Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No.1154.05 and OMB Control No. 2060–0182 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: January 15, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–1481 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed January 11, 1999 Through January 15, 1999

Pursuant to 40 CFR 1506.9

EIS No. 990008, Final EIS, BIA, AZ, Southpoint Power Plant, Fort Mojave Indian Reservation Approval of a Lease for Development Project, Construction and Operation of a 500 Megawatt Natural Gas Fired Power Plant, NPDES Permit and COE Section 404 Permit, Mohave County, AZ, Due: February 22, 1999, Contact: Ms. Amy Heuslein (602) 379–6750.

EIS No. 990009, Draft Supplement, COE, NC, Manteo (Shallowbag) Bay Project, Navigation Channel Deepening from the Altantic Ocean through Oregon Inlet to Wanchee, Due: March 08, 1999, Contact: Williams Adams (910) 251–4748.

EIS No. 990010, Final EIS, FHW, AL, Tuscaloosa East Bypass Corridor, Construction, I–59/I–20 east of Tuscaloosa to US 82 west of Northport, Funding, NPDES Permit, COE Section 10 and 404 Permits, Tuscaloosa County, AL , Due: February 22, 1999, Contact: Joe D. Wilkerson (334) 223–7370.

EIS No. 990011, Final EIS, FHW, WI, US 10 Highway Improvements, WI–13 and US 10 in Marshfield to WI–54 and US 10 in Waupaca, Funding and COE Section 404 Permit, Wood, Portage and Waupaca Counties, WI , Due: February 22, 1999, Contact: Wesley Shemwell (608) 829–7500.

EIS No. 990012, Final EIS, FHW, NC, US 74 Shelby Bypass Transportation Improvements, Construction, Funding and COE Section 404 Permit, Cleveland County, NC , Due: February 22, 1999, Contact: Nicholas L. Graf, PE. (919) 856–4346.

EIS No. 990013, Second Draft Supple, NOA, CA, OR, WA, Pacific Coast Salmon Plan (1997) for Amendment 14, Fishery Management Plan, Comprehensive Updating, Exclusive Economic Zone (EEZ), Off the Coasts of WA, OR and CA , Due: March 12, 1999, Contact: Mr. William Robinson (206) 526–6142.

EIS No. 990014, Final EIS, SFW, CA, Headwaters Forest Acquisition and the Palco Sustained Yield Plan and Habitat Conservation Plan, Implementation, Humboldt, Del Norte and Mendocino Counties, CA , Due: February 22, 1999, Contact: Ben Harrison (503) 231–2068.

Dated: January 19, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–1508 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5499–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared January 4, 1999 through January 8, 1999 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1999 (62 FR 17856).

Draft EISs

ERP No. D–AFS–L65300–ID Rating EC2, Goose Creek Watershed Project, Harvesting Timber and Improve Watershed, Payette National Forest, New Meadows Ranger District, Adams County, ID.

Summary: EPA expressed environmental concerns about the potential adverse impacts on elk habitat, road density, and water quality.

ERP No. D–BLM–J01009–WY Rating EC2, Carbon Basin Coal Project Area, Coal Lease Application for Elk Mountain/Saddleback Hills, Carbon County, WY.

Summary: EPA expressed environmental concerns about adverse impacts to air and water quality. EPA requested additional information for analysis of impacts to air and water.

ERP No. D–FHW–C40144–NY Rating EC2, US 219 between Springville to Salamanca, Improvements from NY 39 to NY 17, PIN 5101.53, Funding and COE Section 404 Permit, Erie and Cattaraugus Counties, NY.

Summary: EPA had environmental concerns (EC) with potential air quality and wetland impacts, the project's purpose and need, and environmental justice issues, and thinks that additional information (2), should be presented in the final EIS.

ERP No. D–NPS–K65211–CA Rating EC2, Whiskeytown Unit General Management Plan, Implementation, Whiskeytown-Shasta-Trinity Natl. Recreation Area, Shasta County, CA.

Summary: EPA expressed environmental concerns regarding the lack of cumulative impact analysis, and recommend changes to the EIS to increase public disclosure of potential impacts.

Final EISs

ERP No. F–BLM–J65247–UT Dixie Land and Resource Management Plan, Implementation, Cedar City Ranger District, Washington County, UT.

Summary: EPA maintains concerns about the proposed water storage projects and recommends a comprehensive EIS prior to approval of any potential reservoir.

ERP No. F–FHW–E40359–SC Carolina Bays Parkway (better known as Grand Strand), Funding, NPDES Permit, COE Section 10 and 404 Permits, Horry and Georgetown Counties, SC.

Summary: EPA's review found that wetland impacts are significant, but a mitigation bank at Sandy Island will be used to offset these losses.

ERP No. F–FHW–E50289–SC Cooper River Bridges Replacement Project, Grace Memorial/Silas N. Pearman Bridges on US 17 over Cooper River and Town Creek, Funding, COE Section 10/404 Permits and CGD Permit, Charleston County, SC.

Summary: EPA's review found that the document adequately discussed concerns raised during the review of the draft document.

ERP No. F–FHW–K40211–HI Kealakehe Parkway Completion, Queen Kaahumanu Highway and Honokohau Harbor Road Intersection to near the Mamalahoa Highway and Old Mamalahoa Highway Intersection, North Korna District, Hawaii County, HI.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40226–CA, CA–37 Highway Improvement, Napa River Bridge to the existing Freeway Section of CA–37 that begins near Diablo Street, Funding and US Army COE Section 404 Permit Issuance, Vallejo, Solano County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40357–CA, CA–101/Cuesta Grade Highway Improvements, 1.1 Miles north of

Reservoir Canyon Road to the Cuesta Grade Overhead, Funding and Permit Issuance, San Luis Obispo County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

ERP No. F–FTA–K40223–CA, Mission Valley East Corridor Transit Improvement Project, between I–15 in Mission Valley and the East County community of La Mesa, Funding, COE Section 404 Permit, Metropolitan Transit Development Board (MTDB) and Light Rail Transit (LRT), San Diego County, CA.

Summary: Review of the Final EIS was not deemed necessary. No formal comment letter was sent to the preparing agency.

Dated: January 19, 1999.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–1509 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6223–3]

RCRA Hazardous Waste Biennial Reporting: Notice of Intent to Privatize Development of Reporting Software

AGENCY: Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The Environmental Protection Agency's (EPA's) Office of Solid Waste will hold a public meeting on February 24, 1999, from 8:30 a.m. to 4:00 p.m., to make information available on the EPA's efforts to privatize the development of software required by State and Federal Agencies for biennial reporting to the EPA about the generation, management and final disposition of hazardous waste regulated by the Resource Conservation and Recovery Act (RCRA). This meeting will focus on providing information to potential software vendors to encourage them to provide the reporting software to the State and Federal Agencies for use in meeting their 1999 biennial reporting requirements.

DATES: The public meeting will be held on February 24, 1999 from 8:30 a.m. to 4:00 p.m.

ADDRESSES: The meeting will be held in EPA's Crystal City office; Conference Room A, Second Floor, 2800 Crystal Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: For technical information and registration matters, contact Ms. Dina Villari of the EPA's Office of Solid Waste at (703) 308–7912; e-mail: villari.dina@epamail.epa.gov. For general information regarding RCRA biennial reporting requirements, contact the RCRA Hotline at (800) 824–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323.

SUPPLEMENTARY INFORMATION: The EPA, under the authority of the Resource Conservation and Recovery Act (RCRA) of 1976, and its amendments of 1980 and 1984 called the Hazardous and Solid Waste Amendments (HSWA), is required to collect information on a biennial basis from generators of hazardous waste and treatment, storage and disposal facilities. As part of this effort, EPA and the States collect and maintain information about the generation, management and final disposition of the nation's hazardous waste regulated by RCRA. Analysis of this information serves as a means of: reporting to Congress and the public on the location, quantities, and disposition of hazardous wastes; assessing the effectiveness of existing Agency regulations; and assisting the Agency in measuring nationwide progress in its mission to protect human health and the environment.

The EPA previously developed reporting software, the Biennial Reporting System (BRS), for use by State and Federal Agencies for the 1989 through 1997 Biennial Reporting cycles. The EPA is now preparing for the 1999 biennial reporting cycle. Although the EPA does not require electronic submission of data from the regulated community, recent biennial reporting cycles have become more automated, with both the regulated community and the State/Federal implementers of the biennial reporting requirements using electronic data submissions to prepare the State data files that ultimately comprise the BRS National Oversight Database. Although the EPA has provided BRS implementer software to State/Federal Agencies, private software vendors have recently begun providing software which meets the needs of both the regulated community and State/Federal implementers of the RCRA program.

A total of 35 State/Federal Agencies used either their own State-developed software or one of the electronic software packages provided by private software vendors for the implementation of the 1997 biennial reporting requirements. Consistent with the intent of the Information Technology Management Reform Act (ITMRA) of 1995, also known as the Clinger-Cohen Act, the EPA is encouraging the privatization of the entire implementer component of the biennial reporting process. ITMRA requires that Federal Agencies make the maximum use of commercial, Off-the-Shelf technology if the private sector can efficiently support the function. The EPA has made the determination that the software developed by private vendors, or State-developed software, is an efficient and cost-effective way of implementing the RCRA biennial reporting requirements and, therefore, the EPA will no longer develop and provide the BRS implementer software.

The purpose of this public meeting is to explain to interested private software vendors the biennial reporting process and implementation schedule for the 1999 biennial reporting cycle, with particular emphasis on the output flat file specifications. This is necessary to ensure the data entry software and implementer database are in a standard format for proper data loading into EPA's National Database.

Subsequent to the February 1999 meeting, the EPA intends to sponsor a June 1999 national conference with the State/Federal Agencies who implement the biennial reporting requirements. EPA will provide interested private software vendors with an opportunity for exhibition of their software products during this June 1999 national conference. Additional details will be provided at the February 1999 meeting.

Dated: January 13, 1999.

Matthew Hale,

Acting Director, Office of Solid Waste.

[FR Doc. 99–1478 Filed 1–21–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30000/60C; FRL–6058–1]

Cyanazine; Notice of Amendment to Terms and Conditions of Registration, Response to Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces the Agency's decision to amend the terms and conditions of the cyanazine registrations held by DuPont Agricultural Products (''DuPont'') and Griffin Corporation (''Griffin''). The registrations are currently being phased out according to the terms and conditions proposed by DuPont and subsequently agreed to by Griffin and

accepted by EPA. These terms and conditions were the basis for concluding the Special Review of cyanazine. This notice announces EPA's decision to grant the registrants' request to further amend the terms and conditions of their cyanazine registrations and voluntary cancellation orders to allow a maximum use rate of 3.0 lb/acre in 1999, instead of 1.0 lb/acre, as currently required. EPA's decision to grant this request is subject to 40 CFR 154.35 because the agreement to phase out cyanazine usage and ultimately cancel the registrations was the basis for the Agency's conclusion of the Special Review. EPA is granting this request because it is a proper response to special weather conditions, it will not disturb the original cancellation order that phases out cyanazine use by 2002 since there will be no extension of the time for phasing out use, and, because the Agency finds that the balance between risks and benefits of cyanazine will continue to justify allowing use under the terms of the phase-out.

FOR FURTHER INFORMATION CONTACT: By mail: Loan Phan, Office of Pesticide Programs (7508C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier delivery, telephone number, and e-mail address: Rm. 679, Crystal Mall 1B2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8008, phan.loan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Regulatory Background

Cyanazine is the common name for [2-((4-chloro-6-(ethylamino)-s-triazine-2-yl)amino)-2-methylpropionitrile], an herbicide.

A Special Review of cyanazine was initiated in November 1994 (58 FR 60412, November 23, 1994) (FRL–4919–5), based on cancer risk concerns to humans. In August 1995, DuPont voluntarily proposed to amend its cyanazine registrations to effectively phase out all use of cyanazine products by December 31, 2002. DuPont modified the labels of cyanazine formulated end use products released for shipment by the registrant after July 25, 1996, to specify the maximum application rates during the phase out and to inform the public of the existing stocks provisions. After EPA initiated the Special Review of cyanazine, Griffin filed an application to register certain cyanazine pesticide products and subsequently agreed to the same terms and conditions of registration that were proposed by DuPont. In August, 1995, EPA accepted DuPont's proposal, and Griffin's agreement, to amend their cyanazine registrations, including voluntary cancellation effective December 31, 1999. EPA subsequently concluded the Special Review of cyanazine (61 FR 39023, July 25, 1996) (FRL–5385–7) because all registrations were being phased out and ultimately canceled, and because EPA determined that the risks from additional use during the phase-out period did not outweigh the benefits of use during that time.

On September 23, 1998, DuPont requested a change to the terms and conditions of its cyanazine registration (as established in the cancellation order, 61 FR 39023), in order to allow use at a rate of 3.0 lbs/acre during the 1999 growing season. Subsequently, Griffin submitted the same request.

On October 21, 1998, EPA issued a Notice of Receipt of the registrants' requests (63 FR 56178, October 21, 1998) (FRL–6040–2), and also announced the Agency's proposed decision to grant the registrants' request. The Agency explained that it believes that DuPont's request for a change in use rate for the 1999 growing season will not disturb the Agency's conclusion in 61 FR 39023 that risks associated with the voluntary phase out and cancellation are outweighed by its benefits. The Notice also solicited public comment pursuant to 40 CFR 154.35 on its proposed decision.

II. Response to Public Comments

EPA received one set of comments in response to its Notice of Receipt of the registrants' request to amend the terms and conditions of the cyanazine registrations (63 FR 56178), from the Vermont Department of Agriculture (''Vermont'').

A. Impact of Agency's Decision on Applicator Training

1. *Comment.* ''The publication and distribution of training materials and use recommendations for the 1999 growing season has already begun. The Agency should not permit the distribution of labeling with directions for use that contradicts material provided to commercial applicators and growers through our cooperative training program with the University Extension System and the Natural Resource Conservation Districts.''

2. *Response.* EPA recognizes the importance of accurate training and enforcement materials, and is willing to aid any state that needs further clarification on the terms and conditions of this amendment, as well as in dispersing information about the amended terms. Further, the supplemental labels clearly identify the change in the allowable use rate for only the 1999 growing season, and could be added to the training package. If training materials have already been distributed, it may be possible to distribute the supplemental labels as an addendum or through some other communications package. However, because this amendment is increasing, rather than decreasing, the maximum allowable use rate, there will be no additional risk if any growers, such as those in Vermont, do not receive the supplemental labels and continue to use the products at the original 1999 rate of 1 pound per acre.

B. Impact of Agency's Decision on Enforcement Program

Comment. ''The determination of appropriate labeled use by the Enforcement Program field staff is complicated by two factors. One is the distinction between original and amended labels as far as rate per acre directions. The second is between labeled rates for sweet corn versus field corn. Having these two discrepancies on labeled products in the field at the same time will make the determination of use in accordance with label directions impossible on a practical basis for the enforcement program.''

Response. EPA acknowledges that the supplemental labels may impose difficulties on Vermont's and other states' enforcement efforts. States may choose to address this in various ways, including a restriction under state law against use of cyanazine products labeled with the 3.0 lbs./acre application rate.

However, EPA believes it is likely that not all growers will choose to use the product at the maximum allowable rate and, if they do, they must have in their possession the supplemental label that allows the higher rate. Enforcement officials may require the grower who is found applying cyanazine at the 3.0 lbs/acre rate to produce the supplemental label.

EPA routinely requires re-labeling with supplemental labels as part of its risk management practices and generally, enforcement officials have been able to effectively implement these supplemental labels. However, the Agency is willing to aid any state that needs further clarification of this amendment and is willing to work with enforcement personnel if specific enforcement issues arise.

As for Vermont's second concern, the amended use rate of 3.0 lbs/acre in 1999 applies to all crops previously registered at this use rate on the cyanazine labels, not just sweet corn. If growers find that applying cyanazine at the higher rate is

effective on their crops, then they may use cyanazine at that rate.

C. Impact of Agency's Decision on Applicator Exposure

1. *Comment.* Vermont also asserts that, because ''...the original cancellation decision was based in part on concern for applicator exposure,...postponing reductions in the use rate sends a contradictory message that the concern for applicator health and safety may not have been such an important issue in the first place. [Vermont] is fully aware of the argument that cumulative exposure over the entire phase-out period would not be changed. That justification does not serve the objective of encouraging pesticide applicators to change their pesticide use behaviors and crop management practices on a day-to-day basis.''

2. *Response.* EPA remains concerned for applicator health and safety. The phase-out required that closed cab application equipment be used by all cyanazine mixer/loaders and applicators beginning in 1998 (61 FR 39023). This requirement remains unchanged, and demonstrates the Agency's commitment to reducing exposure to workers during the phase-out period. Both DuPont and Griffin have ceased production of cyanazine. Therefore, although the allowable maximum application rate will be three times what it would have been under the original terms of the phase-out, no more cyanazine than what was originally anticipated to be applied will actually be applied between 1998 and 2002.

The cyanazine phase-out was intended to reduce exposure to cyanazine and to eliminate cyanazine use by 2002. It was not specifically intended to encourage pesticide applicators to change their pesticide use behaviors and crop management practices on a day-to-day basis. However, this is a valid objective that the State of Vermont can pursue under state law if it chooses.

D. Existing Stocks; Atypical Weather Patterns

1. *Comment.* Although Vermont understands the concerns regarding the level of existing stocks remaining at the end of the cancellation period, it points out that ''managing the inventory of cyanazine is not the Agency's responsibility. The issue of existing stocks would be a reasonable consideration if the Agency had any indemnity liability under FIFRA Section 15. As that is not the case with cyanazine, the Agency should not concern itself with the question of existing stocks.''

2. *Response.* The Agency disagrees with Vermont that EPA should not concern itself with the question of existing stocks. Existing stocks of pesticides can pose risks which may not be adequately mitigated by hazardous waste regulatory provisions. Hence, the Agency believes that it is proper to consider existing stock concerns when implementing cancellation orders, especially so when the overall risk-benefit balance will not be disturbed.

3. *Comment.* Citing that the amended terms were requested in response to atypical weather patterns during the 1998 growing season (63 FR 56178), Vermont comments that, ''managing environmental policy based on the weather is also not the Agency's mandate or responsibility. The weather is far too variable a factor to serve as a valid criteria for setting national environmental policy ...''

4. *Response.* Weather patterns often have significant effects on agriculture and pest control situations which form the basis for national pesticide regulatory policy. The atypical weather patterns of the 1998 growing season are only one factor in EPA's evaluation of the registrants' requested amendment. EPA also takes into consideration the concerns of growers, as well as registrants and applicators, when making decisions. In this case, the Agency received calls from sweet corn growers requesting permission to use cyanazine at the higher rate of 3.0 lbs/acre until the end of the phase-out period and information from the registrants noting that less cyanazine was used than originally anticipated. EPA balanced the growers' and registrants' concerns with the risks posed by allowing the 3.0 lbs/acre use rate to stay in place for one more growing season, and concluded that the overall risk will not be disturbed.

III. References

1. U.S. Environmental Protection Agency. ''Notice of Receipt of Request to Amend the Terms and Conditions of Cyanazine Registrations.'' **Federal Register** Notice (63 FR 56178). October 21, 1998.

2. U.S. Environmental Protection Agency. ''Notice of Preliminary Determination to Terminate Special Review; Notice of Receipt of Requests for Voluntary Cancellation.'' **Federal Register** Notice (61 FR 8185). March 1, 1996.

3. U.S. Environmental Protection Agency. ''Cyanazine; Notice of Final Determination to Terminate Special Review of Cyanazine; Notice of Voluntary Cancellation and Cancellation Order of Cyanazine Product Registrations.'' **Federal Register** Notice (61 FR 39023). July 25, 1996.

4. Communications between DuPont Agricultural Products and USEPA. Confidential Business Information.

5. Communications between Griffin Corporation and USEPA. Confidential Business Information.

List of Subjects

Environmental protection.

Dated: January 15, 1999.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–1476 Filed 1–21–99; 8:45 am]
BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting

Farm Credit Administration Board; Amendment to Sunshine Act Meeting.

AGENCY: Farm Credit Administration.

SUMMARY: Pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), the Farm Credit Administration gave notice on January 11, 1999 (64 FR 1623) of the regular meeting of the Farm Credit Administration Board (Board) scheduled for January 14, 1999. This notice is to amend the agenda by adding an item for the open session of that meeting.

FOR FURTHER INFORMATION CONTACT: Floyd Fithian, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board were open to the public (limited space available), and parts of this meeting were closed to the public. The agenda for January 14, 1999, is amended by adding an item to the open session to read as follows:

OPEN SESSION

B. *New Business*

2. *Policy Statement*

—Temporary Relief for Pork Producers

Date: January 19, 1999.

Floyd Fithian,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–1587 Filed 1–20–99; 2:52 pm]
BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CS Docket No. 98–102, FCC 98–335]

Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: Section 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 548(g), requires the Commission to report annually to Congress on the status of competition in markets for the delivery of video programming. On December 23, 1998, the Commission released its fifth annual report (''*1998 Report*''). The *1998 Report* contains data and information that summarize the status of competition in markets for the delivery of video programming and updates the Commission's prior reports. The *1998 Report* is based on publicly available data, filings in various Commission rulemaking proceedings, and information submitted by commenters in response to a *Notice of Inquiry* in this docket.

FOR FURTHER INFORMATION CONTACT: Marcia Glauberman or Nancy Stevenson, Cable Services Bureau (202) 418–7200, TTY (202) 418–7172.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *1998 Report* in CS Docket No. 98–102, FCC 98–335, adopted December 17, 1998, and released December 23, 1998. The complete text of the *1998 Report* is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW, Washington, DC, 20554, and may also be purchased from the Commission's copy contractor, International Transcription Service (''ITS, Inc.''), (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036. In addition, the complete text of the *1998 Report* is available on the Internet at http://www.fcc.gov/Bureaus/Cable/WWW/csrptpg.html.

Synopsis of the 1998 Report

1. The Commission's *1998 Report* to Congress provides information about the cable television industry and other multichannel video programming distributors (''MVPDs''), including direct broadcast satellite (''DBS'') service, home satellite dishes (''HSDs''), multipoint distribution service (''MMDS''), local multipoint distribution service (''LMDS''), satellite master antenna television (''SMATV'') systems, and broadcast television service. The Commission also considers several other existing and potential distributors of and distribution technologies for video programming, including the Internet, home video sales and rentals, local exchange telephone carriers (''LECs''), and electric and gas utilities. The report includes as an attachment the results of an inquiry undertaken by the Cable Services Bureau focusing on cable television programming costs and related issues.

2. The Commission further examines market structure and issues affecting competition, such as horizontal concentration, vertical integration and technical advances. The 1998 report addresses competitors serving multiple dwelling unit (''MDU'') buildings and evidence of competitive responses by industry players that are beginning to face competition from other MVPDs.

3. In the *1998 Report,* the Commission concludes that competitive alternatives and consumer choices are still developing but that cable television continues to be the primary delivery technology for the distribution of multichannel video programming and continues to occupy a dominant position in the MVPD marketplace. As of June 1998, 85% of all MVPD subscribers received video programming service from local franchised cable operators compared to 87% a year earlier. There has been an increase in the total number of subscribers to noncable MVPDs, most of which is attributable to the continued growth of DBS. However, there have been declines in the number of subscribers and market shares of MVPDs using other distribution technologies. Significant competition from local telephone companies has not generally developed even though the Telecommunications Act of 1996 (''1996 Act'') removed some barriers to LEC entry into the video marketplace.

4. *Key Findings*:

- *Industry Growth:* A total of 76.6 million households subscribed to multichannel video programming services as of June 1998, up 4.1% over the 73.6 million households subscribing as of June 1997. This subscriber growth accompanied a 2.3% increase in multichannel video programming's penetration of television households from 75.9% to 78.2% in June 1998. Noncable's share of total MVPD subscribers continued to grow, constituting 15% of all multichannel video subscribers as of June 1998, up from 13% over the June 1997 figure reported last year. The cable television industry has continued to grow in terms of subscribership (up to 65.4 million subscribers as of June 1998, a 2% increase from the 64.2 million cable subscribers in June 1997). The total number of noncable MVPD subscribers grew from 9.5 million as of June 1997 to 11.2 million as of June 1998, an increase of over 18% since last year's report.
- *Convergence of Cable and Telephone Service:* The 1996 Act repealed a statutory prohibition against an entity holding attributable interests in a cable system and a LEC with overlapping service areas. It was expected that local exchange telephone carriers would begin to compete in video delivery markets, and cable television operators would begin providing local telephone exchange service. However, telephone entry into video markets has been slow to develop. Congress developed the Open Video System (''OVS'') framework as another means to encourage telephone company entry into the video marketplace. Thus far, however, few telephone companies have sought certification to provide video through OVS.
- *Promotion of Entry and Competition:* The Commission has continued to take steps to eliminate obstacles to competition, including the adoption and enforcement of rules that prohibit governmental and private restrictions that unreasonably interfere with a consumer's right to install the dishes and other antennas to receive programming services from (direct-to-home) DBS, wireless cable, and television broadcast; establish procedures to use internal wiring installed in an MDU building by the incumbent provider, facilitating owners' and residents' choice among providers; and increase the amount of spectrum available for wireless uses and eliminate restrictions on use, for the benefit of wireless providers. In addition, the Commission recently strengthened its enforcement procedures for the program access rules, which are designed to ensure that alternative MVPDs can acquire, on non-discriminatory terms, vertically-integrated satellite delivered programming.
- *Horizontal Concentration:* Nationally, concentration among the top MVPDs has declined since last year. As a result of acquisitions and trades, cable MSOs have continued to increase the extent to which their systems form regional clusters. The number of clusters of systems serving at least 100,000 subscribers is currently 117, down from the 139 reported last year. Although the number of clusters declined, the trend for clusters to increase in subscribership or size appears to be continuing, and these

clustered systems now account for service to approximately 52% of the nation's cable subscribers.

• *Vertical Integration:* The number of satellite-delivered programming networks has increased from 172 in 1997 to 245 in 1998. Vertical integration of national programming services between cable operators and programmers, measured in terms of the total number services in operation, declined from last year's total of 44% to just 39% this year, the continuation of a four year trend. However, in 1998, cable MSOs, either individually or collectively, owned 50% or more of 78 national programming services. A year earlier, cable MSOs owned 50% or more of 50 national networks.

• *Technological advances:* Technological advances are occurring that will permit MVPDs to increase both quantity of service (i.e., an increased number of channels using the same amount of bandwidth or spectrum space) and types of offerings (e.g., interactive services). In particular, cable operators and other MVPDs continue to develop and deploy advanced technologies, especially digital compression, in order to deliver additional video options and other services (e.g., data access, telephony) to their customers. To access these wide ranging services, consumers use ''navigation devices.'' In the last year, the Commission adopted rules and policies to implement Section 629 of the Communications Act, which is intended to ensure commercial availability of these navigation devices.

• *Programming costs:* The report includes as an attachment the results of an inquiry undertaken by the Cable Services Bureau focusing on cable television programming costs and related issues. This inquiry was commenced to follow-up on issues raised in last year's annual competition report and involved a voluntary questionnaire distributed to six multiple system operators. The Bureau found that, other than inflation adjustments, programming cost increases were the most significant factor contributing to rate increases. The rate of increase in programming costs between July 1996 and July 1997 was 20.2%. Programming costs for the responding MSOs (for regulated services) were equal to approximately 24% of regulated revenues for that period. On average, about one-quarter of an operator's regulated revenues was used to pay for programming. Sports programming costs (for the period surveyed) did not increase at a disproportionally higher rate than other types of programming and played a fairly minor role (accounting for only 5.3%) in overall rate increases. The inquiry results do not reflect license fee increases owing to sports distribution rights agreements announced in late 1997 and 1998.

Ordering Clauses

5. This *1998 Report* is issued pursuant to authority contained in sections 4(i), 4(j), 403 and 628(g) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 403 and 548(g).

6. *It is ordered* that the Office of Legislative and Intergovernmental Affairs shall send copies of this *1998 Report* to the appropriate committees and subcommittees of the United States House of Representatives and the United States Senate.

7. *It is further ordered* that the proceeding in CS Docket No. 98–102 *Is terminated.*

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–1388 Filed 1–21–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Notice of Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of Section 2, Pub. L. 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Carnival Corporation, 3655 N.W. 87th Avenue, Miami, FL, 33178–2193, Vessel: PARADISE

Cunard Line Limited (d/b/a/ Seabourn Cruise Line) and Seabourn Maritime Management A/S, 55 Francisco Street, Suite 710, San Francisco, CA 94133, Vessels: SEABOURN LEGEND, SEABOURN PRIDE AND SEABOURN SPIRIT

Peter Deilmann Reederei GmbH & Co., and Schiffahrtsgesellschaft MS ''DEUTSCHLAND'' GmbH & Co., and MS ''DEUTSCHLAND'' Verwaltungsgesellschaft Gmbh, Am Hafensteig 17–19, D–23730 Neustadt in Holstein, Germany, Vessel: DEUTSCHLAND

Compagnie des Iles du Ponant and Compagnie des Iles du Levant, 60 Boulevard du Marechal Juin, 44100 Nantes, France, Vessel: LE LEVANT

Imperial Majesty Cruise Line L.L.C., Ulysses Cruises, Inc. (d/b/a Premier Cruises), International Shipping Partners, Inc., Oceanbreeze Ltd Inc. and Premier Operations Ltd., 871 W. Oakland Park Blvd., Fort Lauderdale, FL 33311, Vessel: OCEANBREEZE

Premier Operations Ltd., Premier Cruise Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises) and International Shipping Partners, Inc., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: ISLANDBREEZE

Premier Operations Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), International Shipping Partners, Inc. and Premier Cruise Lines, Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: OCEANIC

Premier Operations Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), International Shipping Partners, Inc. and Seabreeze Ltd. Inc., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: SEABREEZE I

Riverbarge Excursion Lines, Inc., 201 Opelousas Avenue, New Orleans, LA 70114, Vessel: RIVER EXPLORER

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A., 110 East Broward Blvd., Fort Lauderdale, FL 33301, Vessels: SILVER CLOUD and SILVER WIND

Premier Operations Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), and International Shipping Partners, Inc., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: REMBRANDT

Princess Cruises, Inc., Princess Cruise Lines, Inc. and The Peninsular and Oriental Steam Navigation Company and CP Shipping Corporation, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067–4189, Vessel: SEA PRINCESS

Royal Caribbean Cruises Ltd., Airtours Plc, Rabbit Leasing Limited and Capital Bank Leasing 6 Limited, 1050 Caribbean Way, Miami, FL 33132–2096, Vessel: SONG OF AMERICA

Dated: January 19, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1433 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR Part 540, as amended:

Compagnie des Iles du Ponant (d/b/a Classical Cruises), 60 Boulevard du Marechal Juin, 44100 Nantes, France, Vessel: LE LEVANT

Cunard Line Limited (d/b/a Seabourn Cruise Line), 55 Francisco Street, Suite 710, San Francisco, CA 94133, Vessels: SEABOURN LEGEND, SEABOURN PRIDE and SEABOURN SPIRIT

Holland America Line-Westours Inc. (d/b/a Holland America Line) and Holland America Line N.V., 300 Elliott Avenue West, Seattle, WA 98119, Vessels: VOLENDAM and ZAANDAM

Cunard Line Limited (d/b/a Cunard), 6100 Blue Lagoon Drive, Suite 400, Miami, FL, 33126, Vessels: QUEEN ELIZABETH 2, ROYAL VIKING SUN, SEA GODDESS I, SEA GODDESS II and VISTAFJORD

Peter Deilmann Reederei GmbH & Co., and Schiffahrtsgesellschaft MS ''DEUTSCHLAND'' GmbH & Co., Am Hafensteig 17–19, D–23730 Neustadt in Holstein, Germany, Vessel: DEUTSCHLAND

Premier Cruises Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), and Premier Operations Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: ISLANDBREEZE

Premier Cruises Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), Seabreeze Ltd Inc. and Premier Operations Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: SEABREEZE I

Radisson Seven Seas Cruises, Inc., 600 Corporate Drive, Suite 410, Fort Lauderdale, FL 33334, Vessel: SEVEN SEAS NAVIGATOR

Premier Cruises Ltd., Ulysses Cruises, Inc. (d/b/a Premier Cruises), Premier Cruises Lines, Ltd. and Premier Operations Ltd., 901 South America Way, Pier 7, Miami, FL 33132–2073, Vessel: OCEANIC

Princess Cruises, Inc., Princess Cruise Lines, Inc. and The Peninsular and Oriental Steam Navigation Company, 10100 Santa Monica Blvd., Suite 1800, Los Angeles, CA 90067, Vessel: SEA PRINCESS

Silversea Cruises, Ltd. and Silver Cloud Shipping Company S.A., 110 East Broward Blvd., Fort Lauderdale, FL 33301, Vessel: SILVER CLOUD and SILVER WIND

Dated: January 19, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1434 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Certified Transportation Group, 195 Oval Drive, Islandia, NY 11722, Officers: William McNamara, President, Joseph McNamara, Vice President

Dated: January 15, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc 99–1391 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Safcomar, Inc., One Exchange Place, Suite 402, Jersey City, NJ 07302, Officers: Hugo Roppel, President, Christian Pochon, Vice President

Conex Global Logistics Services, Inc., 550 S. Alameda Street, Compton, CA 90221, Officers: Michael W. Keller, President, Shigehiro Uchida, Exec. Vice President

FTS International, Inc., 145–38A 157th Street, Jamaica, NY 11413, *Officer:* Shlomo Greenberg, President

Dated: January 15, 1999.

Bryant L. VanBrakle

Secretary.

[FR Doc. 99–1390 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Docket No. 99–01]

Direct Container Line Inc. Possible Violations of Sections 10(a)(1) and 10(b)(1) of the Shipping Act of 1984

Order of Investigation and Hearing

Respondent Direct Container Line Inc. (''DCL'') is a tariffed and bonded non-vessel-operating common carrier (''NVOCC'') based in Carson, California. DCL holds out to furnish transportation services worldwide, including NVOCC services, *inter alia*, from ports and points in the United States to the Far East. According to DCL's webpage, DCL operates 13 offices and 25 receiving terminals in the United States and Canada, with branches or subsidiaries in 86 countries worldwide. DCL claims to have over 500 employees, with over 350 based in the United States.

Through interviews and on-site examination of shipping records maintained in DCL's offices in Carson, CA and Carteret, NJ, an investigation was commenced into the possible involvement of DCL in equipment substitution malpractices involving OOCL and Maersk Line on consolidated shipments to the Far East. In all, records were reviewed of nearly one hundred shipments in which provisions of the Transpacific Westbound Rate Agreement (''TWRA'') equipment substitution rules were invoked for the purpose of providing DCL with 45′ containers while charging DCL those service contract rates applicable to 40′ equipment.

In practice, it appears that DCL met the requirements of TWRA's equipment substitution rules by misdeclaring the cargo measurements at 65 CBM or less, equivalent to the ordinary capacity utilization of a 40 foot high cube container under TWRA rules. It further appears that cargo weights also were misdeclared on the master bill of lading so as to understate the actual weights to a figure less than 21 metric tons (21,000KG), the maximum weight

permitted under TWRA Rule 2(G)(5).[1] The container manifest furnished by DCL to the ocean common carrier on consolidated shipments reflected measurements and weights consistent with those shown on the ocean common carrier's master bill of lading. DCL's charges to its own NVOCC customers, meanwhile, were calculated on the basis of the higher measurements and weights shown only on DCL's internal manifests. The house bills of lading issued by DCL to its shippers likewise reflect DCL's reliance upon the higher measurements and weights.

It is well-established law that a carrier is charged with a responsibility of reasonably diligent inquiry and exercise of care to ensure its compliance with the shipping statutes. *Prince Line* v. *American Paper Exports Inc.*, 55 F.2d 1053 (3d Cir., 1932). In the case of equipment substitution violations, it appears that DCL affirmatively sought the application of the equipment substitution rule to its own freight rate advantage, and did so without regard for the ocean common carrier's equipment substitution rule or the implication of DCL's misdeclaration of shipment weights and measurements.

In the course of its investigation, BOE sought also to examine DCL's rating of cargoes under the provisions of its NVOCC tariff. In examining copies of rated house bills of lading for these same shipments, it appears that DCL has in many instances applied LCL rates which are higher than those on file in DCL's tariff. Pertinent examples are rates for dry cell batteries, machines NOS and textiles, in which the rates charged by DCL exceed the tariff by varying amounts.[2] DCL's actions do not appear to meet the ''reasonable diligence'' standard required of carriers in satisfying their obligations under the statute.[3] *Rates From Japan to United States*, 2 USMC 426, 434 (1940); *Rates from United States to Philippine Islands*, 2 USMC 535, 542 (1941).

Section 10(a)(1) of the 1984 Act, 46 U.S.C. app. § 1709(a)(1), prohibits any person by means of false billings, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, to obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Section 10 (b)(1) of the 1984 Act, 46 U.S.C. app. § 1709(b)(1), prohibits a common carrier from charging, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges set forth in its tariff. Under section 13 of the 1984 Act, 46 U.S.C. app. § 1712, a person is subject to a civil penalty of not more than $25,000 for each violation knowingly and willfully committed, and not more than $5,000 for other violations.[4] Section 13 and section 23, 46 U.S.C. app. § 1721, further provide that a common carrier's tariffs may be suspended for violations of sections 10(a)(1) or 10(b)(1) for a period not to exceed one year.

Now therefore, it is ordered, That pursuant to sections 10, 11, 13 and 23 of the 1984 Act, 46 U.S.C. app §§ 1709, 1710, 1712 and 1721, an investigation is instituted to determine:

(1) whether Direct Container Line Inc. Violated Section 10(b)(1) of the 1984 Act by obtaining or attempting obtain transportation at less than the rates and charges otherwise applicable by an unjust or unfair device or means;

(2) whether Direct Container Line Inc. violated section 10(b)(1) of the 1984 Act by charging, demanding, collecting or receiving greater, less or different compensation for the transportation of property than the rates and charges shown in its tariff.

(3) whether, in the event violations of sections 10 (a)(1) and 10(b)(1) of the 1984 Act are found, civil penalties should be assessed against Direct Container line and, if so, the amount of penalties to be assessed;

(4) whether, in the event violations of sections 10(a)(1) and 10(b)(1) of the 1984 Act are found, the tariff of Direct Container Line should be suspended;

(5) whether, in the event violations are found, an appropriate cease and desist order should be issued.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commissions Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Direct Container Line Inc. is designated a Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notices of the time and place of hear or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law judge shall be issued by January 18, 2000 and the final

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[1] Rule 2(G)(5) provides, *inter alia:*

Carrier may, at its option, substitute a type of equipment other than that which was booked or ordered by the shipper or its agent, subject to the following conditions:

* * * * *

2. A 45′ container may be substituted for a 40′ container, subject to a maximum of 65 CBM and 21KT, at a rate and charges applicable to a 40′ container.

When cargo is loaded in excess of the above quantities, the applicable revenue ton or per container rate for a 45′ container will apply.

[2] The range of variance in rates appears substantial. On one shipment to Hong Kong, DCL's rate for dry cell batteries was $55 per CBM, while its tariff rate was $50/CBM; for textiles (synthetic fabrics), the rate charged by DCL was $100 per CBM (DCL's tariff rate was $70/CBM); for laundry machines DCL collected $95 per CBM (versus $51/CBM under DCL's tariff).

[3] In 1994, DCL entered into a compromise agreement with the Commission, resolving allegations of violations on section 10(b)(1) for failure to assess the rates set forth in its tariff with respect to shipments in the South American Trades. As part of its agreement, DCL represented that it had implemented measures to eliminate such practices by DCL.

[4] These penalties are increased 10 percent for any violations occurring after November 7, 1996. *See Inflation Adjustment of Civil Penalties,* 61 FR 52704 (October 8, 1996).

decision of the Commission shall be issued by May 17, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–1389 Filed 1–21–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 8, 1999.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. The Blanchard Family Group, Russellville, Arkansas; to acquire voting shares of Clement Bancshares, Inc., Plainview, Arkansas, and thereby indirectly acquire voting shares of First State Bank, Plainview, Arkansas.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bert D. Backard, Independence, Kansas; to acquire voting shares of First Howard Bankshares, Inc., Cherryvale, Kansas, and thereby indirectly acquire voting shares of First National Bank of Howard, Howard, Kansas, First Security Bankshares, Inc., Topeka, Kansas, I and B, Inc., Cherryvale, Kansas, and Peoples State Bank, Cherryvale, Kansas.

Board of Governors of the Federal Reserve System, January 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1492 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

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 February 15, 1999.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. M&T Bank Corporation and Olympia Financial Corporation, both of Buffalo, New York; to acquire 100 percent of the voting shares of FNB Rochester Corp., Rochester, New York, and thereby indirectly acquire First National Bank of Rochester, Rochester, New York.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Farmers State Bancshares, Inc., Bangor, Wisconsin; to become a bank holding company by acquiring 100 of the voting shares of Farmers State Bank, Bangor, Wisconsin.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Umpqua Holdings Corporation, Roseburg, Oregon; to become a bank holding company by acquiring 100 percent of the voting shares of South Umpgua Bank, Roseburg, Oregon.

Board of Governors of the Federal Reserve System, January 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1420 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

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 February 18, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Coast Community Bancshares, Inc., Biloxi, Mississippi; to retain 100 percent of the voting shares of Coast Community Bank, Biloxi, Mississippi.

2. Community Bancshares of Mississippi, Inc., Forest, Mississippi; to acquire 100 percent of the voting shares

of Coast Community Bancshares, Inc., Biloxi, Mississippi, and thereby indirectly acquire Coast Community Bank, Biloxi, Mississippi.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Woodforest Bancshares, Inc., Houston, Texas, and Sun Belt Bancshares Corporation, Wilmington, Delaware; to acquire 100 percent of the voting shares of HB Financial Corporation, Highlands, Texas, HB Financial Corporation of Delaware, Wilmington Delaware, and Highlands State Bank, Highlands, Texas, through the merger of Woodforest Bancshares and HB Financial Corporation, Sun Belt Bancshares Corporation, and HB Financial Corporation of Delaware, and Woodforest National Bank, Houston, Texas, and Highlands Bank. These mergers will occur simultaneously.

Board of Governors of the Federal Reserve System, January 19, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1493 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Wrightsville Bancshares, Inc., Wrightsville, Georgia; to acquire WBS Financial Services, Inc., Wrightsville, Georgia, and thereby engage in insurance agency activities, pursuant to § 225.28(b)(11)(iii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 15, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1421 Filed 1–21–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, January 27, 1999.

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: January 20, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–1549 Filed 1–20–99; 10:47 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Bioethics Advisory Commission (NBAC) Meeting

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address (1) research involving human embryonic stem cells and (2) the use of human biological materials in research. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on February 2, 1999 from 11:30 am to 12 noon.

Dates/times	Location
February 2, 1999, 8:00 am–5:30 pm.	Whig Hall-Senate Chamber, Princeton University, Princeton, New Jersey 08544.
February 3, 1999, 8:00 am–12 noon.	Same Location as Above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at

bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: January 15, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–1416 Filed 1–21–99; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital Statistics (NCVHS).

Times and Dates: 9:00 a.m.–5:30 p.m., February 3, 1999; 9:00 a.m.–5:00 p.m., February 4, 1999.

Place: Conference Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington D.C. 20201.

Status: Open.

Purpose: The meeting will focus on a variety of health data policy and privacy issues. Department officials will update the Committee on recent activities of the HHS Data Council and the status of HHS activities in implementing the administrative simplification provisions of P.L. 104–191, the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Committee also will be briefed on developments in the national health information infrastructure in Australia and an overview of public health surveillance in the U.S. Panel discussions are planned on data requirements for Medicare risk adjusted payments, and standardizing surveillance data for immunizations. In addition, Subcommittee breakout sessions are planned. All topics are tentative and subject to change. Please check the NCVHS website, where a detailed agenda will be posted prior to the meeting.

Contact Person For More Information: Substantive information as well as summaries of NCVHS meetings and a roster of committee members may be obtained by visiting the NCVHS website (http://aspe.os.dhhs.gov/ncvhs) where an agenda for the meeting will be posted when available. Additional information may be obtained by calling James Scanlon, NCVHS Executive Staff Director, Office of the Assistant Secretary for Planning and Evaluation, DHHS, Room 440–D, Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201, telephone (202) 690–7100, or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Note: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey Building by non-government employees. Thus, individuals without a government identification card may need to have the guard call for an escort to the meeting room.

Dated: January 14, 1999.

James Scanlon,

Director, Division of Data Policy.

[FR Doc. 99–1385 Filed 1–21–98; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–07]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

The Role of Positive and Negative Emotion in Promoting Hearing Conservation Behaviors Among Coal Miners—New—The mission of the National Institute of Occupational Safety and Health (NIOSH) is to promote ''safety and health at work for all people through research and prevention.'' NIOSH investigates and identifies occupational safety and health hazards and conducts a variety of activities, including educational programs with workers, to help prevent work-related illness and injury.

One of the most widespread, but often overlooked, occupational hazards is noise. As a result, hearing loss is the most common occupational diseases in the United States today. More than 30 million workers are exposed to hazardous noise levels.

The risk of hearing loss is particularly high in certain occupations. Research shows that more than 90 percent of coal miners will experience moderate to significant hearing loss by the time they reach retirement. This level of hearing loss has a number of negative implications for both the affected individual and others: (1) impaired communication with family members, friends, and coworkers can result in social isolation; (2) unrelenting tinnitus (ringing in the ears) can significantly lower one's quality of life; (3) a diminished ability to monitor the work environment (including warning signals, etc.) increases the risk of accidents and further injury at the workplace; and finally, (4) there are economic costs that result from workers compensation and lower productivity.

NIOSH believes that there are two broad strategies for reducing the risk of hearing loss. First, wherever possible, engineering controls have to be implemented at the source of the hazardous noise. Second, workers have to be educated about hazardous levels of noise and what they can do to prevent hearing loss. This study falls into the latter category.

The study is required because past efforts at educating coal miners about hearing loss have had only mixed success. Hearing loss occurs without pain or obvious physical abnormalities, so it has been difficult to create a sense of urgency about this problem among workers. NIOSH has to identify new and more effective ways of promoting hearing conservation behaviors.

In this study, NIOSH proposes working with the United Mine Workers of America, and experts in health communication, to test the effectiveness of several innovative approaches to

communicating risk and promoting safer behaviors. Different messages will be sent to five different groups of coal miners. All participants will receive some beneficial information. The researchers will follow up with these groups at two different points in time to assess the relative effectiveness of the messages.

The central purpose of this study is to promote hearing conservation among coal miners. However, NIOSH believes that the results of this study will help in similar efforts with other worker populations. The total cost to respondents is $0.00.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs.)
Coal Miners in Pretest	80	1	.5	40
Coal Miners in Study	300	2	.5	300
Total				340

Evaluation of Public Care Providers' Training, Screening, and Referral Practices for Pregnancy-Related Violence—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). Two questionnaires have been designed to collect information for the project entitled: ''Evaluation of Public Care Providers' Training, Screening, and Referral Practices for Pregnancy-Related Violence.'' The purpose of the project is to develop and implement an evaluation to provide the Centers for Disease Control and Prevention (CDC) with the capacity to investigate the role of clinical guidelines in detecting and intervening in intimate violence in publicly-funded family planning settings. This evaluation will encompass: (1) the administrative level at which guidelines operate; (2) the contents of guidelines; (3) the format of guidelines; (4) the use of guidelines; and (5) barriers to the adoption of guidelines for programs that do not have any in place. The information gathered will be analyzed in conjunction with existing data from other sources. The information obtained from the evaluation will be used by CDC to develop recommendations for guidelines to address screening and referral practices and provider training. Healthy People 2000 calls for a reduction of physical, sexual and emotional abuse towards women, and for the use of protocols in emergency room settings to identify and treat victims of violence. As the nation's prevention agency, CDC has been charged with finding ways to prevent violence against women. Little is known about how widely guidelines have been instituted in publicly-funded family planning settings. This evaluation will provide the first clear understanding of the barriers to implementing and using appropriate protocols. The total cost to respondents participating in the evaluation is approximately $1,880.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden per response (in hrs.)	Total burden (in hrs)
Clinicians & Clinic Administrators	1200	1	.25	300

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1431 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Education Programs in Occupational Safety and Health, Program Announcement #98045, meeting.

Times and Dates: 8 p.m.–10 p.m., February 21, 1999 (Open). 8 a.m.–6 p.m., February 22, 1999 (Closed). 8 a.m.–5 p.m., February 23, 1999 (Closed).

Place: Commonwealth Hilton Hotel, I–75 and Turfway Road, Florence, Kentucky 45275.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title, 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement #98045.

Contact person for more information: Bernadine Kuchinski, Occupational Safety and Health Office of Extramural Coordination and Special Projects, National Institute for Occupational Safety and Health, CDC, 1600 Clifton Road, N.E., Atlanta, Georgia 30333. Telephone 404/639–3342, e-mail bbk1@cdc.gov.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 14, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention, CDC.

[FR Doc. 99–1469 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee on Immunization Practices: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Advisory Committee on Immunization Practices (ACIP).

Times and Dates: 9 a.m.–5:45 p.m., February 17, 1999, 8 a.m.–3:45 p.m., February 18, 1999.

Place: Atlanta Marriott North Central, 2000 Century Boulevard, N.E., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: The Committee is charged with advising the Director, CDC, on the appropriate uses of immunizing agents. In addition, under 42 U.S.C. § 1396s, the Committee is mandated to establish and periodically review and, as appropriate, revise the list of vaccines for administration to vaccine-eligible children through the Vaccines for Children (VFC) program, along with schedules regarding the appropriate periodicity, dosage, and contraindications applicable to the vaccines.

Matters to be Discussed: The agenda will include an update from the Food and Drug Administration; update from the National Immunization Program; update from the Vaccine Injury Compensation Program; update from the National Vaccine Program; update from the pneumococcal working group; report by the polio working group on transition to an all Inactivated Poliovirus schedule; prevention and control of influenza recommendation; world and U.S. influenza surveillance data for the 1999–2000 season; influenza-related morbidity in young children; 1999 influenza vaccine guidelines; prevention of varicella; varicella use in children with HIV/AIDS; update on varicella safety and efficacy; post exposure use of varicella vaccine; ACIP recommendations for vaccination of adults; ACIP recommendations for vaccine requirements for day care and school entry; update on the status of the hepatitis B recommendation; revised recommendation for vaccination of children against hepatitis A; revised recommendation for Lyme disease vaccine; use of rotavirus vaccine in premature children; update on general principles of VFC; consolidating VFC resolutions for pneumococcal, hepatitis A and hepatitis B vaccines; draft recommendation for algorithms for immunization registries; electronic updating of ACIP reports and recommendations; and the anti-vaccine movement in the U.S.A. Other matters of relevance among the committee's objectives may be discussed.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Gloria A. Kovach, Committee Management Specialist, CDC, 1600 Clifton Road, NE, m/s D50, Atlanta, Georgia 30333. Telephone 404/639–7250.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1498 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Citizens Advisory Committee on Public Health Service Activities and Research at Department of Energy (DOE) Sites: Savannah River Site Health Effects Subcommittee

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the following meeting.

Name: Citizens Advisory Committee on Public Health Service Activities and Research at DOE Sites: Savannah River Site Health Effects Subcommittee.

Times and Dates: 1 p.m.–5 p.m., February 4, 1999; 7 p.m.–9 p.m., February 4, 1999; 8:30 a.m.–12 noon, February 5, 1999.

Place: Hilton Savannah DeSoto, 15 East Liberty Street, Savannah, Georgia 31412–8207. Telephone 912/232–9000, fax 912/232–6018.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 75 people.

Background: Under a Memorandum of Understanding (MOU) signed in December 1990 with DOE and replaced by an MOU signed in 1996, the Department of Health and Human Services (HHS) as given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation or to potential hazards from non-nuclear energy production use. HHS delegated program responsibility to CDC.

In addition, a memo was signed in October 1990 and renewed in November 1992 between ATSDR and DOE. The MOU delineates the responsibilities and procedures for ATSDR's public health activities at DOE sites required under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or ''Superfund''). These activities include health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

Purpose: This subcommittee is charged with providing advice and recommendations to the Director, CDC, and the Administrator, ATSDR, regarding community, American Indian Tribes, and labor concerns pertaining to CDC's and ATSDR's public health activities and research at this DOE site. The purpose of this meeting is to provide a forum for community, American Indian Tribal, and labor interaction and serve as a vehicle for communities, American Indian Tribes, and labor to express concerns and provide advice to CDC and ATSDR.

Matters to be Discussed: Agenda items include presentations from the National Center for Environmental Health (NCEH), the National Institute for Occupational Safety and Health, and ATSDR on updates regarding the progress of current studies. On February 4, at 7 p.m., the meeting will continue with a presentation by CDC, and/or its contractor, on the results of the Source Term Project of the Savannah River Site Environmental Dose Reconstruction and to allow more time for public input and comment.

All agenda items are subject to change as priorities dictate.

Due to administrative delays in the program, this notice was not published fifteen (15) days in advance of the meeting.

Contact Persons for Additional Information: Paul G. Renard, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724. Telephone 770/488–7040, fax 770/488–7044.

The Director, Management Analysis and Services Office has been delegated

the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: January 15, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1447 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Safety and Occupational Health Study Section; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m. February 11, 1999. 8 a.m.–5:30 p.m. February 12, 1999.

Place: Embassy Suites, 1900 Diagonal Road, Alexandria, VA 22314.

Status: Open 8 a.m.–8:30 a.m. February 11, 1999. Closed 8:30 a.m.–5:30 p.m. February 11, 1999. Closed 8 a.m.–5:30 p.m. February 12, 1999.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8–8:30 a.m. on February 11, 1999, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant application. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, DCD, pursuant to Public Law 92–463.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. Telephone 304/285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: January 14, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services, Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–1468 Filed 1–21–99; 8:45 am]

BILLING CODE 4163–19–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Form OCSE–396A, Child Support Enforcement Program Financial Report and Form OCSE–34A, Child Support Enforcement Program Quarterly Report of Collections.

OMB No. 0970–0181.

Description: These forms are used by States to report the expenditures and the collections of child support payments made under Title IV–D of the Social Security Act during each fiscal quarter. These forms also report the semiannual budget estimates for the program and the portion of the collected payments to be distributed to the custodial parent or to the Federal or State governments. The information is used to calculate quarterly grant awards, annual incentive payments to the States, annual ''hold harmless'' payments and is published in an Annual Report to Congress. Respondents are limited to the designated child support enforcement agency in each State.

Respondents: States.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
396A	54	4	8	1,728
34A	54	4	8	1,728

Estimated Total Annual Burden Hours: 3,456.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: January 15, 1999.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 99–1459 Filed 1–21–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0038]

Agency Emergency Processing Under OMB Review; Survey of Biomedical Equipment Manufacturers for Year 2000-Compliant Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of manufacturers of Year 2000-vulnerable biomedical devices in order to obtain a list of their products that have been identified as being Year 2000-compliant. The list of the Year 2000-compliant biomedical devices will be made available to the public via the Federal Year 2000 Biomedical Clearinghouse on the World Wide Web. FDA is requesting OMB approval within 9 days of receipt of this submission.

DATES: Submit written comments on the collection of information by February 12, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. The information is needed immediately to allow health care facilities and others to assess their vulnerability to Year 2000 problems and to take corrective actions, if necessary, well in advance of January 1, 2000. The existence of a Year 2000 date problem in biomedical equipment, which includes medical devices and scientific laboratory equipment, could pose potentially serious health and safety consequences. It is vital that there be no Year 2000 failures of biomedical equipment. The use of normal clearance procedures would be likely to result in the prevention or disruption of this collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Biomedical Equipment Manufacturers for Year 2000-Compliant Products

Manufacturers of biomedical equipment that may be Year 2000-vulnerable will be asked to provide a list of their products that have been evaluated and found not to be impacted by the Year 2000 date issue. The information requested will include the specific manufacturer, product type, model and specific serial or version number (when applicable) of each product evaluated by the manufacturer and determined to be compliant. The request will also ask for a single point of contact at the manufacturer to discuss product information, including information on testing protocols.

The manufacturer will be able to provide the information directly to a government web site via the Internet or provide electronic or paper copy of the information to FDA for inclusion in the web site data base. Government agencies, as well as health care facilities and the general public, will have access to the web site and will use the information to assess currently owned equipment as well as to evaluate potential acquisitions. The posting of information on compliant products is designed to provide health care facilities with a positive statement as to the status of compliant products.

Respondents: Manufacturers of Year 2000-vulnerable medical devices and scientific laboratory products.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,500	1	3,500	12	42,000

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA mailing lists as well as experience with the data base on noncompliant products were used to estimate the number of manufacturers who would be subject to this collection. Based on experience with submissions to the noncompliant product data base as well as the estimated number of Year 2000-vulnerable biomedical products, FDA estimates that it will take manufacturers an average of 12 hours to collect, prepare, and submit the requested information. These estimates include allowance for variance in the number of compliant products to be reported by a manufacturer.

Dated: January 13, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–1507 Filed 1–21–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: December 1998

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of December 1998, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
PROGRAM-RELATED CONVICTIONS	
ABIR, FEREYDOON, KINGS POINT, NY	01/20/1999
AL-CARE, C S W, P C, ALBANY, NY	01/20/1999
BAYLISS, COLIN E, DOVER, OH	01/20/1999
BOONE, JENNIFER, DAVISBORO, GA	01/20/1999
BURKE-BAILEY, SARAH, FLINT, MI	01/20/1999
CANASI, MANUEL D, MIAMI, FL	01/20/1999
CARLETON, TIMOTHY B, HUDSON, NY	01/20/1999
DARMARAJAH, MUTTAIYA, PANAMA CITY, FL	01/20/1999
DIXON, ROBIN, COLLEGE PARK, GA	01/20/1999
DUDLEY, TAWANDA DENEAN, MAYSVILLE, NC	01/20/1999
FULBRIGHT, PAUL JR, WILLIAMSTON, SC	01/20/1999
GARRETT, JAMES A, AVERILL PARK, NY	01/20/1999
HALL, EDWIN P JR, DECATUR, GA	01/20/1999
JAMES, ROBERT E, SPRINGFIELD, NJ	01/20/1999
KABAT, DOUGLAS S, NISKAYUNA, NY	01/20/1999
LEWIS, RICKIE, DECATUR, GA	01/20/1999
LORING, W BRUCE, CATSKILL, NY	01/20/1999
MARSHALL, GARY, LEWISBURG, PA	01/20/1999
MARTINEZ, ROXANNA, SANDERSON, FL	01/20/1999
MATHIS, ALBERT F, COLLEGE PARK, GA	01/20/1999
MAYNARD, PATRICIA, ATLANTA, GA	01/20/1999
MCGRATH, MARY ANN, CLAVERICK, NY	01/20/1999
MEREDITH, ELISA B, HUDSON, NY	01/20/1999
MEREDITH, WINDY JO, SIOUX CITY, IA	01/20/1999
NHML, INC, NEW PHILADELPHIA, OH	01/20/1999
ORLANDO FAMILY PRACTICE, ORLANDO, FL	01/20/1999
PINKERTON, RAYMOND H, WESTERVILLE, OH	01/20/1999
RECOVERY COUNSELING ASSOC, INC, HUDSON, NY	01/20/1999
SAN JUAN, RAFAEL, RIVERDALE, NY	01/20/1999
SIMMONS, JENNIFER, GLEN ALLEN, VA	01/20/1999
SOLOMON, ROBERT L, DECATUR, GA	01/20/1999
STEFFEN, APRIL, PHOENIX, AZ	01/20/1999
THOMAS, MARVIN D, CLEVES, OH	01/20/1999
USA MEDICAL SYSTEMS, INC, CINCINNATI, OH	01/20/1999
VACCA, ALBERTO H, SANDERSON, FL	01/20/1999
WOLFE, JANE, QUEENS VILLAGE, NY	01/20/1999
PATIENT ABUSE/NEGLECT CONVICTIONS	
ASAY, JAMI, GLENDIVE, MT	01/20/1999
BAINES, DAISY L, MULLINS, SC	01/20/1999
BARLOW, CARLO PEDRO, HARTSVILLE, SC	01/20/1999
BRAGA, DJALMA, COLUMBIA, SC	01/20/1999
CHILDS, KAREN I, COLUMBUS, OH	01/20/1999
FRIERSON, LATONDRA QUINISE, MANNING, SC	01/20/1999
FRIX, MATTHEW ERIC, FORT GIBSON, OK	01/20/1999
GOTTO, KATHLEEN C, CASTANA, IA	01/20/1999
GRAY, JEANETTE C, KINGSTREE, SC	01/20/1999
IVORY, GREGORY, N CHARLESTON, SC	01/20/1999
JACKSON, CYNTHIA DIANE, TACOMA, WA	01/20/1999
JOHNSON, ROCHELLE, ATLANTA, GA	01/20/1999
JOHNSON, GARNETTA, AKRON, OH	01/20/1999
KOUSSANDIANOS, PAUL G, ROCKY RIVER, OH	01/20/1999
PRESTON, TONYA D, FLORENCE, SC	01/20/1999
PRYOR, JOHN H, CLEVELAND, OH	01/20/1999
RICHMOND, CHARLENE R, SALEM, OH	01/20/1999
ROBERTS, KATIE L, DARLINGTON, SC	01/20/1999
ROTHFUSS, MATTHEW, MUMFORD, NY	01/20/1999
STEARNS, MICHAEL Q, VIENNA, VA	01/20/1999
CONVICTION FOR HEALTH CARE FRAUD	
ELLIS-WHITING, MARGUEARITE, PORT GIBSON, MS	01/20/1999
VIDA, ALAIN MARTIN, PACIFIC PALISADES, CA	01/20/1999
CONTROLLED SUBSTANCE CONVICTIONS	
KELLER, RODNEY A, TIFFIN, OH	01/20/1999
SANO, DAVID P, ALLIANCE, OH	01/20/1999
LICENSE REVOCATION/SUSPENSION/ SURRENDERED	
AHERN, EDMUND FRANCIS JR, SHREWSBURY, MA	01/20/1999
AKIN-FERGUSON, CAROL, KNOXVILLE, IL	01/20/1999
ALLISON, BETH, SANTA ROSA, CA	01/20/1999
ANDERSON, JOHN POWELL, WAYNESBORO, VA	01/20/1999
ANDROES, JACOB JR, ESPANOLA, WA	01/20/1999
ASLAM, KHALID S, ISLAMABAD, PAKISTAN	01/20/1999
BARTSCHI, LARRY ROGER, CHICO, CA	01/20/1999
BENNETT, GINA LIN, GLENN ALLEN, MS	01/20/1999
BILLINGS, LORI D, NEW ALBANY, MS	01/20/1999
BLACKMON, LOLA MAE, JACKSON, MS	01/20/1999
BLUNT, LINDA D, GRANITE CITY, IL	01/20/1999
BOURLAND, GINA, CARBONDALE, IL	01/20/1999
BOYER, CATHY, SPRINGFIELD, IL	01/20/1999
BREAKFIELD, ELIZABETH B, COLUMBIA, MS	01/20/1999
BUCK, HARPER J, 129010 MOSCOW RUSSIA,	01/20/1999
BURKS, DELLAREE, CHICAGO, IL	01/20/1999
BUTLER, PAMELA SUE BOYLE, GRAND ISLAND, NE	01/20/1999
CARR, TERESA M, DES MOINES, IA	01/20/1999
CHEEK, JOHN C	01/20/1999

Subject, city, state	Effective date
SHAKER HTS, OH	
CHUANG, FRANCIS C ..... TAICHUNG, TAIWAN	01/20/1999
COOK, DAVID C ..... WHITTIER, CA	01/20/1999
DAGLE, CHARLES L ..... FORT DODGE, IA	01/20/1999
DANN, ELIZABETH A ..... ELDORADO, IL	01/20/1999
DAVIES, JOSEPH ALAN ..... CARSON CITY, NV	01/20/1999
DE LEON, JOSE MANUEL ..... APO AA,	01/20/1999
DUNN, JACK III ..... LUBBOCK, TX	01/20/1999
EASSA, JOSEPH ..... CARSON CITY, NV	01/20/1999
EMBRY, CAROLYN JOYCE .... KILLEEN, TX	01/20/1999
ESTRADA, ENRIQUE REYES JR ..... SAN ANTONIO, TX	01/20/1999
FADUL, OSCAR V ..... HUNTSVILLE, AL	01/20/1999
FAGBEYIRO, BRIDGET IYABO ARLINGTON, TX	01/20/1999
FISHER, MATTHEW E ..... COLUMBUS, OH	01/20/1999
GADDY, SARA (SALLY) M ..... BILOXI, MS	01/20/1999
GADEK, JAMES E ..... COLUMBUS, OH	01/20/1999
GIAMETTE, JILLANA ..... NEW HAVEN, CT	01/20/1999
GIARRATANO, SAMUEL ..... WESTERN SPRINGS, IL	01/20/1999
GIBBS, JOHNNA C ..... ALTON, IL	01/20/1999
GRAVES, JOSEPH P ..... SAN DIEGO, CA	01/20/1999
GRAY, JOHN E ..... LAS VEGAS, NV	01/20/1999
GREEN, JERRY DALE ..... GRAHAM, TX	01/20/1999
GRIFFITH, REBECCA JO ..... MARION, IA	01/20/1999
HALABE, STUART ..... WOODLAND HILLS, CA	01/20/1999
HARRIS, PATRICIA R ..... CHICAGO, IL	01/20/1999
HART, ELIZABETH A ..... ANKENY, IA	01/20/1999
HERSKOWITZ, RONALD ..... N ANDOVER, MA	01/20/1999
HILLS, WILLIAM T ..... WETHERSFIELD, CT	01/20/1999
HOLLINS, MARVIN DEWAYNE SEATTLE, WA	01/20/1999
HOOPER, SHELLEY ..... LAS VEGAS, NV	01/20/1999
HUGGS, MICHAEL ..... MADISON, MS	01/20/1999
HUNTWORTH, RICHARD ..... TERRE HAUTE, IN	01/20/1999
HUSS, GREGORY K ..... SPRINGFIELD, IL	01/20/1999
JANES, JAMES PAUL ..... CAMARILLO, CA	01/20/1999
JOHNSON, BRENDA COLLETTE ..... OAKLAND, CA	01/20/1999
JOHNSON, ROSA GOODE ..... PROSPECT, VA	01/20/1999
JONES, GWYN	01/20/1999
AURORA, IL	
JOYNER, DEBBIE P ..... COLLINSVILLE, MS	01/20/1999
KAMSON, ADETOKUNBO ..... MANHATTAN BEACH, CA	01/20/1999
KEYS, ANNA M ..... CHICAGO, IL	01/20/1999
KIFFMEYER, RITA A ..... STERLING, IL	01/20/1999
KOTT, JOHN R ..... LA GRANGE PARK, IL	01/20/1999
KRAFT, RUTH ..... CHICAGO, IL	01/20/1999
KRAMER, ANGELA M ..... NORRIDGE, IL	01/20/1999
LABROAD, DAVID ..... SUFFIELD, CT	01/20/1999
LAWSON, J D ..... PARADISE VALLEY, AZ	01/20/1999
LAYCHAK, CORRINE J ..... COLORADO SPRGS, CO	01/20/1999
LETH, ROBERT G ..... MAY CITY, IA	01/20/1999
LEWIS, KIMBERLY C ..... SPRINGFIELD, OH	01/20/1999
LOW, DARREN W ..... ELK GROVE VILLAGE, IL	01/20/1999
LUNA, BONNY ..... SUNNYVALE, CA	01/20/1999
LYON, BETHANY ..... DELTONA, FL	01/20/1999
MAHAFFEY, RACHAEL A ..... GRINNELL, IA	01/20/1999
MALONE, TERESAH ..... HOUSTON, TX	01/20/1999
MARKHAM, PAMELA JEAN .... AURORA, CO	01/20/1999
MARSHALL, JEANIE JO ..... PERRY, IA	01/20/1999
MARSHALL, SEAN K ..... IRVINE, CA	01/20/1999
MARTENSEN, KARRI ..... SPARKS, NV	01/20/1999
MASON, JEFFREY P ..... WESTERVILLE, OH	01/20/1999
MCCAIN, DAN L ..... HOLLYWOOD, CA	01/20/1999
MCCARTY, MATTIE L ..... MERIDIAN, MS	01/20/1999
MCCAUL, BRAD J ..... RED BLUFF, CA	01/20/1999
MEYER, RONALD E ..... NORRIDGE, IL	01/20/1999
MILAM, JOAN P ..... FRANKLIN, MA	01/20/1999
MIRIZIO, SHARYN ..... SOUTHINGTON, CT	01/20/1999
MITCHELL, JERRY III ..... LUCEDALE, MS	01/20/1999
MONGOLD, DOROTHY P ..... STAFFORD, VA	01/20/1999
MOORE, DANIELLE L ..... DUNDAS, VA	01/20/1999
MORALES, PAUL W ..... WEST COVINA, CA	01/20/1999
MORO, JOHN D ..... CHRISTOPHER, IL	01/20/1999
MUNDT, DONNA E ..... DIETERICH, IL	01/20/1999
MYLES, MARY V ..... LUMBERTON, MS	01/20/1999
NEWMAN, CASIE CHARLENE BILOXI, MS	01/20/1999
NNANJI, JOSHUA E	01/20/1999
CLINTON, IA	
NOVAK, GARY CHARLES ..... PARK RIDGE, IL	01/20/1999
O'CONNOR, PATRICK D ..... BREA, CA	01/20/1999
OLMSTEAD, BRUCE ALLEN ... APPLE VALLEY, CA	01/20/1999
PASION, EMEDITA ..... LAS VEGAS, NV	01/20/1999
PELLES, JUNE ..... LAS VEGAS, NV	01/20/1999
PETERSEN, VELMA E ..... ENCINITAS, CA	01/20/1999
PETTY, LISA R ..... SACRAMENTO, CA	01/20/1999
PHALSAPHIE, MANSOUR ..... HENDERSON, KY	01/20/1999
PIERCE, PAMELA S ..... WINDSOR, VA	01/20/1999
POSTEN, HOWARD ALAN ..... CLOVIS, CA	01/20/1999
RANGASWAMY, AVVARI ..... PIKEVILLE, KY	01/20/1999
REPERTINGER, SUSAN K ..... CORALVILLE, IA	01/20/1999
RICHARDS, CHARLES A ..... MOREHEAD CITY, NC	01/20/1999
RILEY, VIRGIL THOMAS ..... W DES MOINES, IA	01/20/1999
RODERICK, MARGARET ..... BEVERLY, MA	01/20/1999
SADLER, TONIA E ..... BOLINGBROOK, IL	01/20/1999
SALAZAR, GENARO L ..... MT PLEASANT, IA	01/20/1999
SANTIZO, SABINA DOROTHY NOVATO, CA	01/20/1999
SARNO-KRISTOFITS, DOLORES M ..... PERKASIE, PA	01/20/1999
SCHER, STEPHEN BARRY ..... LINCOLNTON, NC	01/20/1999
SCHUTZ, DAVID CHARLES .... ATLANTA, GA	01/20/1999
SEGOVIA, RICHARD LAWRENCE ..... RIVERSIDE, CA	01/20/1999
SHAHID, SYED IQBAL HUSSAIN ..... LOMITA, CA	01/20/1999
SHANNON, CHARLOTTA ..... HAZELHURST, MS	01/20/1999
SHEARY, JOHN E ..... GOSHEN, IN	01/20/1999
SHORE, JANET ..... WINSTON-SALEM, NC	01/20/1999
SMITH, BEVERLEE ..... LAS VEGAS, NV	01/20/1999
SNEED, CAMILLE MARIE ..... ARLINGTON, TX	01/20/1999
SOSA, RODOLFO JR ..... OCEANSIDE, CA	01/20/1999
SPELLMAN, MELISSA B ..... NORTHBROOK, IL	01/20/1999
STARR, MARY E ..... GAHANNA, OH	01/20/1999
STEWART, JANICE ..... OLIVE BRANCH, MS	01/20/1999
STIMAC, JANET L ..... DANVILLE, IL	01/20/1999
STRELKA, EUGENE P ..... SALEM, VA	01/20/1999
TACKETT, GRANVILLE E	01/20/1999

Subject, city, state	Effective date
NEWPORT NEWS, VA	
TARAVAT, MARY L ..... SKOKIE, IL	01/20/1999
TAYLOR, JENNIFER LYNN ..... ROANOKE, VA	01/20/1999
THOMPSON, HAROLD C ..... MERIDIAN, MS	01/20/1999
TIGUE, PATRICIA L ..... HAZEL CREST, IL	01/20/1999
TINDLE, CHRISTINA WILBANKS ..... BETHEL SPRINGS, TN	01/20/1999
TOLLIVER, PETRICH ..... PORTSMOUTH, VA	01/20/1999
TRAHAN, DALE B ..... SCHAUMBURG, IL	01/20/1999
VINEYARD, WALTER ..... GALESBURG, IL	01/20/1999
VOEGTLE, DAVID B ..... BERNARDSTON, MA	01/20/1999
WADE, NATHANIEL ..... CHICAGO, IL	01/20/1999
WARE, DIANA LYNN ..... BRYAN, TX	01/20/1999
WATERBURY, TERESA LYNNE ..... S SIOUX CITY, NE	01/20/1999
WHITFIELD, ANGELA ..... MURPHYSBORO, IL	01/20/1999
WIGTON, RICHARD JR ..... SAN RAMON, CA	01/20/1999
WILLIAMS, OTIS A JR ..... ENGLEWOOD, NJ	01/20/1999
WOLF, DOROTHY V ..... QUINCY, IL	01/20/1999
WOODS, ROBIN ANTIONETTE BURLINGTON, NC	01/20/1999
WRIGHT, JOHN MICHAEL ..... GLENDORA, CA	01/20/1999
YATES, WILLIAM M ..... COLUMBIA, SC	01/20/1999
ZIELINSKI, CAROLE M ..... PARK RIDGE, IL	01/20/1999
FEDERAL/STATE EXCLUSION/ SUSPENSION	
ALPHA BETA MEDICAL SUPPLY ..... PHILADELPHIA, PA	01/20/1999
COANNE PHARMACY, INC ..... BRONX, NY	01/20/1999
L & Z TRANSPORTATION ..... EDISON, NJ	01/20/1999
QAYYUM, ABDUL ..... BRONX, NY	01/20/1999
SCHMAEVICH, BETTA ..... BROOKLYN, NY	01/20/1999
SCHMEHL, ROLAND MALCOLM ..... WESTBROOK, ME	01/20/1999
T J & E SALES & SERVICES CORP ..... NEW YORK, NY	01/20/1999
YIH, JOY ..... NEW YORK, NY	01/20/1999
YIH, TEDDY ..... NEW YORK, NY	01/20/1999
ZELTSER, LAZAR ..... EDISON, NJ	01/20/1999
OWNED/CONTROLLED BY CONVICTED/ EXCLUDED	
GARY MARSHALL & ASSOCIATES ..... MARIETTA, GA	01/20/1999
GEORGIA COMMUNITY HELP CENTER ..... MARIETTA, GA	01/20/1999
P & D SURGICAL, INC ..... NEW HAVEN, CT	01/20/1999
PREFERRED MEDICAL EQUIPMENT ..... TAMPA, FL	01/20/1999
PREFERRED MEDICAL, INC .. ATLANTA, GA	01/20/1999
PREVENTIVE MEDICENTER, INC ..... MIAMI, FL	01/20/1999
DEFAULT ON HEAL LOAN	
ALABI, AMOS A ..... BRONX, NY	01/20/1999
ATTERSON, ALLEN LEE ..... FORTWORTH, TX	01/20/1999
BEATY, BRENDA L ..... OLATHE, KS	01/20/1999
BEATY, WILLIAM CHRISTOPHER JR ..... OLATHE, KS	01/20/1999
BERRY, SCOTT T ..... SANTA BARBARA, CA	01/20/1999
BOILLOTAT, GARY L ..... HARVEY, LA	01/20/1999
BROSSARD, IRIS A ..... WICHITA, KS	01/20/1999
BURNEY, DAWN W ..... JACKSONVILLE, FL	01/20/1999
CONN, RONALD J ..... LOVELAND, OH	01/20/1999
CRANDALL, DON R ..... HOUSTON, TX	01/20/1999
CREGO, RAYDEL F ..... ELIZABETH, NJ	01/20/1999
DOYLE, TIMOTHY P ..... BELLEVUE, WA	01/20/1999
DUARTE, DAVID ALLEN ..... LOS ANGELES, CA	01/20/1999
DWIGHT, JONATHAN B ..... ALBURQUERQUE, NM	01/20/1999
ECHALK, EDWARD E ..... STILLWATER, OK	01/20/1999
FAIR, DAVID F ..... KNOXVILLE, TN	01/20/1999
FISHER, JACQUELINE ..... HO HO KUS, NJ	01/20/1999
FORD, HELEN E ..... PHILADELPHIA, PA	01/20/1999
FULTON, DEBRA ..... TOLEDO, OH.	12/08/1998
GALLUCCI, DON A ..... DEDHAM, MA	01/20/1999
GITTENS, KENNETH ALPHONS ..... WACO, TX	01/20/1999
GLASSMAN, CLIFFORD ..... PASADENA, CA.	12/18/1998
GRATSON, MICHAEL W JR .... ARLINGTON, TX	01/20/1999
HAINES, STEVEN M ..... JACKSON, NJ	01/20/1999
HALL, PATRICIA L ..... FORT WORTH, TX	01/20/1999
HANSEN, ROBERT E ..... PASADENA, CA	01/20/1999
HOBOWSKY, MARTIN R ..... CARSON CITY, MI.	12/31/1998
IRACI, CYNTHIA L ..... CANTON, GA	01/20/1999
JUSTICE, MICHAEL W ..... BIRMINGHAM, AL	01/20/1999
KEO, DUONGVANNAK ..... NORWOOD, MA	01/20/1999
LACKOVIC, MICHELLE F ..... CHARLESTOWN, NH	01/20/1999
LACY, JESSE M ..... PALM BAY, FL	01/20/1999
LAURENTS, JOHN MARK ..... PORT NECHES, TX	01/20/1999
MARTIN, BARBARA L ..... BEAUMONT, TX	01/20/1999
MOORE, DOUGLAS B ..... BETTENDORF, IA	01/20/1999
MOSES, ROBERT NELSON .... JACKSONVILLE, FL	01/20/1999
POOLE, CHARLES KAVANAUGH ..... VIRGINIA BEACH, VA	01/20/1999
RAJA, ABDULRAHMAN A ..... KANSAS CITY, MO .	01/20/1999
RINKLEIB, KAREN M ..... PENN VALLEY, CA	01/20/1999
RODRIGUEZ-FEO, CARLOS JOSE ..... MIAMI, FL	01/20/1999
ROSS-MATHIS, JEAN ANN ..... MADISON, AL	01/20/1999
SESSIONS, DAVID B ..... TAYLORSVILLE, UT	01/20/1999
SHAHRESTANI, SHAHRIAR .... ANAHEIM, CA	01/20/1999
SMITH, HARRY H ..... GARY, IN	01/20/1999
STIVALI, ALFRED M III ..... DECATUR, GA	01/20/1999
SUGGS, RONNIE E ..... ORLANDO, FL	01/20/1999
TUCKER, MICHAEL J ..... CHEROKEE, IA	01/20/1999
TUCKER, JONATHAN L ..... CHELSEA, MA	01/20/1999
WHIGHAM, GWENDOLYN E ... HOUSTON, TX	01/20/1999
WILSON, PAMELA J ..... COLUMBUS, OH	01/20/1999
YOUNG, KAREN L ..... NEW HOPE, PA	01/20/1999
ZACCAGLIN, ANTHONY B ..... GRAND TERRACE, CA	01/20/1999

Dated: January 11, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–1497 Filed 1–21–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

ADDRESSES: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301/496–7057; fax: 301/402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications

Amino-Terminus-Modified Eosinophil-Derived Neurotoxin and Its Selective Toxicity to Kaposi's Sarcoma Cell Line, KS Y–1

Dr. Susanna M. Rybak and Dr. Dianne L. Newton (NCI)
Serial No. 60/106,732 filed 02 Nov 98
Licensing Contact: J.R. Dixon; 301/496–7056 ext. 206; e-mail: jd212g@nih.gov

The invention described in this patent application is related to the field of cancer/HIV therapeutics. More particularly, the invention relates to the creation and identification of a compound which, in *in vitro* assays, is selectively cytotoxic for Kaposi's sarcoma cells and therefore may prove useful for developing a therapeutic treatment for Kaposi's sarcoma. The compound, a derivative of human eosinophil-derived neurotoxin (''EDN''), was obtained by altering the mature EDN protein at its amino terminus. EDN, a ribonuclease, has previously been shown to be cytotoxic when delivered to cells as an immunotoxin. The EDN derivative of this patent application has been constructed by adding to the NH_2 terminus of the mature EDN protein the four (4) naturally-occurring COOH terminal amino acids of the signal sequence of EDN, SLHV. Normall, this signal sequence is cleaved from EDN to obtain the mature, functional protein.

Tissue Microarray For Rapid Molecular Profiling

O Kallioniemi, G. Sauter (NHGRI)
DHHS Reference No. E–007–99/0 filed 28 Oct 98
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; e-mail: rr154z@nih.gov

Recent advances in molecular medicine have provided new opportunities to understand cellular and molecular mechanisms of disease and to select appropriate treatment regimens with the greatest likelihood of success. The clinical application of novel molecular, genetic and genomic discoveries has been impeded by the slow and tedious process of evaluating biomarkets in large numbers of clinical specimens. The present invention provides a method of high-throughput molecular profiling of very large numbers of tissue specimens, such as tumors, with minimal tissue requirements. This procedure provides a target for rapid parrallel analysis of biological and molecular characteristics (such as gene dosage and expression) from hundreds of morphologically controlled tumor specimens. Multiple sections can be obtained from such tissue microarrays (''tissue chips'') so that each section contains hundreds or thousands of different tissue specimens that maintain their assigned locations. Different in situ analyses, such as histological, immunological, or molecular, are performed on each section to determine the frequency and significance of multiple molecular markers in a given set of tissues. This method can also be combined with other technologies such as high-throughput genomics surveys using NA microarrays. DNA microarrays enable analysis of thousands of genes from one tissue specimen in a single experiment, whereas the tissue microarrays make it possible to analyze hundreds or thousands of tissue specimens in a single experiment using a single gene or protein probe. Together the DNA and tissue microarray technologies will be very powerful for the rapid analysis of markers associated with disease prognosis or therapy outcome.

Inhibitors of Formation of Protease Resistant Prion Protein

B Chesebro, B Caughey, J Chabry, S Priola (NIAID)
Serial No. 09/128,450, filed 03 Aug 98
Licensing Contact: George Keller; 301/496–7735 ext. 246; e-mail: gk40j@nih.gov.

The current invention provides peptides and pharmaceutical compositions that are useful to inhibit formation of protease resistant prion proteins (PrPres) such as the PrPres associated with transmissible spongiform encephalopathies (TSE). Certain synthetic peptides which incorporate the most amyloidogenic region of the PrP protein can inhibit the formation of PrPres under conditions where it would otherwise be formed. Such specific inhibition of the formation of PrPres may prevent or slow the deposition of amyloid deposits in the tissues of animals that have been exposed to a TSE or are suffering from a neurodegenerative disorder having the characteristics of a spongiform encephalopathy. For more information, see Chabry, Jr. et al. (1998) Specific Inhibition of *in vitro* Formation of Protease-Resistent Prion Protein by Specific Peptides, *J. Biol. Chem. 273*, 13203–13207.

Transcriptional Activation of the C-Mos Oncogene Is Associated With Disease Progression in HIV Infection

DI Cohen (NCI)
Serial No. 60/093,121 filed 15 Jul 98
Licensing Contact: George Keller; 301/496–7735 ext. 246; e-mail: gk40j@nih.gov

the current invention provides methods of diagnosing and staging pathogenic lentivirus infections, specifically HIV, by detecting activation of the *c-mos* gene. The binding of the HIV envelope glycoprotein, during cell-cell infection, to CXC chemokine receptors, leads to transcriptional activation of the c-mos gene. The invention also provides a method for treating a cell proliferative disorder associated with c-mos activity, such as HIV inspection, by treating a subject having the disorder with a composition that regulates *c-mos* activity or expression. In addition, compounds that modify *c-mos* express in specific cells can be identified, using this invention.

The HIV co-culture system can be used to initiate *c-mos* dependent cell death. Death in this system is dependent on the level of *c-mos* induction. Pharmacological agents that either also induce *c-mos*, or stabilize *c-mos* following its induction, would accelerate this death process. Therefore, this technology defines a method of screen for novel anti-proliferative drugs capable of interacting with this unique *c-mos* death pathway.

β_2-Microglobulin Fusion Proteins and High Affinity Variants

RK Ribaudo, M Shields (NCI)
Serial No. 60/088,813 filed 10 Jun 98

Licensing Conact: Peter Soukas; 301/496–7056 ext. 268; e-mail: ps193c@nih.gov

This invention concerns fusion proteins comprising (β_2M), a component of the MHC–1 complex, and immunologically active proteins such as the co-stimulatory molecule B7. The fusion proteins, and nucleic acids encoding them, have broad utility activating Cytotoxic T Lymphocytes (CTLs) against viruses and tumors. The fusion proteins locate to the surface of MHC–1 expressing cells. They may be used as adjuvants to enhance the efficacy of MHC–1 binding peptides, from viruses or cancer antigens, as vaccines. The fusion proteins can be used, *in vivo* or *ex vivo*, to enhance the immunogenicity of cancer cells to cause their destruction by the immune system. B7-β_2M is as effective at co-stimulating T-cells in comparison to anti-CD28 monoclonal antibodies, whereas wild-type β_2M is ineffective at co-stimulating T-cells. In addition, B7-β_2M induces better recognition and killing of tumor cell lines compared to wild-type β_2M. Another aspect of the invention is a mutant human β_2M that binds MHC–1 with higher affinity than wild-type β_2M. It can be used in place of wild-type β_2M, including in the fusion proteins, to greater effect.

Disubstituted Lavendustin a Analogs and Pharmaceutical Compositions Comprising the Analogs

VL Narayanan, EA Sausville, G Kaur, R Varma (NCI)
Serial No. 60/076,330 filed 27 Feb 98
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention discloses lavendustin A analogs that are protein tyrosine kinase (PTK) inhibitors having antiproliferative activity. A preferred compound, based on in vivo biological activity, is 4'-adamantylmethylbenzoate-1'-N-1,4-dihydroxybenzylamine. Pharmaceutical compositions comprising effective amounts of lavendustin are also covered; such compositions also may comprise other active ingredients and other materials typically used in such pharmaceutical formulations.

These compounds and compositions of the invention may be used for treating subjects to, for example, inhibit the proliferation of living cells for treatment of proliferative diseases.

Oligodeoxyribonucleotides Comprising O^6-Benzylguanine and Their Use

R Moschel et al. (NCI)
Serial No. 09/023,726 filed 13 Feb 98
Licensing Contact: Girish Barua; 301/496–7056 ext. 263; e-mail: gb18t@nih.gov

The invention provides single-stranded oligodeoxyribonucleotides which are more potent than O6-benzylguanine in inactivating human O^6-alkylguanine-DNA alkyltransferase (AGT). The oligodeoxyribonucleotides comprise from about 5 to 11 bases, at least one of which is a substituted or an unsubstituted O^6-benzylguanine. The oligodeoxyribonucleotides have several advantages over O^6-benzylguanine. They can inactivate mutant human AGTs that are either not inactivated or incompletely inactivated by O^6-benzylguanine. They have greater solubility in water than O^6-benzylguanine, and they react much more rapidly with AGT than does O^6-benzylguanine. The invention also provides compositions comprising such oligodeoxyribonucleotides. In addition, the invention provides a method of enhancing the effect of antineoplastic alkylating agents that alkylate the O^6 position of guanine residues in DNA for the chemotherapeutic treatment of cancer in a mammal.

Shielded Ultrasound Probe

H Wen, E Bennett (NHLBI)
DHHS Reference No. E–017–98/0 filed 12 Nov 97
Licensing Contact: John Fahner-Vihtelic; 301/496–7735 ext. 270; *e-mail*: jf36z@nih.gov

The invention relates to the recently developed imaging method called Hall Effect Imaging (HEI). HEI involves the use of a magnetic field and electrical or ultrasound pulses applied to an object to generate an image of the object. HEI has the potential to become a novel medical imaging technique, revealing features not seen in existing imaging methods. Performing HEI with conventional ultrasound transducers is difficult due to electrical interference, though. The present invention is a design for an ultrasonic transducer which overcomes these difficulties. This design may be made as a modification of a commercial ultrasound probe, thereby lowering the cost of development and production.

Methods for Use of Interleukin-4 (IL–4) and Tumor Necrosis Factor-Alpha (TNF–α) To Treat Human Immunodeficiency Virus (HIV) Infection

George N. Pavlakis, Antonio Valentin, Barbara K. Felber (NCI)
DHHS Reference No. E–160–96/1 filed 18 Sep 98 (claiming priority of U.S. Provisional 60/059,359 filed 19 September 1997)
Licensing Contact: J. Peter Kim, 301/496–7056 ext. 264; *e-mail*: jk141n@nih.gov

AIDS (acquired immunodeficiency syndrome), first reported in the United States in 1981, has become a worldwide epidemic, crossing all geographic and demographic boundaries. More than 475,000 cases of AIDS have been reported in the United States since 1981 and more than 295,000 deaths have resulted in the U.S. from AIDS. Over 1.5 million Americans are thought to be infected with HIV (human immunodeficiency virus), the causative agent of AIDS.

The subject invention relates to the interactions of the cytokines, interleukin-4 (IL–4) and tumor necrosis factor alpha (TNF-α), with HIV and HIV targets in the body. The invention provides methods for characterizing isolates of HIV according to susceptibility to the viral replication inhibiting effects of IL–4 and methods for use of TNF-α, IL–4, IL–4 analogs, and/or inhibitors of IL–4 to treat patients infected with specific isolates of HIV. The methods include a method for determining the prognosis of a patient infected with HIV, a method for down-regulating CCR5 expression in a cell, and methods for treating patients infected with CCR5 dependent isolate of HIV or CXCR4 dependent isolate of HIV.

Novel FUSE-Binding Protein and cDNA

DL Levens, RC Duncan, MI Avigan (NCI)
U.S. Patent 5,580,760 issued 03 Dec 96; U.S. Patent 5,734,016 issued 31 Mar 98; PCT/US97/21679 filed 21 Nov 97
Licensing Contact: Richard Rodriguez; 301/496–7056 ext. 287; *e-mail:* rr154z@nih.gov

This invention includes the gene sequence for a novel proto-oncogene binding protein that is valuable for studying the regulation of genes responsible for transforming normal cells to cancer cells. The c-myc proto-oncogene plays a central role in normal cell proliferation and programmed cell death; factors that inhibit its expression thus contribute to the formation of a variety of tumors. This newly isolated gene sequence encodes a protein that binds to the far-upstream element (FUSE) of the c-myc gene, which has been shown to be required to its maximal transcription. The FUSE-binding protein gene sequence may be used to analyze mutations, translocations, and other genetic derangements that are associated with abnormalities of the FUSE protein or c-myc expression. Such DNA probes also may be useful for diagnosing a variety of physiologic and pathologic

conditions, such as the transformation of normal cells to tumor cells. The FUSE-binding protein also may be used for developing mAbs that can be used to detect and quantitate the protein in biologic samples.

Fluorescent Hybridization Probes not Requiring Separation of Products

ME Hawkins, W Pfleiderer, MD Davis, FM Balis (NCI)
U.S. Patent 5,525,711 issued 11 Jun 96; U.S. Patent 5,612,468 issued 18 Mar 97; DHHS Reference No. E–155–96/1; PCT/US97/22448 filed 10 Dec 97
Licensing Contact: L. Manja R. Blazer; 301/496–7056 ext. 224; e-mail: mb379c@nih.gov

Fluorescent guanosine analogs (excitation at 340 nm, emission at 450 nm) are incorporated into oligonucleotides through a native deoxyribose linkage using automated DNA synthesis which allows them to base stack with native bases. As a result, slight changes in DNA structure can cause significant changes in spectral properties. These compounds are highly fluorescent as monomers in solution, but lose intensity in oligonucleotides. The use of these fluorophores as hairpin hybridization probes is based on the dramatic fluorescence increase that occurs upon them being squeezed out of the strand during annealing where the probe has not been provided with a base-pairing partner in the complementary strand. The degree of increase depends on the oligonucleotide sequence and the annealing strands' concentration. It allows the detection of specific DNA sequences in a mixture without separation of annealed and labeled products. These stable probes are treated as normal phosphoramidites during the DNA synthesis and subsequent de-blocking procedures.

This research has been published in Nucleic Acids Research, 23 (1995) 2872–2880 and Analytical Biochemistry, 244 (1997) 86–95.

Dated: January 13, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–1424 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Shared Resources for Scientists Outside NCI Cancer Centers.

Date: February 17, 1999.

Time: 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn Rockville, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Administrator, National Institutes of Health, National Cancer Institute, Special Review, Referral and Resources Branch, Executive Plaza North, 6130 Executive Boulevard, Bethesda, MD 20892, 301/435–9050.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1427 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Acquired Immunodeficiency Syndrome Research Review Committee.

Date: February 18–19, 1999.

Open: February 18, 1999, 8:00 am to 9:00 am.

Agenda: The meeting will be open for discussion of administrative details relating to committee business and program review, and for a report from the Director, Division of Extramural Activities, which will include a discussion of budgetary matters.

Place: Wyndham Washington Hotel, 1400 M Street NW, Washington, DC 20005–2750.

Closed: February 18, 1999, 9:00 am to adjournment on February 19, 1999.

Agenda: To review and evaluate grant applications.

Place: Wyndham Washington Hotel, 1400 M Street NW, Washington, DC 20005–2750.

Contact Person: Paula S. Strickland, PhD., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc 99–1425 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Drug Abuse.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign

language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Drug Abuse.

Date: February 2–3, 1999.

Closed: February 2, 1999, 2:00 pm to 5:00 pm

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building 45, 45 Center Drive, Bethesda, MD 20892.

Open: February 3, 1999, 9:00 am to Adjournment.

Agenda: This portion of the meeting will be open to the public or announcements and reports of administrative, legislative and program developments in the drug abuse field.

Place: National Institutes of Health, Natcher Building 45, 45 Center Drive, Bethesda, MD 20892.

Contact Person: Teresa Levitin, Phd, Director, Office of Extramural Program Review, National Institute on Drug Abuse, National Institutes of Health, DHHS, Bethesda, MD 10892, (301) 5554–2755.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institute of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Springfield,

Committee Management Officer, NIH.

[FR Doc. 99–1426 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C., Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group, Violence and Traumatic Stress Review Committee.

Date: February 8–9, 1999.

Time: 8:30 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Mary Sue Krause, MEDS, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Services Research Review Committee.

Date: February 9–10, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Clinical Psychopathology Review Committee.

Date: February 11–12, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: Jack D. Maser, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Health Behavior and Prevention Review Committee.

Date: February 17, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th Street, NW, Washington, DC 20037.

Contact Person: Lawrence E. Chaitkin, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Treatment Assessment Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Henry J. Haigler, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20847, 301–443–3367.

Name of Committee: National Institute of Mental Health Initial Review Group, Social and Group Processes Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Sheila O'Malley, MA, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Disorders of Aging Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: River Inn, 924 25th Street, NW, Washington, DC 20037.

Contact Person: David Chananie, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Child Psychopathology and Treatment Review Committee.

Date: February 18–19, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9C–18, Rockville, MD 20857, 301–443–1340.

Name of Committee: National Institute of Mental Health Initial Review Group, Child/Adolescent Development, Risk, and Prevention Review Committee.

Date: February 18–19, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Victoria S. Levin, MSW, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600

Fishers Lane, Room 9C–26, Rockville, MD 20857, 301–443–6470.

Name of Committee: National Institute of Mental Health Initial Review Group, Perception and Cognition Review Committee.

Date: February 18–19, 1999.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle, 1 Washington Circle, NW, Washington, DC 20037.

Contact Person: Russell E. Martenson, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–101, Rockville, MD 20857, 301–443–3936.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1428 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: February 4–5, 1999.

Closed: February 4, 1999, 10:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Parklawn Building, Conference Room E, 5600 Fishers Lane, Rockville, MD 20857.

Open: February 5, 1999, 8:00 am to 2:45 pm.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jane A. Steinberg, PhD, Executive Secretary, Acting Director, Division of Extramural Activities, National Institute of Mental Health, NIH, Parklawn Building, 5600 Fishers Lane, Room 9–105, Rockville, MD 20857, 301–443–3367.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: January 14, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–1429 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Co-Exclusive License: erbB–2/HER2/*neu* Gene Segments, Probes, Recombinant DNA and Kits for Detection

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(I), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a co-exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial Number 08/475,035, entitled ''erbB–2 Gene Segments, Probes, Recombinant DNA and Kits for Detection'' filed June 7, 1995, and U.S. Patent Application Serial Number 07/110,791, entitled ''Human Gene Related To But Distinct From EGF Receptor'', filed October 21, 1987 to Ventana Medical Systems, Inc., Having a place of business in Tucson, AZ. This announcement supersedes the prior Notice of Intent to Grant published on October 19, 1998. The patent rights in this invention have been assigned to the United States America.

DATES: Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer on or before March 23, 1999 will be considered.

ADDRESSES: Requests for a copy of the patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Susan S. Rucker, J.D., Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 245; Facsimile: (301) 402–0220.

SUPPLEMENTARY INFORMATION: In an effort to identify genes which are associated with cancer, the invention described in these patent applications includes a gene, related to the epidermal growth factor, now known as erbB–2/HER2/*neu*. Research related to this gene has indicated that the gene is implicated in breast and other cancers. While the amplification of this gene has been demonstrated to have prognostic value with respect to breast cancer additional development is needed to determine whether or not the gene has value as a prognostic indicator for other types of cancer or may serve as an indicator which can be sued to select the proper course of treatment for breast and other cancers.

The prospective co-exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use may be limited to the development of nucleotide-based diagnostic and prognostic uses, regulated by the Food and Drug Administration, of the invention for cancers other than breast cancer including, but not necessarily limited to, prostate, ovarian, and bladder cancers.

Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released

under the Freedom of Information Act, 5 U.S.C. 552.

Dated: January 13, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–1423 Filed 1–21–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 1999 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Mental Health Services (CMHS), announces the availability of FY 1999 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA) before preparing an application.

Activity	Application deadline	Estimated funds available	Estimated number of awards	Project period
Child Mental Health Initiative	4/21/99	$20–25 Million	20–25	Up to 5 yrs.

Note: SAMHSA will publish additional notices of available funding opportunities for FY 1999 in subsequent issues of the **Federal Register**.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 1999 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 105–277. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

General Instructions: Applicants must use application form PHS 5161–1 (Rev. 5/96; OMB No. 0937–0189). The application kit contains the GFA (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity (i.e., the GFA) described in Section 3 are available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission: Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710.*

(* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Application Deadlines: The deadline for receipt of applications is listed in the table above.

Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing.

Applications received after the deadline date and those sent to an address other than the address specified above will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3).

Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Table of Contents

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and

consumers to effectively use that knowledge in everyday practice.

SAMHSA differs from other agencies in focusing on needed information at the services delivery level, and in its question-focus. Dissemination and application are integral, major features of the programs. SAMHSA believes that it is important to get the information into the hands of the public, providers, and systems administrators as effectively as possible. Technical assistance, training, preparation of special materials will be used, in addition to normal communications means.

SAMHSA also continues to fund legislatively-mandated services programs for which funds are appropriated.

2. Criteria for Review and Funding

Consistent with the statutory mandate for SAMHSA to support activities that will improve the provision of treatment, prevention and related services, including the development of national mental health and substance abuse goals and model programs, competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures.

2.1 General Review Criteria

As published in the **Federal Register** on July 2, 1993 (Vol. 58, No. 126), SAMHSA's ''Peer Review and Advisory Council Review of Grant and Cooperative Agreement Applications and Contract Proposals,'' peer review groups will take into account, among other factors as may be specified in the application guidance materials, the following general criteria:

- Potential significance of the proposed project;
- Appropriateness of the applicant's proposed objectives to the goals of the specific program;
- Adequacy and appropriateness of the proposed approach and activities;
- Adequacy of available resources, such as facilities and equipment;
- Qualifications and experience of the applicant organization, the project director, and other key personnel; and
- Reasonableness of the proposed budget.

2.2 Funding Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process.

Other funding criteria will include:

- Availability of funds.

Additional funding criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 1999 SAMHSA Activities

3.1 Grants

3.1.1. Comprehensive Community Mental Health Services for Children and Their Families (Child Mental Health Initiative)

- Application Deadline: April 21, 1999
- Purpose: Under Sec. 561(a) of the Public Health Service Act grants will be awarded to implement, in one or more communities, a broad array of community-based and family-focused services for children with serious emotional disturbance and their families, including individualized case planning and coordination, and to enable communities to integrate child- and family-serving agencies, including health, mental health, substance abuse treatment, child welfare, education, and juvenile justice into a local comprehensive system of care. The statute further requires that an evaluation of the system(s) of care implemented under the Program be conducted and that it include, among other things, longitudinal studies of the outcomes of services provided by such systems. (Sec. 565(c)(1) of the PHS Act).

The primary goal of the program is to successfully implement systems of care at the grant sites. A second goal after implementing systems of care, is evaluation of the outcomes of services delivered under the system. This will be accomplished through a national multi-site evaluation conducted under a separate contract and grantees will be required to cooperate with the multi-site evaluation contractor. The final goal of the Program is to use the results of both the system development efforts of each service site and the results of the descriptive, process and outcome evaluation to shape future program direction with proven exemplary practices that work best for children and their families.

- Eligible Applicants: Eligibility is limited by statute to ''public entities.'' A public entity is defined for this purpose (in Section 561(a)(2) of the PHS Act) as any State, any political subdivision of a State, and Indian tribe or tribal organization (as defined in Section 4(b) and Section 4(c) of the Indian Self-Determination and Education Assistance Act). The applicant entity must be qualified to deliver services under the State Medicaid Plan and have an agreement to do so, either directly or through a service provider organization. In order for an entity to be eligible, a plan must be in place for the development of a system of care for community-based services for children with a serious emotional disturbance approved by the Secretary of the U.S. Department of Health and Human Services per Sec. 564(b) of the PHS Act. For the purposes of this program, an approved State Mental Health Plan for Children and Adolescents with Serious Emotional Disturbance, submitted under Public Law 102–321, will be accepted as such a plan. This does not apply to Indian tribe or tribal organization applicants.
- Amount: Approximately $20–25 million will be available to support twenty (20) to twenty-five (25) awards under this GFA in FY 1999. Actual funding will depend upon the availability of funds at the time of award. These grants are for a period of 5 years; it is anticipated that an average of approximately $1 million will be available to each grantee in year one; $1.25 million in year two; $2 million in year three, $1.5 million in year four, and $1.5 million in five. An applicant must arrange and demonstrate the availability of matching non-Federal funds in statutorily mandated ratios. [NOTE: Applicants must see full GFA for the specific ratios].
- *Catalog of Federal Domestic Assistance Number:* 93.104.
- Program Contact: For programmatic or technical assistance, contact: Gar De Carolis, Chief, Child, Adolescent, and Family Branch, Division of Knowledge Development and Systems Change, Center for Mental Health Services/SAMHSA, Room 18–49, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1333/FAX (301) 443–3693, Internet: gdecarol@samhsa.gov.

For grants management issues, contact: Steve Hudak, Grants Management Officer, Office of Program Services/SAMHSA, Room 15C–05, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–4456/FAX (301) 594–2336, Internet: shudak@samhsa.go.

- For application kits, contact: IQ Solutions, Inc., 11300 Rockville Pike Suite 801, Rockville, MD 20852 Voice: (301) 984–1471, FAX: (301) 984–1333, E-mail: PTaylor@IQSolutions.com.
- CMHS intends to sponsor four technical assistance workshops for potential applicants. For more information, potential applicants may contact: Ken Currier, Director, Technical Assistance Operations, National

Resource Network for Child and Family Mental Health Services, Washington Business Group on Health, 777 North Capitol Street, N.E., Suite 800, Washington, D.C. 20002, (202) 408–9320/FAX (202) 408–9332, Internet: currier@wbgh.com.

4. Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

5. PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 1999 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Office of Extramural Activities, Policy and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: January 14, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–1506 Filed 1–21–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–05]

Submission for OMB Review: Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments due date:* February 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 13, 1999.

Wayne Eddins,

Reports Management Officer.

Title of Proposal: Letter of Transmittal/Servicing Agreement/ Resolution of Board Director and Certificate of Authorized Signatures.

Office: Government National Mortgage Association.

OMB Approval Number: 2503–0016.

Description of The Need For The Information and its Proposed use: Form HUD–11700, Letter of Transmittal, is used by issuers to transmit to GNMA required materials to request approval of all applications to become a mortgage-backed securities issuer. Form HUD–11702, Resolution of Board of Directors and Certificate of Authorized Signatures, is used to provide GNMA with the names and signatures of the Board of Directors of the issuer's organization. Form HUD–11707, Servicing Agreement, is used by the issuer to provide assurance to GNMA that servicing of the mortgages backing the securities will be performed at an acceptable standard.

Form Number: HUD–11700, 11702 and 11707.

Respondents: Federal Government and Business or Other-For-Profit.

Frequency of Submission:

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11700	399		4		.17		270
HUD–11702	399		1		.17		68

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–11707	399		59		.17		4002

Total Estimated Burden Hours: 4340.

Status: Reinstatement with changes.

Contact: Sonya Suarez, HUD, (202) 708–2772; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 13, 1999.

[FR Doc. 99–1386 Filed 1–21–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4441–N–04]

Submission for OMB Review; Comment Request

AGENCY: Office of the Assistant Secretary for Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: February 22, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–1305. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) the title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, of revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: January 13, 1999.

Wayne Eddins,

Reports Management Officer.

Title of proposal: Financial Statement.

Office: Office of Housing.

OMB Approval Number: 2502–0098.

Description of the Need for the Information and Its Proposed Use: Credit information manufactured housing property improvement loans authorized by Title I Section 2 of the National Housing Act P.L. 479, 48 Stat. 1246, U.S.C. 17101 et seq. This form is used by HUD in determining factors involved when compromises are reached with borrowers to lighten the financial burdens in given cases of Title I Homes Improvement and Manufactured Home Loans.

Form Number: HUD–56142.

Respondents: Individuals or Households.

Frequency of Submission: On Occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
	1258		1		1		1258

Total Estimated Burden Hours: 1258.

Status: Reinstatement without changes.

Contact: Lester J. West, HUD, (518) 464–4200 x4206; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: January 13, 1999.

[FR Doc. 99–1387 Filed 1–21–99; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–03]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnson, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR Part 581 and section 501 of the Stewart B. McKinney Homeless Assistant Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist

the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property avaiable for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made avaiable for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maiximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–2059; INTERIOR: Ms. Lola D. Kane, Department of the Interior, 1849 C Street, NW, Mail Stop 5512–MIB, Washington, DC 20240; (202) 208–4080; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: January 14, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 1/22/99

Suitable/Available Properties

Buildings (by State)

California

Naval & Marine Corps Readiness
1700 Stadium Way
Los Angeles CO: Los Angeles CA 90012–
Landholding Agency: GSA
Property Number: 54199910005
Status: Excess
Comment: 133,484 sq. ft., suffered seismic damage, presence of asbsetos/lead paint, historic convenants, 45% of property will revert to City
GSA Number: 9–N–CA–1523

Kansas

Bldg. 2703
Forbes Field, Topeka Air Industrial Park
Topeka Co: Shawnee KS
Landholding Agency: GSA
Property Number: 54199840014
Status: Excess
Comment: 192,985 sq. ft., needs repair, most recent use—storage/warehouse
GSA Number: 7–D–KS–422–111

Mississippi

Quarters 163
Natchez Trace Parkway
Ridgeland Co: Madison MS 39157–
Landholding Agency: Interior
Property Number: 61199910003
Status: Excess
Comment: 1121 sq. ft., most recent use—residential, presence of asbestos, off-site use only

Quarters 183
Natchez Trace Parkway
Kosciusko Co: Attala MS 39090–
Landholding Agency: Interior
Property Number: 61199910004
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 190
Natchez Trace Parkway
Port Gibson Co: Claiborne MS 39150–
Landholding Agency: Interior
Property Number: 61199910005
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 194
Natchez Trace Parkway
Ackerman Co: Choctaw MS 39725–
Landholding Agency: Interior
Property Number: 61199910006
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Quarters 258
Natchez Trace Parkway
Carlisle Co: Claiborne MS 39049–
Landholding Agency: Interior
Property Number: 61199910007
Status: Excess
Comment: 1121 sq. ft., presence of asbestos, most recent use—residential, off-site use only

Virginia

Bldg. SP–63A
Naval Base Norfolk
Norfollk Co: 23511–
Landholding Agency: Navy
Property Number: 77199910017
Status: Excess
Comment: 480 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. SP–63
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910018
Status: Excess
Comment: 1632 sq. ft., presence of asbestos, off-site use only

Suitable/Available Properties

Land (by State)

California

Lake Sonoma, Tract 1607
Geyserville, CA
Landholding Agency: GSA
Property Number: 54199740020
Status: Excess
Comment: 139 acres, most recent use—recreation
GSA Number: 9–D–CA–1504

Mira Loma Parcel
March Comm. Annex No. 2
Mira Loma Co: Riverside CA
Landholding Agency: GSA
Property Number: 54199910007
Status: Excess
Comment: 0.81 acres, potential utilities
GSA Number: 9–G–CA–1505

Reclamation Unit LC–2, Par. B
Texas Ave/Old Lewiston Rd
Lewiston Co: Trinity CA
Landholding Agency: GSA
Property Number: 54199910008
Status: Excess
Comment: 28.3 acres with old barn in poor condition
GSA Number: 9–I–CA–1509

Massachusetts

.07 acre
Westover Air Reserve Base
Off Rte 33
Chicopee Co: Hampden MA 01022–
Landholding Agency: GSA
Property Number: 18199840007
Status: Excess
Comment: land, no utilities

Texas

Camp Bullis, Tract 9
Fort Sam Houston (formerly)
San Antonio Co: Bexar TX 57501
Landholding Agency: GSA
Property Number: 21199420462
Status: Surplus
Comment: 1.07 acres of undeveloped land, subject to existing easements
GSA Number: 7–D–TX–0474E

West Virginia

Segments 11–14
Matewan Area
Matewan Co: Mingo WV 25678–
Landholding Agency: GSA
Property Number: 54199910002
Status: Excess
Comment: 13 acres, 18 tracts, subject to convenants/restrictions
GSA Number: 4–D–WV–532

Segment 8
Matewan Redevelopment Site
Matewan Co: Mingo WV
Landholding Agency: GSA
Property Number: 54199910006
Status: Excess
Comment: 3.39 acres, subject to covenants/restrictions
GSA Number: 4–D–WV–533

Suitable/Unavailable Properties

Buildings (by State)

Idaho

Bldg. 224
Mountain Home Air Force
Co: Elmore ID 83648–
Landholding Agency: Air Force
Property Number: 18199840008
Status: Unutilized
Comment: 1890 sq. ft., no plumbing facilities, possible asbestos/lead paint, most recent use—office

Mississippi

Federal Building
236 Sharkey Street
Clarksdale Co: Coahoma MS 38614–
Landholding Agency: GSA
Property Number: 54199910004
Status: Excess
Comment: 15,233 sq. ft., courthouse
GSA Number: 4–G–MS–553

North Carolina

Bodie Island Lighttower
Cape Hatteras
Nags Head Co: Dare NC 27959–
Landholding Agency: GSA
Property Number: 54199910003
Status: Excess
Comment: lighttower, restricted use
GSA Number: 4–U–NC–733

California

Bldg. 4190 & Outbuilding
Yosemite National Park
Wawona Co: Madera CA 95389–
Landholding Agency: Interior
Property Number: 61199910002
Status: Unutilized
Reason: Extensive deterioration

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 7719910001
Status: Unutilized
Reason: Extensive deterioration

Idaho

Bldg., Minidoka Project
Rupert Co: ID 83350–
Landholding Agency: Interior
Property Number: 61199910001
Status: Unutilized
Reason: Extensive deterioration

Kentucky

Ranger Station
Big South Fork Natl River & Rec Area
Stearns Co: McCreary KY 42647–
Landholding Agency: Interior
Property Number: 61199910008
Status: Excess
Reason: Extensive deterioration

New Hampshire

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; secured area

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; extensive deterioration

New Jersey

Telephone Repeater Site
U.S. Coast Guard
Monmouth Beach Co: Monmouth Beach NJ 07750–
Landholding Agency: GSA
Property Number: 54199910001
Status: Excess
Reason: Extensive deterioration
GSA Number: 1–U–NJ–628

Puerto Rico

Mosquito Pier
Naval Station Roosevelt Roads
Vieques Island Co: PR
Landholding Agency: Navy
Property Number: 77199910005
Status: Unutilized
Reason: Secured area

Bldg. 781
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration

Texas

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholdin Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration

Virginia

Bldg. 1256
Naval Amphibious Base Little Creek
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77199910013
Status: Excess
Reason: Extensive deterioration

Bldg. W219
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910014
Status: Excess
Reason: Secured area

Gym
Naval Air Station, Oceana
Virginia Beach Co: VA 23460–5120
Landholding Agency: Navy
Property Number: 77199910015
Status: Unutilized
Reason: Extensive deterioration

Runway
Naval Air Station, Oceana
Virginia Beach Co: VA 23460–5120
Landholding Agency: Navy
Property Number: 77199910016
Status: Unutilized
Reason: Extensive deterioration

West Virginia

Thomas House, Tract 173–20
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910009
Status: Excess
Reason: Extensive deterioration

Cole House, Tract 153–07
New River Gorge National River
Fayetteville Co: Fayette WV 25840–
Landholding Agency: Interior
Property Number: 61199910010
Status: Excess
Reason: Extensive deterioration

Vento House, Tract 173–17
New River Gorge National River
Glen Jean Co: Fayette WV 25846–
Landholding Agency: Interior
Property Number: 61199910011
Status: Excess
Reason: Extensive deterioration

[FR Doc. 99–1267 Filed 1–21–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–704214

Applicant: Jorge and Caro Rosell, Ruskin, FL.

The applicant requests a permit to re-export and re-import captive born leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–005419

Applicant: University of Massachusetts, Department of Biology, Amherst, MA.

The applicant requests a permit to import from Mongolia: hair and tooth samples collected from wild specimens of snow leopards (*Unica unica*), hair samples collected from wild specimens of Gobi brown bear (*Ursus arctos pruinosus*), and one snow leopard skull and complete skeleton to enhance the survival of the species through scientific research and conservation education.

PRT–006037

Applicant: Chicago Zoological Park/ Brookfield Zoo, Brookfield, IL.

The applicant requests a permit to import blood samples from wild Howler monkeys (*Alouatta palliata*) from Veracruz, Mexico, for the purpose of enhancement of the survival of the species through scientific research.

PRT–722075

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to re-export and re-import captive-born Bengal tiger (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–006704

Applicant: Avicultural Breeding and Res. Center, Loxahatche, FL.

The applicant requests a permit to export eight captive-hatched thick-billed parrots (*Rhynochopsitta papchyrhycha*) to Susanne Iten Fischer, Unterageri, Switzerland to enhance the survival of the species through captive propagation.

PRT–006998

Applicant: Jack Sites, Brigham Young University, Provo, UT.

The applicant requests a permit to import tissue samples and voucher specimens of wild giant Amazon river turtles (*Podocnemis expansa*) from Brazil for the purpose of scientific research.

PRT–837068

Applicant: Yerkes Regional Primate Research Center, Atlanta, GA.

The applicant requests a permit to take gibbons (*Hylobates lar*), gorillas (*Gorilla gorilla*), pygmy chimpanzees (*Pan paniscus*), sooty mangabeys (*Cercocebus torquatas atys*), Sumatran orangutans (*Pongo abelii*), Bornean orangutans (*Pongo pygmaeus*), and hybrid orangutans (*Pongo abelii* x *Pongo pygmaeus*) through limited invasive sampling including anesthetizing, collecting blood, skin, and bone marrow tissue samples, and MRI scanning usually, but not always, during routine veterinary examinations for the purpose of scientific research. The applicant has requested authorization to conduct breeding research. However, this activity is covered under the authorization of their Captive-bred Wildlife Registration. The applicant has requested authorization to conduct the aforementioned activities using chimpanzees (*Pan troglodytes*) and stump-tailed macaques (*Macaca arctoides*). We have determined that the chimpanzees and stump-tailed macaques held by this facility meet the requirements of the primate special rule [50 CFR 17.40(c)] and therefore, the prohibitions of the Endangered Species Act do not apply.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following applications for a permit to conduct certain activities with marine mammals. The applications were submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 et seq.) and the regulations governing marine mammals (50 CFR 18).

PRT–844696

Applicant: The Alaska Zoo, Anchorage, AK.

Permit Type: Public Display.

Name and Number of Animals: Polar bear (*Ursus maritimus*); one.

Summary of Activity to be Authorized: The applicant has requested a permit to take for the purpose of public display a polar bear cub that was recovered by the U.S. Fish and Wildlife Service as an orphaned animal. Because of its young age at the time it was removed from the wild, the Service has determined that this animal cannot develop the life skills needed to survive in the wild and considers this animal non-releasable. The Zoo is applying for a permit to permanently hold this animal for the purpose of public display.

Source of Marine Mammals: Orphaned cub as described above.

Period of Activity: 5 years from date of issuance of permit, if issued. Concurrent with the publication of this notice in the **Federal Register**, the Office of Management Authority is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

PRT–006116

Applicant: Ina L. Johnson, Immokalee, FL.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted prior to April 30, 1994, by Ernest L. Johnson from the Lancaster Sound polar bear population, Northwest Territories, Canada, for personal use and bequeathed to the applicant.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with the application are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act,* by any party who submits a written request for a copy of such documents to the above address within 30 days of the date of publication of this notice.

Dated: January 19, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–1460 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants: Notice of Availability and Opening of Comment Period for an Environmental Assessment/Habitat Conservation Plan and Receipt of an Application for an Incidental Take Permit for the Delmarva Fox Squirrel in Association With Home Port on Winchester Creek Development Project, Queen Anne's County, Maryland

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and receipt of application; correction.

In the notice document 98–34673, beginning on page 72321, in the issue of Thursday, December 31, 1998, make the following correction:

On page 72322, the first full paragraph in the third column, under the heading. Background, should be replaced with the paragraph:

The EA considers the environmental consequences of four alternatives, including the proposed action, a no-action alternative, a conservation acquisition alternative, and a reduced impact alternative. The proposed action alternative is the issuance of a permit under Section 10(a) of the Act that would authorize incidental take of the DFS that may occur in the habitats of Home on Winchester Creek Development, and implementation of the HCP and IA as submitted by the Applicant. The proposed action would require the Applicant to implement their HCP. The HCP provides mitigation measures for the proposed incidental taking including habitat enhancement, permanent protection of an off-site parcel, and contribution to a trust fund. The HCP provides a funding mechanism for these mitigation measures. Under the no-action alternative, the Applicant would not develop the proposed development site in Queen Anne's County and thus avoid the take of DFS. No ITP would be deemed necessity or issued. Under the conservation acquisition alternative, the site would be acquired by a government or private conservation entity or land trust organization and would be retained in its natural state. No ITP would be deemed necessary or issued. Under the reduced impact alternative, the Service requested a number of modifications to the applicant's design plan including a shift in the location of the right-of-way entrance road away from the DFS forested edge habitat, a reduction in the number of housing units, and relocation of some of the housing lots outside of the 150 foot conservation easement. These modifications would reduce the likelihood of take of DFS by unavoidable human disturbances as well as reducing the number of DFS killed by vehicles.

Dated: January 13, 1999.

Ronald E. Lambertson,

Regional Director, Region 5.

[FR Doc. 99–1436 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Federal Geographic Data Committee (FGDC); Application Notice Announcing the Opening Date for Transmittal of Applications Under the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program for Fiscal Year (FY) 1999

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice inviting applications for the NSDI Cooperative Agreements Program awards for Fiscal Year 1999, with performance to begin in August, 1999.

SUMMARY: The purpose of the FGDC National Spatial Data Infrastructure (NSDI) Cooperative Agreements Program is to facilitate and foster partnerships and alliances within and among various public and private entities to assist in building the NSDI. The initiative to build the NSDI was launched in 1994 by Executive Order 12906 to advance the nation's capacity to develop, use, share and disseminate geospatial data. The NSDI is the term used to describe the linking together of the array of technologies, spatial data, public policies, people and institutions needed to put current and accurate geographic data into the hands of citizens and decision-makers.

The Cooperative Agreements Program funds projects focused on promoting metadata collection and creating clearinghouses of geographic data linked to the Internet, and advancing the NSDI through education.

Applications may be submitted by Federal agencies, State and local government agencies, educational institutions, private firms, private foundations, non-profit organizations, and Federally acknowledged or state-recognized Native American tribes or groups. Authority for this program is contained in the Organic Act of March

3, 1879, 43 U.S.C. 31 and Executive Order 12906.

DATES: The Program Announcement and application forms for this program are expected to be available on or about February 1, 1999. Applications must be received on or before March 2, 1999.

ADDRESSES: Copies of Program Announcement No. 99HQPA0005 for the NSDI Cooperative Agreements Program may be obtained through the Internet at <www.usgs.gov/contracts/index.html>. Copies of the Program Announcement may also be obtained by writing to: Ms. Karen Staubs, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192, (703) 648–7372, FAX (703) 648–7901. Requests for paper copy must be in writing. Telephonic requests will not be honored.

FOR FURTHER INFORMATION CONTACT: For the NSDI Cooperative Agreements Program contact Ms. Kathleen Craig, U.S. Geological Survey, Office of Acquisition and Federal Assistance, Mail Stop 205B, 12201 Sunrise Valley Drive, Reston, Virginia 20192; (703) 648–7357, fax (703) 648–7901.

SUPPLEMENTARY INFORMATION: Under the NSDI Cooperative Agreements Program proposals are to be directed towards either of two types of effort. The first is the creation of descriptions (metadata) of 'framework' digital geospatial data sets and serving those descriptions for search and retrieval through the distributed, electronically connected network of public internet-based clearinghouses—the National Spatial Data Infrastructure National Geospatial Data Clearinghouse. The second type of effort is providing clearinghouse/metadata technical assistance to organizations to enable the documentation and serving of metadata for 'framework' data. The geographic data themes known as 'framework' data are transportation, hydrography, elevation, digital orthoimagery, government boundaries, geodetic control, and cadastral information.

Dated: January 12, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–1488 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–020–1220–00]

Sonoma-Gerlach and Paradise-Denio Management Framework Plan Amendment and Draft Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period extension.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969, notice is given that the Winnemucca Field Office of the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement on the management of the West Arm of the Black Rock Desert, located in Humboldt, Pershing and Washoe Counties, Nevada.

DATES AND ADDRESSES: A 30 day extension to the comment period has been granted. Written comments on the Draft Environmental Impact Statement must be postmarked by February 15, 1999.

A copy of the Draft Environmental Impact Statement can be obtained from: Bureau of Land Management, Winnemucca Field Office, ATTN: Gerald Moritz, Project Manager, 5100 E. Winnemucca Boulevard, Winnemucca, Nevada 89445.

The Draft Environmental Impact Statement is available for inspection at the following additional locations: Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, Nevada: Humboldt County Library, Winnemucca, Nevada: Pershing County Public Library, Lovelock, Nevada: Washoe County Public Library, Reno, Nevada: Washoe County Branch Library, Gerlach, Nevada: Susanville Library District, Susanville, California: University of Nevada Library in Reno, Nevada: and the Sacramento City College Library, Sacramento. In addition, the entire document is available on the World Web at the following address: www.nv.blm.gov/Winnemucca/BlackrockEIS.htm

FOR FURTHER INFORMATION CONTACT: Gerald Moritz, Project Manager at the above Winnemucca Field Office Address or telephone (702) 623–1500.

Dated: January 13, 1999.

Les W. Boni,

Acting Field Manager.

[FR Doc. 99–1489 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

DEPARTMENT OF AGRICULTURE

Bureau of Land Management and Forest Service

[MT–920–08–1220–00, 1617P]

Notice of Intent To Prepare an Environmental Impact Statement for an Off-Highway Vehicle Amendment to Resource Management Plans and Forest Plans

AGENCY: Bureau of Land Management, Interior and Forest Service, USDA.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) and U.S. Forest Service (FS), Region 1, propose to amend their respective resource management plans and forest plans in Montana, North Dakota, and portions of South Dakota. This action is necessary so managing agencies can responsibly manage the land and meet people needs. With an increase of off-highway vehicle (OHV) traffic; i.e., motorcycles, four-wheel drive vehicles, all terrain vehicles, etc., the BLM and the FS have observed the spread of noxious weeds, user conflicts, soil erosion, damage to cultural sites, and disruption of wildlife and wildlife habitat. The BLM and FS propose changing the areas currently open seasonally or yearlong to cross-country OHV use to a designation that allows for travel only on roads and trails. However, this amendment would not change most of the current limited or closed designations, or designated intensive off-road vehicle use areas. Exceptions for off-road travel will be considered in the analysis for game retrieval, camping, or disabled access. Access allowed under the terms and conditions of a federal lease or permit would not be affected by the proposal.

In the future, areas could be identified for intensive use and/or trail development. As joint lead agencies, the BLM and FS will prepare an environmental impact statement (EIS) to analyze the impacts of this proposal and any alternatives. Travel planning currently under consideration at individual FS and BLM offices will continue and those analyses with recent decisions will remain in place under this proposal.

DATES: Comments and recommendations on this notice should be received in writing no later than March 31, 1999.

ADDRESSES: Address all comments concerning this notice to OHV Plan

Amendment, Lewistown Field Office, P.O. Box 1160, Lewistown, MT 59457–1160.

FOR FURTHER INFORMATION CONTACT: Jerry Majerus, 406–538–7461 or Dick Kramer, 406–329–1008.

SUPPLEMENTARY INFORMATION: The Montana/Dakotas BLM administers 8.5 million acres of public land within 10 field offices. Each office manages OHV use under a land use plan. These land use plans allow for three designations of vehicle use; open, limited, and closed. These land use plans vary considerably in OHV designations. More recent plans limit OHV use to existing or designated roads and trails in portions of the area, while older plans were developed prior to the increased use of OHVs and leave most areas open. Currently, 5 million acres are open for unrestricted travel, 3.4 million acres are limited seasonally or yearlong to existing or designated roads and trails, and 99,000 acres are closed.

The FS administers 18.2 million acres of land in Montana and the Dakotas located within nine national forests and the Dakota Prairie Grasslands. Each national forest manages OHV use as part of their forest plans. The OHV use is prohibited in all designated wilderness areas. Forest plans allow for three designations of use in other areas; open, restricted, and closed. Forest plans vary considerably in the amount of area designated for these uses. Some forests have many areas that are open while other forests have few open areas. Some forests restrict OHV use to designated roads and trails only. All forest plans were prepared prior to the recent increase in OHV use and the new development of all terrain vehicle technology.

One of the many opportunities on public land is traveling the backcountry for recreational pursuits, such as sightseeing, wood cutting, fishing, hunting, and other activities as provided by the direction of existing land management and resource plans. Some of this use occurs on public lands where OHV use is currently limited to existing or designated roads and trails. It is the goal of both agencies to provide for a wide spectrum of dispersed recreation activities that will minimize environmental impacts and minimize conflicts between user groups.

However, there are large areas of public land that are open to cross-country travel off roads and trails. This unrestricted use has the potential to continue the spread of noxious weeds, create user conflicts, cause erosion, damage cultural sites, and disrupt wildlife and wildlife habitat. The magnitude of these impacts is not known at this time. With an increase in OHV traffic and changes in OHV technology, the public and land management agencies recognize the need to evaluate the current management decisions for those areas where driving off roads and trails is allowed.

A change in management direction would be accomplished through an EIS and an interagency plan amendment. The plan amendment would address the use of wheeled, motorized vehicles designed for and/or capable of travel off roads and trails.

The BLM and FS propose changing the areas currently open seasonally or yearlong to cross-country OHV use to a designation that allows for travel only on roads and trails. However, this would not change most of the current limited or closed designations, or designated intensive use areas. Travel planning currently under consideration at individual FS and BLM offices will continue and those analyses with recent decisions will remain in place under this proposal. Exceptions for off-road travel will be considered for game retrieval, camping, or disabled access. Access allowed under the terms and conditions of a federal lease or permit would not be affected by the proposal. This broad scale decision as proposed would be an interim decision until revision or completion of travel management plans.

After the plan amendment is completed, the BLM and FS would continue to develop travel plans for geographical areas (i.e., landscape analysis, watershed plans, or activity plans). Through travel planning, roads and trails would be inventoried, mapped, and designated as open or closed. Travel planning may identify areas for trail development or further limit travel off roads and trails. Travel planning may require implementation over a 10 to 15 year period.

Snowmobile use will not be addressed in this particular proposal. The agencies agree that to do so would lengthen the process significantly. In addition, the resource impacts associated with snowmobile use are different enough to warrant a separate analysis. The agencies are currently exploring options for addressing snowmobile use.

The scoping period for the plan amendment and EIS will begin in January 1999, and open houses will be held in February 1999. The dates, times and locations of these open houses will be announced in local newspapers, and other news media, and available from the local offices of the BLM and FS. A draft plan amendment and EIS should be available for review in June 1999, with public meetings in July 1999. The comment period on the draft plan amendment and EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712), Sec. 6, Pub. L. 94–588, 90 Stat. 2949 (16 U.S.C. 1604).

Larry E. Hamilton,

State Director.

Dale N. Bosworth,

Regional Forester.

[FR Doc. 99–1438 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–1320–00]

Powder River Regional Coal Team Activities: Schedule of Public Meeting

AGENCY: Department of the Interior, Wyoming.

ACTION: Notice of public meeting.

SUMMARY: The Powder River Regional Coal Team (RCT) announces that it has scheduled a public meeting for February 23, 1999, for the following purposes: (1) Review current and proposed activities in the Powder River Coal Region, (2) review new and pending coal lease applications (LBA), and (3) make recommendations on new coal lease applications.

DATES: The RCT meeting will begin at 9 a.m. MDT, on Tuesday, February 23, 1999, in the Centennial South Conference Room of the Radisson Northern Hotel, Broadway & 1st Ave. North, Billings, MT, 406–245–5121. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Radisson Northern Hotel, Broadway & 1st Ave. North, Billings, MT, 406–245–5121. Attendees are responsible for making their own reservations.

FOR FURTHER INFORMATION CONTACT: Mel Schlagel, Wyoming State Office, P.O. Box 1828 (MS–922), Cheyenne, WY 82003, 307–775–6257.

SUPPLEMENTARY INFORMATION: Primary purpose of the meeting is to discuss two new pending coal leases by application (LBA) from Jacobs Ranch Coal Company (Kennecott Energy Company) (WYW146744), filed on October 2, 1998, for an estimated 519 million tons and 4,821 acres, and the Spring Creek Coal Company (Kennecott Energy Company) (MTM88405) filed June 26, 1998, for an estimated 15.4 million tons and 150

acres. This is the initial public notification of the pending applications listed above, in accordance with the ''Powder River Operational Guidelines'' (1991). Generally, a coal lease application filed under the LBA portion of BLM regulations (43 CFR 3425) takes 2–4 years to be processed to the competitive sale stage, depending on informational and environmental study requirements. The RCT may generate recommendation(s) for any or all of the new and pending LBAs.

The meeting will serve as a forum for public discussion on Federal coal management issues of concern in the Powder River Basin region. Any party interested in providing comments or data related to the above pending applications may either do so in writing to the State Director (925), Wyoming State Office, Bureau of Land Management, P.O. Box 1828, Cheyenne, WY 82003, no later than February 12, 1999, or by addressing the RCT with his/her concerns at the meeting on February 23, 1999. The draft agenda for the meeting follows.

1. Introduction of RCT Members and guests.

2. Approval of the Minutes of the April 23, 1997, RCT meeting held in Casper, WY.

3. Regional Coal Activity Status:

a. Current Production and Trend.

b. Activity Since Last RCT Meeting.

c. Status of pending LBAs previously reviewed by RCT:

—North Rochelle LBA—WYW127221
—Powder River—WYW136142
—Thundercloud—WYW136458
—Belle Ayr—WYW141568

d. Status of the Belco/Hay Creek Coal Exchange.

e. Environmental Status Check update.

f. Wetlands Unsuitability Criteria update.

g. Status of Coal Leasing Potential Report.

4. Lease Applicant Presentations:

—Spring Creek Coal Company
—Jacobs Ranch Coal Company

5. RCT Activity Planning Recommendations

—Review and recommendation(s) on pending lease Application(s)

6. Discussion of the next meeting.

7. Adjourn.

Dated: January 12, 1999.

Alan R. Pierson,

State Director.

[FR Doc. 99–1070 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–020–1310–00]

Notice of Intent for Planning Analyses

AGENCY: Bureau of Land Management (BLM), Interior.

SUMMARY: The Jackson Field Office, Eastern States, will prepare a Planning Analyses (PA) for consideration of leasing two scattered tracts of Federal mineral estate for oil and gas exploration and development. The PAs will be prepared in concert with Environmental Analyses (EA).

The notice is issued pursuant to Title 40 Code of Federal Regulations (CFR) 1501.7 and Title 43 CFR 1610.2(c). The planning effort will follow the procedures set forth in 43 CFR Part 1600.

The public is invited to participate in this planning process, beginning with the identification of planning issues and criteria.

DATES: Comments relating to the identification of planning issues and criteria will be accepted through February 17, 1999.

ADDRESSES: Send comments to Bureau of Land Management, Jackson Field Office, 411 Briarwood Drive, Suite 404, Jackson, Mississippi 39206.

FOR FURTHER INFORMATION CONTACT: Quazi T. Islam, Physical Scientist, Jackson Field Office, (601) 977–5473.

SUPPLEMENTARY INFORMATION: The BLM has responsibility to consider applications to lease Federal mineral estate for oil and gas exploration and development. An interdisciplinary team will be used in preparation of the PA/EAs. Preliminary issues, subject to change as a result of public input, are (1) potential impacts of oil and gas exploration and development on the surface resources and (2) consideration of restrictions on lease rights to protect surface resources.

Due to the scattered nature of the two tracts proposed for leasing, a separate analysis will be prepared for each tract. Tract locations, along with acreages, are listed below.

Alabama, Conecuh County, St. Stephens Meridian,
T 6 N, R 9 E, Section 33; 53 acres more or less.

Mississippi, Lowndes County, Huntsville Meridian,
T 16 S, R 18 W, Sections 31 and 32; T 16 S, R 19 W, Section 36; and T 17 S, R 18 W, Section 5; all within the boundary of the Columbus Air Force Base containing 1381.5 acres more or less.

Due to the limited scope of this PA/EA process, public meetings are not scheduled.

Bruce E. Dawson,

Field Manager, Jackson.

[FR Doc. 99–1495 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–99–1430–01; AZA 29964, AZA 29969–AZA 29975, AZA 2997–AZA 29983, AZA 29985–AZA 29989]

Arizona: Notice of Realty Action; Competitive Sale of Public Land in Quartzsite, La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of notice.

SUMMARY: The following land in La Paz County, Arizona, has been found suitable for disposal under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713). The extension will allow additional time to complete the sale.

Gila and Salt River Meridian, Arizona

T. 4N., R. 19W.,
Sec. 22, NE¼NE¼SE¼;
Sec. 23, N½SW¼, S½NE¼SW¼SW¼, NW¼SW¼SW¼, N½SE¼SW¼, SW¼SE¼SW¼;
Sec. 29, W½NE¼NE¼NE¼, NW¼NE¼NE¼, NW¼NE¼, W½NE¼NW¼, SE¼NE¼NW¼, NW¼NW¼.
Aggregating 260.00 acres, more or less.

SUPPLEMENTARY INFORMATION: On December 20, 1996, the Yuma Field Office published a notice for this public land sale in the **Federal Register** (61 FR 67342). This notice segregated the subject public land from appropriation under the public land laws, including the mining laws, pending disposition of the action or 270 days from the date of publication of the notice in the **Federal Register**. An Extension of the Notice for segregation was published in the **Federal Register** on September 23, 1997 (62 FR 49701). A second Extension of the Notice for segregation was published in the **Federal Register** on June 1, 1998 (63 FR 29746).

Upon publication of this notice in the **Federal Register** that segregation will be extended pending disposition of the action or for another 270 day period, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Debbie DeBock, Realty Specialist, Uyma Field Office, 2555 East Gila Ridge Road, Yuma, AZ 85365, (520) 317–3208.

Dated: January 11, 1999.

Gail Acheson,

Field Manager.

[FR Doc. 99–1490 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Canyon National Park, Coconino County, AZ

AGENCY: National Park Service, Interior.

ACTION: Notice and request for comment.

SUMMARY: Notice is hereby given that a proposal for a cellular communication site at Grand Canyon National Park has been received. The project will be to construct and operate a telecommunications facility at Hopi Point on the South Rim of the park.

DATES: Written comment time has been extended from January 11, 1999 to February 5, 1999.

ADDRESSES: Direct all written comments to Superintendent, Attn.: Barbara Nelson, Telecommunications Specialist, Grand Canyon National Park, P.O. Box 129, Grand Canyon, AZ 86023.

FOR FURTHER INFORMATION CONTACT: Barbara Nelson, Telecommunications Specialist at telephone number 520–638–7710.

Dated: January 12, 1999.

Nicky Lindig,

Acting Deputy Superintendent.

[FR Doc. 99–1543 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service and Repayment Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of proposed contractual actions pending through December 31, 1998, and contract actions that have been completed or discontinued since the last publication of this notice on October 20, 1998. From the date of this publication, future quarterly notices during this calendar year will be limited to modified, new, completed, or discontinued contract actions. This annual notice should be used as a point of reference to identify changes in future notices. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities. Additional Bureau of Reclamation (Reclamation) announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the supplementary information.

FOR FURTHER INFORMATION CONTACT: Alonzo Knapp, Manager, Reclamation Law, Contracts, and Repayment Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2889.

SUPPLEMENTARY INFORMATION: Pursuant to section 226 of the Reclamation Reform Act of 1982 (96 Stat. 1273) and 43 CFR 426.20 of the rules and regulations published in *52 FR 11954*, Apr. 13, 1987, Reclamation will publish notice of the proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in *47 FR 7763*, Feb. 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. Each proposed action is, or is expected to be, in some stage of the contract negotiation process in 1999. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to: (I) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. As a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Acronym Definitions Used Herein

(BCP) Boulder Canyon Project
(CAP) Central Arizona Project
(CUP) Central Utah Project
(CVP) Central Valley Project
(CRSP) Colorado River Storage Project
(D&MC) Drainage and Minor Construction

(FR) Federal Register
(IDD) Irrigation and Drainage District
(ID) Irrigation District
(M&I) Municipal and Industrial
(O&M) Operation and Maintenance
(P–SMBP) Pick-Sloan Missouri Basin Program
(R&B) Rehabilitation and Betterment
(PPR) Present Perfected Right
(RRA) Reclamation Reform Act
(NEPA) National Environmental Policy Act
(SOD) Safety of Dams
(SRPA) Small Reclamation Projects Act
(WCUA) Water Conservation and Utilization Act
(WD) Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5346.

1. Irrigation, M&I, and miscellaneous water users; Idaho, Oregon, Washington, Montana, and Wyoming: Temporary or interim water service contracts for irrigation, M&I, or miscellaneous use to provide up to 10,000 acre-feet of water annually for terms up to 5 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

2. Rogue River Basin Water Users, Rogue River Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

3. Willamette Basin Water Users, Willamette Basin Project, Oregon: Water service contracts; $8 per acre-foot per annum.

4. Pioneer Ditch Company, Boise Project, Idaho; Clark and Edwards Canal and Irrigation Company, Enterprise Canal Company, Ltd., Lenroot Canal Company, Liberty Park Canal Company, Parsons Ditch Company, Poplar ID, Wearyrick Ditch Company, all in the Minidoka Project, Idaho; Juniper Flat District Improvement Company, Wapinitia Project, Oregon; Roza ID, Yakima Project, Washington: Amendatory repayment and water service contracts; purpose is to conform to the RRA (Public Law 97–293).

5. Bridgeport ID, Chief Joseph Dam Project, Washington: Warren Act contract for the use of an irrigation outlet in Chief Joseph Dam.

6. Palmer Creek Water District Improvement Company, Willamette Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet.

7. U. S. Fish and Wildlife Service and Boise-Kuna ID, Boise Project, Idaho: Memorandum of Agreement for the use of approximately 400 acre-feet of storage space annually in Anderson Ranch Reservoir. Water to be used for wildlife mitigation purposes (ponds and wetlands).

8. North Unit ID and/or city of Madras, Deschutes Project, Oregon: Long-term municipal water service contract for provision of approximately 125 acre-feet annually from the project water supply to the City of Madras.

9. North Unit ID, Deschutes Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wickiup Dam.

10. Five individual contractors, Umatilla Project, Oregon: Repayment agreements for reimbursable cost of dam safety repairs to McKay Dam.

11. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

12. Baker Valley ID, Baker Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to store nonproject water.

13. Okanogan ID, Okanogan Project, Washington: SOD contract to repay District's share of cost of dam safety repairs to Salmon Lake Dam.

14. Trendwest Resorts, Yakima Project, Washington: Long-term water exchange contract for assignment of Teanaway River and Big Creek water rights to Reclamation for instream flow use in exchange for annual use of up to 3,500 acre-feet of water from Cle Elum Reservoir for a proposed resort development.

15. Milner ID, Minidoka-Palisades Projects, Idaho: Amendment of storage contracts to reduce the District's spaceholding in Palisades Reservoir by up to 5,162 acre-feet, thereby allowing use of this space by Reclamation for flow augmentation.

16. City of Cle Elum, Yakima Project, Washington: Contract for up to 2,170 acre-feet of water for municipal use.

17. Juniper Flat District Improvement Company, Wapinitia Project, Oregon: Repayment contract for reimbursable cost of dam safety repairs to Wasco Dam.

The following contract actions have been completed or discontinued in the Pacific Northwest Region since this notice was last published on October 20, 1998.

1. (4) West Extension ID, Umatilla Project, Oregon: Contract amendment to conform to the RRA (Public Law 97–293) executed in November 1998.

2. (14) South Boise Mutual Irrigation Company, Ltd. and United Water Idaho, Boise Project, Idaho: Agreement amending contracts to approve the acquisition and municipal use of Anderson Ranch Reservoir water by United Water Idaho, and the transfer of Lucky Peak Reservoir water to the United States. This action is not likely to be pursued.

3. (20) Burley and Southwest IDs, Minidoka Project, Idaho: Warren Act contract with charge to allow for use of project facilities to convey nondistrict water to Southwest ID. This action is not likely to be pursued.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

1. Irrigation water districts, individual irrigators, M&I and miscellaneous water users, Mid-Pacific Region projects other than CVP: Temporary (interim) water service contracts for available project water for irrigation, M&I, or fish and wildlife purposes providing up to 10,000 acre-feet of water annually for terms up to 5 years; temporary Warren Act contracts for use of project facilities for terms up to 1 year; long-term contracts for similar service for up to 1,000 acre-feet annually. *Note.* Copies of the standard forms of temporary water service contracts for the various types of service are available upon written request from the Regional Director at the address shown above.

2. Contractors from the American River Division, Buchanan Unit, Colusa Basin Drain, Cross Valley Canal, Delta Division, East Side Division, Friant Division, Hidden Unit, Sacramento River Division, San Felipe Division, Shasta Division, Trinity River Division, and West San Joaquin Division, CVP, California: Renewal of existing long-term and interim renewal water service contracts with contractors whose contracts expire between 2000 and 2001; water quantities for these contracts total in excess of 5.6M acre-feet. These contract actions will be accomplished through long-term renewal contracts pursuant to Public Law 102–575.

3. Redwood Valley County WD, SRPA, California: District is considering restructuring the repayment schedule pursuant to Public Law 100–516 or initiating new legislation to prepay the loan at a discounted rate. Prepayment option under Public Law 102–575 has expired.

4. Sacramento River water rights contractors, CVP, California: Contract amendment for assignment under voluntary land ownership transfers to provide for the current CVP water rates and update standard contract articles.

5. Naval Air Station and Truckee Carson ID, Newlands Project, Nevada: Amend water service agreement No. 14–06–400–1024 for the use of project water on Naval Air Station land.

6. El Dorado County Water Agency, San Juan WD, and Sacramento County Water Agency, CVP, California: M&I water service contracts to supplement

existing water supply; 15,000 acre-feet for El Dorado County Water Agency, 13,000 acre-feet for San Juan WD, and 22,000 acre-feet for Sacramento County Water Agency, authorized by Public Law 101–514.

7. U.S. Fish and Wildlife Service, California Department of Fish and Game, Grasslands WD, CVP, California: Water service contracts to provide water supplies for refuges and private wetlands within the CVP pursuant to Public Law 102–575 and Federal Reclamation Laws; quantity to be contracted for is approximately 450,000 acre-feet.

8. Sutter Extension WD, Biggs-West Gridley WD, Buena Vista Water Storage District, and the State of California Department of Water Resources, CVP, California: Pursuant to Public Law 102–575, conveyance agreements for the purpose of wheeling refuge water supplies and funding district facility improvements and exchange agreements to provide water for refuge and private wetlands.

9. Mountain Gate Community Services District, CVP, California: Amendment of existing long-term water service contract to include right to renew. This amendment will also conform the contract to current Reclamation law, including Public Law 102–575.

10. Santa Barbara County Water Agency, Cachuma Project, California: Repayment contract for SOD work on Bradbury Dam.

11. CVP Service Area, California: Temporary water purchase agreements for acquisition of 20,000 to 200,000 acre-feet of water for fish and wildlife purposes as authorized by the Central Valley Project Improvement Act for terms of up to 3 years.

12. City of Roseville, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water provided from the Placer County Water Agency. This contract will allow CVP facilities to be used to deliver nonproject water to the City of Roseville for use within their service area.

13. Sacramento Municipal Utility District, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and assignment of up to 15,000 acre-feet of project water to the Sacramento County Water Agency. The amended contract will conform to current Reclamation law.

14. Mercy Springs WD, CVP, California: Assignment of District's water service contract to Pajaro Valley Water Management Agency. The assignment will provide for delivery of up to 13,300 acre-feet annually of water to the Agency from the CVP for agricultural purposes.

15. Santa Barbara County Water Agency, Cachuma Project, California: Contract to transfer responsibility for O&M and O&M funding of certain Cachuma Project facilities to the member units.

16. Stony Creek WD, Black Butte Dam and Lake, Sacramento River Division, CVP, California: Proposed amendment of Stony Creek WD's water service contract, No. 2–07–20–W0261, to allow the Contractor to change from paying for all project water, whether used or not, to paying only for project water scheduled or delivered and to add another month to the irrigation period.

17. M&T, Inc., Sacramento River Water Rights Contractors, CVP, California: Proposed exchange agreement with M&T, Inc., to take its Butte Creek water rights water from the Sacramento River in exchange for CVP water.

18. East Bay Municipal Utility District, CVP, California: Amendment to the long-term water service contract, No. 14–06–200–5183A, to change the points of diversion.

19. Madera ID, Lindsay-Strathmore ID, and Delta Lands Reclamation District No. 770, CVP, California: Execution of 2- to 3-year Warren Act contracts for conveyance of nonproject water in the Friant-Kern and/or Madera Canals when excess capacity exists.

20. Napa County Flood Control and Water Conservation District, Solano Project, California: Renewal of water service contract, No. 14–06–200–1290A, which expires February 28, 1999.

21. Solano County Water Agency, Solano Project, California: Renewal of water service contract, No. 14–06–200–4090, which expires February 28, 1999.

22. Reno, Sparks, and Washoe County, Washoe and Truckee Storage Projects, Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the Truckee River Water Quality Settlement Agreement.

23. Sierra Pacific Power Company and Washoe County Water Conservation District, Washoe and Truckee Storage Projects, Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

24. Casitas Municipal Water District, Ventura Project, California: Repayment contract for SOD work on Casitas Dam.

25. Centerville Community Services District, CVP, California: A long-term supplemental repayment contract for reimbursement to the United States for conveyance costs associated with CVP water conveyed to Centerville.

26. El Dorado ID, CVP, California: Execution of long-term Warren Act contract for conveyance of nonproject water. This contract will allow CVP facilities to be used to deliver nonproject water to the District for use within their service area.

27. Placer County Water Agency, CVP, California: Amendment of existing water service contract to allow for additional points of diversion and reduction in the amount of project water to be delivered from a maximum of 117,000 acre-feet to a maximum of 35,000 acre-feet. The amended contract will conform to current Reclamation law.

28. Langell Valley ID, Horsefly ID, and Tulelake ID, Klamath Project, Oregon: Repayment contract for SOD work on Clear Lake Dam.

29. Widren WD, CVP, California: Assignment of District's water service contract to the City of Tracy. The assignment will require approval of conversion of the District's CVP irrigation water to M&I water.

30. Warren Act Contracts, CVP, California: Execution of long-term Warren Act contracts with various entities for conveyance of nonproject water in the Delta-Mendota Canal.

31. Solano County Water Agency and Solano ID, Solano Project, California: Contract to transfer responsibility for O&M of Monticello Dam, Putah Diversion Dam, Putah South Canal, Headworks of Putah South Canal, and Parshall Flume at Milepost 0.18 of Putah South Canal to Solano ID and provide that the Solano County Water Agency shall provide the funds necessary for O&M of the facilities.

32. Tuolumme Utility District (formerly Tuolumne Regional WD), CVP, California: Water service contract for up to 9,000 acre-feet from New Melones Reservoir.

33. Reno, Sparks, Washoe County, State of Nevada, State of California, Town of Fernley, Nevada, Truckee-Carson ID, and any other local interest or Native-American Tribal interest, who may have negotiated rights under Public Law 101–618; Nevada and California: Contract for the storage of non-Federal water in Truckee River reservoirs as authorized by Public Law 101–618 and consistent with the terms and conditions of the proposed Truckee River Operating Agreement.

34. City of Folsom, CVP, California: Contract to amend their water rights settlement contract's point of diversion.

35. Banta Carbona ID, CVP, California: Long-term Warren Act contract for conveyance of nonproject water in the Delta-Mendota Canal.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8536.

1. Milton and Jean Phillips, Kenneth or Ann Easterday, Robert E. Harp, Cameron Brothers Construction Co., Ogram Farms, Bruce Church, Inc., Sunkist Growers, Inc., and Clayton Farms, BCP, Arizona: Water service contracts, as recommended by Arizona Department of Water Resources, with agricultural entities located near the Colorado River for up to 15,557 acre-feet per year total.

2. Arizona State Land Department, State of Arizona, BCP, Arizona: Contract for 6,607 acre-feet per year of Colorado River water for agricultural use and related purposes on State-owned land.

3. Armon Curtis, Arlin Dulin, Jack Rayner, Glen Curtis, Jamar Produce Corporation, and Ansel T. Hall, BCP, Arizona: Water service contracts to exempt each referenced contract from the acreage limitation and full-cost pricing provisions of the RRA.

4. Brooke Water Co., Havasu Water Co., Town of Quartzsite, BCP, Arizona: Contracts for additional M&I allocations of Colorado River water to entities located along the Colorado River in Arizona for up to 2,610 acre-feet per year as recommended by the Arizona Department of Water Resources.

5. National Park Service for Lake Mead National Recreation Area, Supreme Court Decree in *Arizona* v. *California*, and BCP in Arizona and Nevada: Memorandum of Understanding for delivery of Colorado River water for the National Park Service's Federal Establishment PPR for diversion of 500 acre-feet annually and the National Park Service's Federal Establishment PPR pursuant to Executive Order No. 5125 (April 25, 1930).

6. Mohave Valley IDD, BCP, Arizona: Amendment of current contract for additional Colorado River water, change in service area, diversion points, RRA exemption, and PPR.

7. Miscellaneous PPR entitlement holders, BCP, Arizona, and California: New contracts for entitlement to Colorado River water as decreed by the U.S. Supreme Court in *Arizona* v. *California*, as supplemented or amended, and as required by section 5 of the Boulder Canyon Project Act. Miscellaneous PPRs holders are listed in the January 9, 1979, Supreme Court Supplemental Decree in *Arizona* v. *California et al.*

8. Miscellaneous PPR No. 11, BCP, Arizona: Assign a portion of the PPR from Holpal to McNulty et al.

9. Federal establishment PPR entitlement holders, BCP: Individual contracts for administration of Colorado River water entitlement of the Colorado River, Fort Mojave, Quechan, Chemehuevi, and Cocopah Indian Tribes.

10. United States facilities, BCP, Arizona and California: Reservation of Colorado River water for use at existing Federal facilities and lands administered by Reclamation.

11. Bureau of Land Management, BCP, Arizona: Contract for 1,176 acre-feet per year, for irrigation use, of Arizona's Colorado River water that is not used by higher-priority Arizona entitlement holders.

12. Curtis Family Trust et al., BCP, Arizona: Contract for 2,100 acre-feet per year of Colorado River water for irrigation.

13. Beattie Farms SW, BCP, Arizona: Contract for 1,890 acre-feet per year of unused Arizona entitlement for irrigation use.

14. Section 10 Backwater, BCP, Arizona: Contract for 250 acre-feet per year of unused Arizona entitlement for environmental use until a permanent water supply can be obtained.

15. U.S. Fish and Wildlife Service, Lower Colorado River Refuge Complex, BCP, Arizona: Proposed agreement for the administration of existing Colorado River water entitlement of refuge lands located in Arizona, resolving water rights coordination issues, and to provide for additional entitlement for nonconsumptive use of flow through water.

16. Hilander C ID, Colorado River Basin Salinity Control Project, Arizona: Water delivery contract for 4,500 acre-feet.

17. Maricopa-Stanfield IDD, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0047 to reschedule repayment pursuant to June 28, 1996, agreement.

18. Indian and non-Indian agricultural and M&I water users, CAP, Arizona: New and amendatory contracts for repayment of Federal expenditures for construction of distribution systems.

19. Tohono O'odham Nation, SRPA, Arizona: Repayment contract for a $7.3 million loan for the Schuk Toak District.

20. San Tan ID, CAP, Arizona: Amend distribution system repayment contract No. 6–07–30–W0120 to increase the repayment obligation approximately $168,000.

21. Central Arizona Drainage and Irrigation District, CAP, Arizona: Amend distribution system repayment contract No. 4–07–30–W0048 to modify repayment terms pursuant to U.S. Bankruptcy Court, District of Arizona.

22. City of Needles, Lower Colorado Water Supply Project, California: Amend contract No. 2–07–30–W0280 to extend Needles water service subcontracting authority to the Counties of Imperial and Riverside.

23. Imperial ID/Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve All-American Canal seepage water in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act dated November 17, 1988.

24. Coachella Valley WD and/or The Metropolitan WD of Southern California, BCP, California: Contract to fund the Department of the Interior's expenses to conserve seepage water from the Coachella Branch of the All-American Canal in accordance with Title II of the San Luis Rey Indian Water Rights Settlement Act, dated November 17, 1988.

25. United States Navy, BCP, Niland, California: Contract for 23 acre-feet of surplus Colorado River water for domestic use delivered through the Coachella Canal.

26. Southern Nevada Water Authority, Robert B. Griffith Water Project, BCP, Nevada: Amend the repayment contract to provide for the incorporation of the Griffith Project into the expanded southern Nevada Water System, funded and built by Southern Nevada Water Authority, to facilitate the diversion, treatment, and conveyance of additional water out of Lake Mead for which the Authority has an existing entitlement to use.

27. Salt River-Pima Maricopa Indian Community, CAP, Arizona: O&M contract for its CAP water distribution system.

28. McMicken ID/Town of Goodyear, CAP, Arizona: Amend McMicken's CAP subcontract to reduce its entitlement by 507 acre-feet and Goodyears's water/service subcontract to increase its entitlement by 507 acre-feet.

29. Bullhead City, BCP, Arizona: Assignment of 1,800 acre-feet of water and associated service area from Mohave County Water Conservation District to Bullhead City, Arizona.

30. Mr. Robert H. Chesney, BCP, Arizona: Amend contract No. 5–07–30–W0321 to increase the cubic-foot-per-

second diversion and facilitate the installation of a low-lift pump.

31. U.S. Army Proving Ground, BCP, Arizona: Agreement for 1,883 acre-feet of Colorado River water.

32. Arizona State Land Department, BCP, Arizona: Water delivery contract for 1,400 acre-feet of Colorado River water for domestic use.

33. Miscellaneous PPR No. 38, BCP, California: Assign Schroeder's portion of the PPR to Murphy Broadcasting and change the place and type of water use.

34. Berneil Water Co., CAP, Arizona: Subcontracts associated with partial assignment of water service to the Cave Creek Water Company.

35. Tohono O'odham Nation, CAP, Arizona: Repayment contract for construction costs associated with distribution system for Central Arizona IDD.

36. Tohono O'odham Nation, CAP, Arizona: Contracts for Schuk Toak and San Xavier Districts for repayment of Federal expenditures for construction of distribution systems.

37. Arizona State Land Department, BCP, Arizona: Water delivery contract for up to 9,000 acre-feet per year of unused apportionment and surplus Colorado River water for irrigation.

38. Don Schuler, BCP, California: Temporary delivery contract for surplus and/or unused apportionment Colorado River water for domestic and industrial use on 18 lots of recreational homes in California.

39. Bureau of Land Management, BCP, California: Agreement for 1,000 acre-feet of Colorado River water in accordance with Secretarial Reservations.

40. Bureau of Land Management, BCP, Arizona: Agreement for 4,010 acre-feet of Colorado River water in accordance with Secretarial Reservations.

41. Arizona Public Service Company and Imperial ID, BCP, Arizona: Delivery contract for up to 1,500 acre-feet of unused Arizona entitlement and/or surplus water.

42. Canyon Forest Village II Corporation, BCP, Arizona: Water delivery contract for the diversion of up to 400 acre-feet of unused Arizona apportionment or surplus apportionment of Colorado River water for domestic use.

43. Gila Project Works, Gila Project, Arizona: Proposed title transfer of facilities and certain lands in the Wellton-Mohawk Division, Arizona, to be transferred from the United States to the Wellton-Mohawk IDD.

44. McMicken ID, CAP, Arizona: Assignment of 486 acre-feet of M&I water to the City of Peoria.

45. ASARCO Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

46. BHP Copper, Inc., CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

47. Cyprus Miami Mining Corporation, CAP, Arizona: Amendment to extend deadline for giving notice of termination on exchange subcontract.

48. San Carlos-Apache Tribe, CAP, Arizona: Agreement among the United States, Salt River Project Agricultural Improvement and Power District, and Salt River Valley Water Users' Association for exchange of up to 14,000 acre-feet of Black River Water for CAP water.

49. San Carlos-Apache Tribe, Arizona: Agreement among the San Carlos-Apache Tribe, the United States, and Phelps Dodge Corporation for the lease of Black River Water.

50. San Carlos Apache Tribe, CAP, Arizona: Amendatory contract to increase the Tribe's CAP water entitlement pursuant to the San Carlos Apache Tribe Water Rights Settlement Act.

51. Bureau of Reclamation, BCP, Arizona and California: Surplus water entitlements for environmental habitat improvement projects.

52. Agricultural and M&I water users, CAP, Arizona: Water service subcontracts for percentages of available supply reallocated in 1992 for irrigation entities and up to 640,000 acre-feet per year allocated in 1983 for M&I use.

53. City of Goodyear, CAP, Arizona: Amendment to increase Goodyear's CAP water entitlement by 1,007 acre-feet pursuant to agreement with McMicken ID to transfer its right to this water under subcontract No. 5–07–30–W0100.

54. McMicken ID, CAP, Arizona: Amendment No.1 to terminate subcontract.

55. E&R Water Company, CAP, Arizona: Exchange agreement to transfer 161 acre-feet of CAP water to the Salt River Project.

The following contract action has been completed in the Lower Colorado Region since this notice was last published on October 20, 1998.

1. (43) Bureau of Land Management, Lower Colorado Water Supply Project, California: Agreement for a consumptive use of 1,150 acre-feet of water for use on Bureau of Land Management-administered lands in California adjacent to the Colorado River.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–4419.

1. Individual irrigators, M&I, and miscellaneous water users; Initial Units, CRSP; Utah, Wyoming, Colorado, and New Mexico: Temporary (interim) water service contracts for surplus project water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for terms up to 10 years; long-term contracts for similar service for up to 1,000 acre-feet of water annually.

(a) Harrison F. Russell and Patricia E. Russell, Aspinall Unit, CRSP, Colorado: Contract for 1 acre-foot to support an augmentation plan, Case No. 97CW39, Water Division Court No. 4, State of Colorado, to provide for a single family residential well, including home lawn and livestock watering (non-commercial).

(b) City of Page, Arizona, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 300 acre-feet of water for municipal purposes.

(c) LeChee Chapter of the Navajo Nation, Glen Canyon Unit, CRSP, Arizona: Long-term contract for 200 acre-feet for municipal purposes.

(d) Stephens, Walter Daniel, Aspinall Unit, CRSP, Colorado: Contract for 2 acre-feet to support an augmentation plan, Case No. 97CW49, Water Division Court No. 4, State of Colorado, to provide for pond evaporative depletions during the non-irrigation season.

(e) Frank M. Colman, Karen Edstrom, William and Lorena Gunn, Emily Vernon, and William E. Williams, Aspinall Unit, CRSP, Colorado: Contract for 3 acre-feet to support augmentation plans, Water Division Court No. 4, State of Colorado, to provide for single family residential use, irrigation, fire protection, and livestock watering.

(f) Daggett County, Utah, Flaming Gorge Unit, CRSP, Utah: M&I water service contract covering payment for and delivery of up to 12,000 acre-feet of untreated water as required by Section 10(k)(2) of Public Law 105–326.

2. Southern Ute Indian Tribe, Animas-La Plata Project, Colorado: Repayment contract for 26,500 acre-feet per year for M&I use and 2,600 acre-feet per year for irrigation use in Phase One and 700 acre-feet in Phase Two; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

3. Ute Mountain Ute Tribe, Animas-La Plata Project, Colorado and New Mexico: Repayment contract; 6,000 acre-feet per year for M&I use in Colorado; 26,400 acre-feet per year for irrigation use in Colorado; 900 acre-feet per year for irrigation use in New Mexico; contract terms to be consistent with binding cost-sharing agreement and water rights settlement agreement.

4. Pine River ID, Pine River Project, Colorado: Contract to allow the District to convert up to 2,000 acre-feet of

project irrigation water to municipal, domestic, and industrial uses.

5. San Juan-Chama Project, New Mexico: San Juan Pueblo repayment contract for up to 2,000 acre-feet of project water for irrigation purposes. Taos Area—The Taos area Acequias, the Town and County of Taos are forming a joint powers agreement to form an organization to enter into a repayment contract for up to 2,990 acre-feet of project water to be used for irrigation and M&I in the Taos, New Mexico area.

6. Carlsbad ID, Carlsbad Project, New Mexico: Multi-year contract to allow the District to lease water to the New Mexico Interstate Stream Commission to fulfill New Mexico's water obligation to Texas under Supreme Court's Amended Decree in *Texas* v. *New Mexico* 485 U.S. 288(1988).

7. The National Park Service, Colorado Water Conservation Board, Wayne N. Aspinall Unit, CRSP, Colorado: Contract to provide specific river flow patterns in the Gunnison River through the Black Canyon of the Gunnison National Monument.

8. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Long-term water service contract for municipal, domestic, and irrigation use.

9. Upper Gunnison River Water Conservancy District, Wayne N. Aspinall Unit, CRSP, Colorado: Substitute supply plan for the administration of the Gunnison River.

10. Uncompahgre Valley Water Users Association, Upper Gunnison River Water Conservancy District, Colorado River Water Conservation District, Uncompahgre Project, Colorado: Water management agreement for water stored at Taylor Park Reservoir and the Wayne N. Aspinall Storage Units to improve water management.

11. Southern Ute Indian Tribe, Florida Project, Colorado: Supplement to contract No. 14–06–400–3038, dated May 7, 1963, for an additional 181 acre-feet of project water, plus 563 acre-feet of water pursuant to the 1986 Colorado Ute Indian Water Rights Final Settlement Agreement.

12. Grand Valley Water Users Association, Orchard Mesa ID, and Public Service Company of Colorado, Grand Valley Project, Colorado: Water service contract for the utilization of project water for cooling purposes for a steam electric generation plant.

13. Public Service Company of New Mexico, CRSP, Navajo Unit, New Mexico: Amendatory water service contract for diversion of 16,700 acre-feet, not to exceed a depletion of 16,200 acre-feet of project water for cooling purposes for a steam electric generation plant.

14. Sanpete County Water Conservancy District, Narrows Project, Utah: Application for an SRPA loan and grant to construct a dam, reservoir, and pipeline to annually supply approximately 5,000 acre-feet of water through a transmountain diversion from upper Gooseberry Creek in the Price River drainage (Colorado River Basin) to the San Pitch—Savor River (Great Basin).

15. Emery County Water Conservancy District, Emery County Project, Utah: Warren Act contract to allow temporary storage of nonproject water in Joes Valley Reservoir and/or Huntington North Reservoir.

16. Individual irrigators, Dolores Project, Colorado: The United States proposes to carry up to 6,000 acre-feet of nonproject water in project facilities under the authority of the Warren Act of 1911.

17. Various contractors, San Juan-Chama Project, New Mexico: The United States proposes to purchase lease water from various contractors to stabilize flows in a critical reach of the Rio Grande in order to meet the needs of irrigators and preserve habitat for the silvery minnow.

The following contract actions have been completed or discontinued in the Upper Colorado Region since this notice was last published on October 20, 1998.

1. (18) Town of Taos, San Juan-Chama Project, New Mexico: Contract to purchase water from the Town of Taos to increase native flows in Rio Grande for benefit of the silvery minnow. This action has been discontinued.

2. (19) City of Albuquerque, San Juan-Chama Project, New Mexico: Amend water storage contract No. 3–CS–53–01510 to exempt the City of Albuquerque from acreage limitation and reporting provisions. Contract was executed October 21, 1998.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59107–6900, telephone 406–247–7730.

1. Individual irrigators, M&I, and miscellaneous water users; Colorado, Kansas, Montana, Nebraska, North Dakota, Oklahoma, South Dakota, Texas, and Wyoming: Temporary (interim) water service contracts for the sale, conveyance, storage, and exchange of surplus project water and nonproject water for irrigation or M&I use to provide up to 10,000 acre-feet of water annually for a term up to 1 year.

2. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Water service contracts for irrigation and M&I; contract negotiations for sale of water from the marketable yield to water users within the Colorado River Basin of Western Colorado.

3. Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Second round water sales from the regulatory capacity of Ruedi Reservoir. Negotiation of water service and repayment contracts for approximately 17,000 acre-feet annually for M&I use; contract with Colorado Water Conservation Board for remaining 21,650 acre-feet of marketable yield for interim use by U.S. Fish and Wildlife Service for benefit of endangered fishes in the Upper Colorado River Basin.

4. Garrison Diversion Unit, P–SMBP, North Dakota: Renegotiation of the master repayment contract with Garrison Diversion Conservancy District to conform with the Garrison Diversion Unit Reformulation Act of 1986; negotiation of repayment contracts with irrigators and M&I users.

5. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Pursuant to section 501 of Public Law 101–434, negotiate amendatory contract to increase irrigable acreage within the project.

6. Lakeview ID, Shoshone Project, Wyoming: New long-term water service contract for up to 3,200 acre-feet of firm water supply annually and up to 11,800 acre-feet of interim water from Buffalo Bill Reservoir. Pursuant to section 9(e) of the Reclamation Project Act of 1939 and Public Law 100–516.

7. City of Rapid City and Rapid Valley Water Conservancy District, Rapid Valley Unit, P–SMBP, South Dakota: Contract renewal for up to 55,000 acre-feet of storage capacity in Pactola Reservoir.

8. North Platte Project, Pathfinder ID: Negotiation of contract regarding SOD program modification of Lake Alice Dam No. 1 Filter/Drain.

9. Northern Cheyenne Indian Reservation, Montana: In accordance with section 9 of the Northern Cheyenne Reserved Water Rights Settlement Act of 1992, the United States and the Northern Cheyenne Indian Tribe are proposing to contract for 30,000 acre-feet per year of stored water from Bighorn Reservoir, Yellowtail Unit, Lower Bighorn Division, P–SMBP, Montana. The Tribe will pay the United States both capital and O&M costs associated with each acre-foot of water the Tribe sells from this storage for M&I purposes.

10. Mid-Dakota Rural Water System, Inc., South Dakota: Pursuant to the Reclamation Projects Authorization and Adjustment Act of 1992, the Secretary of

the Interior is authorized to make grants and loans to Mid-Dakota Rural Water System, Inc., a nonprofit corporation for the planning and construction of a rural water supply system.

11. Angostura ID, Angostura Unit, P–SMBP, South Dakota: The District had a contract for water service which expired on December 31, 1995. An interim 3-year contract provides for a continuing water supply and the District to operate and maintain the dam and reservoir. The proposed long-term contract would provide a continued water supply for the District and the District's continued O&M of the facility.

12. Cities of Loveland and Berthoud, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

13. P–SMBP, Kansas and Nebraska: Initiate negotiations for renewal of long-term water supply contracts with Kansas-Bostwick, Nebraska-Bostwick, Frenchman Valley, Frenchman-Cambridge, and Almena IDs.

14. Northwest Area Water Supply, North Dakota: Long-term contract for water supply from Garrison Diversion Unit facilities. Basis of negotiation has been approved by Commissioner. Negotiations are pending.

15. Fort Shaw and Greenfields IDs, Sun River Project, Montana: Contract for SOD costs for repairs to Willow Creek Dam. Greenfields ID has signed a 1-year repayment contract for its share of the SOD costs. Have received the revised/approved basis of negotiation from the Commissioner. In the process of negotiating a contract with Fort Shaw ID.

16. P–SMBP, Kansas: Water service contracts with the Kirwin and Webster IDs in the Solomon River Basin in Kansas will be extended for a period of 4 years in accordance with Public Law 104–326 enacted October 19, 1996. Water service contracts will be renewed prior to expiration.

17. City of Cheyenne, Kendrick Project, Wyoming: Negotiation of contract to renew for an additional term of 5 years. Contract for up to 10,000 acre-feet of storage space for replacement water on a yearly basis in Seminoe Reservoir. A temporary contract has been issued pending negotiation of the long-term contract.

18. Highland-Hanover ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction costs.

19. Upper Bluff ID, P–SMBP, Hanover-Bluff Unit, Wyoming: Renegotiation of long-term water service contract; includes provisions for repayment of construction cost.

20. Fort Clark ID, P–SMBP, North Dakota: Negotiate an interim water service contract to continue delivery of project water pending renewal of a long-term water service-repayment contract.

21. Canadian River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a consideration for project land transferred to the National Park Service, and a 3-year deferment of payments.

22. Nueces River Project, Texas: Recalculate existing contract repayment schedule to conform with the provisions of the Emergency Drought Relief Act of 1996. The revised schedule is to reflect a 5-year deferment of payments.

23. Western Heart River ID, P–SMBP, Heart Butte Unit, North Dakota: Negotiation of water service contract to continue delivery of project water to the District.

24. Lower Marias Unit, P–SMBP, Montana: Water service contract expired June 1997. Initiating renewal of existing contract for 25 years for up to 480 acre-feet of storage from Tiber Reservoir to irrigate 160 acres. Received approved basis of negotiation from the Commissioner. Currently developing the contract and consulting with the Tribes regarding the Water Rights Compact.

25. Lower Marias Unit, P–SMBP, Montana: Initiating 25-year water service contract for up to 750 acre-feet of storage from Tiber Reservoir to irrigate 250 acres. A 1-year temporary contract has been issued to allow additional time to complete necessary actions required for the long-term contract.

26. Lower Marias Unit, P–SMBP, Montana: Water service contract expired May 31, 1998. Initiating renewal of the long-term water service contract to provide 4,570 acre-feet of storage from Tiber Reservoir to irrigate 2,285 acres. A 1-year interim contract has been issued to continue delivery of water until the necessary actions can be completed to renew the long-term contract.

27. Glendo Unit, P–SMBP, Wyoming: Initiate amendments to extend the current contracts until December 31, 2000, in accordance with the ''Irrigation Project Contract Extension Act of 1998'' for Burbank Ditch, New Grattan Ditch Company, Torrington ID, Lucerne Canal and Power Company, and Wright and Murphy Ditch Company.

28. Glendo Unit, P–SMBP, Nebraska: Initiate amendments to extend the current contracts until December 31, 2000, in accordance with the ''Irrigation Project Contract Extension Act of 1998'' for Bridgeport, Enterprise, and Mitchell IDs, and Central Nebraska Public Power and Irrigation District.

29. Dickinson Heart River Mutual Aid Corporation, P–SMBP, Dickinson Unit, North Dakota: Negotiate renewal of water service contract for irrigation of lands below Dickinson Dam in western North Dakota.

30. Public Service Company of Colorado: Agreement to furnish surplus water from the historic users pool at Green Mountain Reservoir for the purpose of generating hydroelectric power at the Grand Valley Power Plant, Palisade, Colorado.

31. Canadian River Project, Texas: Amend repayment contract No. 14–06–500–485 to allow for prepayment of construction charge obligation as authorized by Public Law 105–316, signed October 30, 1998.

32. Savage ID, P–SMBP, Montana: Contract with District has expired. Preparing basis of negotiation for the Commissioner's approval prior to issuing a long-term contract.

33. San Angelo Project, Texas: San Angelo Water Supply Corporation, amend contract to reflect increase in irrigable acreage as authorized pursuant to section 501 of Public Law 101–434.

34. City of Fort Collins, Colorado, Colorado-Big Thompson Project, Colorado: Long-term contracts for conveyance and storage of nonproject M&I water through Colorado-Big Thompson Project facilities pursuant to the Town Sites and Power Development Act of 1906.

35. Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: In compliance with the October 1996 Stipulation and Agreement, Orchard Mesa Check Case No. 91CW247, Colorado Water Division No. 5, Reclamation is currently negotiating a long-term Operating Agreement among Colorado Public Service Company of Colorado, Orchard Mesa ID, and Grand Valley Water Users Association, for delivery of surplus Green Mountain Reservoir water to the Federal Grand Valley Power Plant.

36. Fryingpan-Arkansas Project, Colorado: Proposing to amend contract No. 9–07–70–W0090 for water storage with Busk-Ivanhoe, Inc.

Dated: January 14, 1999.

Wayne O. Deason,

Deputy Director, Program Analysis Office.

[FR Doc. 99–1439 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: January 29, 1999 at 11:00 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. No. AA1921–167 (Review) (Pressure Sensitive Plastic Tape from Italy)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on February 12, 1999)
5. Outstanding action jackets:
   (1) Document No. GC–98–069: APO matters
   (2) Document No. GC–98–071: APO matters

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: January 20, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–1603 Filed 1–20–99; 2:46 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Three Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that three proposed consent decrees in *United States* v. *Drum Service Co. of Florida, et al.,* M.D. Fla., Civil No. 98–687–Civ–Orl–18C, were lodged on January 6, 1999, with the United States District Court for the Middle District of Florida. The consent decrees resolve claims under Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9607, as amended, brought against (1) defendants Douglass Fertilizer & Chemical Co., Inc., Spencer G. Douglass, Joseph P. Brooks, the Estate of Irving Feinberg, Mallory Corporation, and Coatings Application & Waterproofing Co.; (2) defendants Zellwin Farms Co., Inc., W.R. Grace & Co.—Conn., Paul Alexander, Julia Alexander, Chemical Systems of Florida, Inc.; and (3) defendant Joseph P. Brooks for response costs incurred and to be incurred by the United States Environmental Protection Agency in connection with responding to the release and threatened release of hazardous substances at the Zellwood Groundwater Contamination Superfund Site (''Site'').

One proposed decree would partially resolve the liability of five former owners and operators of a liquid fertilizer business at the Site and the current owner of the portion of the Site on which the liquid fertilizer business was located. The Decree would release claims against Douglass Fertilizer & Chemical Co., Inc., Spencer G. Douglass, Joseph P. Brooks, the Estate of Irving Feinberg, Mallory Corporation, and Coatings Application & Waterproofing Co. (''Settling Defendants''), for response costs incurred to perform the remedy selected in a Record of Decision for Operable Unit One of the Site. The Settling Defendants collectively would pay $199,980.11 to resolve these claims.

The second proposed decree would resolve the liability of four current owners and one current operator for all past and future response costs at the Site. Zellwin Farms Co., Inc., would pay $18,048.23; W.R. Grace & Co.—Conn. would pay $8,114.94; and Paul Alexander, Julia Alexander and Chemical Systems of Florida, Inc., collectively would pay $8,114.94 to resolve the United States' claims.

The third proposed decree would resolve the liability of Joseph P. Brooks, a former operator at the Site, on the grounds that Mr. Brooks has an inability to pay. Mr. Brooks, who is paying $70,000 as a Settling Defendant in the first proposed Consent Decree, would pay an additional $500 to resolve his remaining liability.

The three proposed consent decrees include a covenant not to sue by the United States under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9606 and 9607, and under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decrees. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Drum Service Co. of Florida, et al.,* M.D. Fla., Civil No. 98–687–Civ–Orl–18C, DOJ Ref. #90–11–2–266.

The proposed consent decrees may be examined at the office of the United States Attorney, Middle District of Florida, 201 Federal Building, 80 N. Hughey Avenue, Orlando, FL 32801; the Region IV Office of the Environmental Protection Agency, Atlanta Federal Center, 61 Forsyth Street, Atlanta, Georgia 30303–8960; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of any of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting copies please refer to the referenced case and enclose a check in the amount of $67.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–1392 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Public Comments and Response of the United States; United States v. Enova Corporation

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that public comments and the response of the United States thereto have been filed with the United States District Court for the District of Columbia in *United States* v. *Enova Corporation,* Civil No. 98–CV–583 (RWR).

On March 9, 1998, the United States filed a Complaint seeking to enjoin a transaction in which Pacific Enterprises (''Pacific'') would merge with Enova Corporation (''Enova''). Pacific is a California gas utility company and Enova is a California electric utility company. Enova sells electricity from plants that use coal, gas, nuclear power, and hydropower. Pacific is virtually the sole provider of natural gas transportation and storage services to plants in southern California that use natural gas to produce electricity. The proposed merger would have created a company with both the incentive and the ability to lessen competition in the market for electricity in California. The

Complaint alleged that the proposed merger would substantially lessen competition in the market for electricity in California, in violation of Section 7 of the Clayton Act, 15 U.S.C. 18.

Public comment was invited within the statutory sixty-day comment period. The two comments received, and the responses thereto, are hereby published in the **Federal Register** and filed with the Court. Copies of the Complaint, Stipulation and Order, Proposed Final Judgment, Competitive Impact Statement, Public Comments, and Plaintiff's Response to Public Comments are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Washington, DC 20530 (telephone: (202) 514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW., Washington, DC 20001. Copies of these materials may be obtained on request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

United States of America, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW., Suite 500, Washington, DC 20530, *Plaintiff,* v. Enova Corporation, 101 Ash Street, San Diego, CA 92101, *Defendant.*

[Case Number: 98–CV–583 (RWR); Judge Richard W. Roberts]

Plaintiff's Response to Public Comments

Pursuant to the requirements of the Antitrust Procedures and Penalties Act (''APPA''), 15 U.S.C. 16(b)–(h) (''Tunney Act''), the United States hereby responds to the two public comments received regarding the proposed Final Judgment in this case.

I. The Complaint and Proposed Judgment

The United States filed a civil antitrust Complaint on March 9, 1998, alleging that the proposed merger of Pacific Enterprises (''Pacific''), a California natural gas utility, and Enova Corporation (''Enova''), a California electric utility, would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that as a result of the merger, the combined company (''PE/Enova'') would have both the incentive and the ability to lessen competition in the market for electricity in California and that consumers would be likely to pay higher prices for electricity.

The Complaint further alleges that prior to the merger, Pacific's wholly owned subsidiary, Southern California Gas Company, was virtually the sole provider of natural gas transmission and storage to natural gas-fueled electric generating plants in Southern California (''gas-fired plants''). As a consequence and without regard to the merger, it had the ability to use that market power to control the supply and thus the price of natural gas available to the gas-fired plants. Prior to the merger, however, Pacific did not own any electric generation plants, so it did not have the incentive to limit its gas transportation, sales or storage or to raise the price of gas to electric utilities in order to increase the price of electricity.

The Complaint alleges that in early 1998, the California electric market experienced significant changes as the result of a legislatively mandated restructuring. In this new competitive electric market, gas-fired plants, which are the most costly electric generating plants to operate, set the price that all sellers receive for electricity in California in peak demand periods. Thus, if a firm could increase the cost of the gas-fired plants by raising their fuel prices, it could raise the price all sellers of electricity in California receive, and increase the profits of owners of lower cost sources of electricity.

Based on these facts, the Complaint alleges that the merger violated Section 7 of the Clayton Act because the acquisition of Enova's low-cost electric generating plants gave Pacific a means to benefit from any increase in electric prices. The Complaint challenges the acquisition of these specific plants:

> Once Pacific's pipeline is combined with Enova's low cost electricity generation facilities, PE/Enova would have the ability to raise the pool price of electricity either by (a) limiting the availability of natural gas to competing gas-fired plants that supply the most expensive units of electricity into the pool, or (b) by limiting gas or gas transportation to gas-fired plants that are more efficient and would otherwise have kept the pool price for electricity down. PE/Enova would have the incentive to raise the pool price after the merger because, through its ownerships of low cost generation facilities, it could profit substantially from any increase in the pool price of electricity and its incremental profits would more than offset any losses of gas transportation sales that would result from withholding gas from competing gas-fired plants. PE/Enova thus will have the incentive and ability to lessen competition substantially and increase the price of electricity in California during periods of high demand.
>
> (Compl. ¶24 (emphasis added).)

The proposed Final Judgment directly remedies this harm by requiring Enova to divest its low-cost generating units to a purchaser or purchasers acceptable to the United States in its sole discretion. These divestiture assets are the Encina and South Bay electricity generation facilities owned by Enova and located at Carlsbad and Chula Vista, California, and include all rights, titles and interests related to the facilities.[1] By requiring this divestiture, the incentive that was created by the merger for PE/Enova to raise electricity prices is removed, providing a full remedy to the harm alleged in the Complaint.[2]

As part of the settlement, the United States also obtained the Defendant's agreement to protection that are beyond those needed to remedy directly the harm created by the acquisition. The proposed decree includes limitations on PE/Enova's ability in the future to acquire other low cost gas-fired generating assets that could give the merged firm the same incentive and opportunity to raise electricity prices that the acquisition of the divested Enova assets would have presented. Recognizing that PE/Enova would have numerous acquisition opportunities over the next few years as a consequence of the State of California's orders that many generating assets be divested (*see* CIS at 13), the proposed decree requires PE/Enova to seek prior approval from the United States before acquiring ownership or ownership-like rights to other low-cost, California generating assets. The United States can, at its sole discretion, disallow any acquisition of such assets, without incurring the costs and risks of litigation.[3] The types of transactions

[1] The Final Judgment provides that the approvals by the United States required by this decree for sale of these assets are in addition to the necessary approvals by the California Public Utilities Commission (''CPUC'') or any other governmental authorities for the sale of such assets. Enova must submit required applications to divest the assets no later than ninety days after entry of the Final Judgment, and complete the divestiture as soon as practicable after receipt of all necessary government approvals, in accordance with the proposed Final Judgment.

[2] As explained in the Competitive Impact Statement (''CIS''), the decree does not require the divestiture of the merged company's nuclear assets, as the price of electricity from those assets will be regulated during the cirtical first years of the decree, which means that ownership of those assets will not give the merged firm an incentive to raise prices. In 2001, if the nuclear power prices become deregulated, the decree provides for safeguards to ensure that any incentive to use these assets to raise price is minimized or eliminated.

[3] The Final Judgment does not prevent PE/Enova from building new capacity in California, or from acquiring capacity built in California after January 1, 1998. New capacity will only be built in California if the output is inexpensive enough to be sold in many hours. By increasing the amount of less expensive power available to meet demand, new, low-cost capacity will reduce the number of hours in which the most costly gas-fired capacity is needed. This in turn will limit PE/Enova's ability to raise the pool price since it is more costly and difficult for PE/Enova to restrict gas to more numerous low-cost plants. For the same reasons, the Final Judgment allows the merged company to acquire or gain control of plants that are rebuilt,

subject to this prior approval process include outright acquisition of any existing California Generating Assets (Final Jmt. § V.A.1); any contract that allows PE/Enova to control such assets (Final Jmt. § V.A.2); any contract for the operation and sale of the output from generating facilities owned by the Los Angeles Department of Water and Power (''LADWP''), the second largest generator of electricity in California and an entity owning more generation than Enova even prior to the divestiture (Final Jmt. §§ V.A.2, II.B); power management contracts of California Generating Facilities with the LADWP (Final Jmt. §§ V.C.4,II.C); and future tolling arrangements of the type that would most clearly mimic true ownership of the tolled facilities (Final Jmt. §§ V.A.2, V.C.3).

In addition, the United States has the ability to monitor PE/Enova's entry into many power management contracts not subject to prior approval (Final Jmt. § V.C.5). The United States thus has the opportunity to review these contracts, which are relatively new in the deregulated California market, and determine whether they would give PE/Enova the same incentive to raise electricity prices that ownership of the divested Enova assets would have created. The United States can then challenge any contracts that would do so.

In sum, the decree provides two types of relief for the United States. First, it achieves a direct remedy for the harm caused by Pacific's acquisition of Enova's low-cost generating assets by ordering divestiture of those specific assets. Second, it provides the additional benefits of the prior approval and contract monitoring provisions. These additional provisions are not meant to (nor can they) prevent PE/Enova from entering any transaction or acquiring any asset that could give it the incentive to exploit Pacific's pipeline market power in the electricity market. Instead they provide the United States with a check on potentially anticompetitive transactions, where the acquisition of such assets would again create incentives similar to these created by the assets acquired (and divested) in the transaction before this Court.

The United States and Enova have stipulated that the proposed Final Judgment may be entered after compliance with the APPA.

II. Response to Public Comments

On June 8, 1998, the United States filed the CIS in this docket and on June 18, 1998, the Complaint, Final Judgment and CIS were published in the **Federal Register**. The **Federal Register** notice explained that interested parties could provide comments to the Department for a period of 60 days. Two parties filed comments with the Department: Edison International (''Edison'') and the City of Vernon.

A. Edison's Comments

Edison's primary comment is that the decree does not strip PE/Enova of the ability or incentive to increase electricity prices, but only eliminates one opportunity to do so. Despite the decree, Edison argues, PE/Enova still can use Pacific's market power over natural gas transmission and still can enter into transactions that will give it the incentive to exercise that power and raise electricity prices. Edison enumerates and discusses particular transactions that would give Pacific that incentive:

1. Building or acquiring new or repowered generating facilities;
2. Entering into tolling agreements;
3. Entering into power generation management contracts; and
4. Entering into financial contracts (derivatives) tied to prices in the California Electric market.

But Edison's criticism misses the mark, because each of the potential transaction it lists is a transaction that Pacific could engage in whether or not it merges with Enova. Thus, Edison's comments do not focus on the harm caused by the merger, but rather on the harm to competition that might result from Pacific's premerger ownership of a monopoly gas pipeline. In contrast, the United States' Complaint is focused only on the effects that flow from the merger.

Edison's assertion (Edison Comments at 13) that Pacific had no premerger incentive to manipulate electricity prices is simply wrong. As soon as California deregulated retail electricity prices, Pacific had the incentive, among other things, to build or acquire new and/or repower other existing generating assets, purchase derivatives, and make gas tolling agreements in order to exploit its pipeline's market power over gas-fired generators. The ability and incentive of Pacific to exercise its natural gas transmission market power for gain in the electric market in any of these manners does not require acquisition of any of Enova's generating assets or its ''electricity expertise.'' [4]

Nevertheless, Edison argues that the Final Judgment is defective because the United States did not also ''understand[ ], anticipat[e], and then prohibit[ ] all the various means by which the merged company could seek to retain or create incentives to earn profits through electricity price manipulations.'' (Edison Comments at 20.) To the extent that Edison means to suggest that, once any merger transaction is found to violate the Clayton Act, a merger decree should enjoin any and all other means by which the defendant might violate the antitrust laws in the future, the suggestion plainly is incorrect.[5] Contrary to Edison's suggestions, enforcement of the merger laws, Section 7 of the Clayton Act, is aimed at remedying the competitively harmful changes in market structure or other conditions that result from the merger. Here, the merger takes Pacific's ability to profitably raise electric prices and adds the incentive provided by Enova's low cost generating assets. The proposed decree severs those assets from the merged company, remedying the change in incentive and ability from the status quo ante. The Final Judgment requires these assets to be sold to a party that will not own the monopoly pipeline and removes the new incentive provided by the acquired Enova assets for PE/Enova to use the pipeline's already existent market power.[6]

Just as Edison's critical comments do not address the merger-related harms alleged in the Complaint, its comments do not address whether the parties' proposed decree is adequate to remedy the harms alleged in that Complaint. Instead, Edison proposes its own alternative remedies that either do not

repowered, or activated out of dormancy after January 1, 1998. Output from such plants is the equivalent of output from new-build capacity. CIS at 13–14.

[4] Edison's comments, which mention Enova's ''electricity expertise'' in one sentence, do not define this term, identify where in Enova it resides, or assert that pacific, the pipeline's parent company, did not already have such expertise prior to the merger or have the ability to obtain it by a number of means, including hiring employees with electric experience.

[5] *See Zenith Radio Corp.* v. *Hazeltine Research, Inc.*, 395 U.S. 100, 133 (1969) (explaining that a court may not enjoin ''all future violations of the antitrust laws, however unrelated to the violation found by the court''); *Hartford-Empire Co.* v. *United States*, 323 U.S. 386, 409–10 & n.7 (1945) (citing *NLRB* v. *Express Publ'g Co.*, 312 U.S. 426, 433, 435–36 (1941)).

[6] Edison also makes the same argument from the opposite perspective—that competition is separately harmed because Enova has gained an ability via the merger to raise price. (Edison Comments at 5.) Again, there is no additional pipeline monopoly power created by the merger. The proposed remedy is effective against the harm caused by the combination (the pipeline and Enova's low cost generating assets), whether the Southern California Gas Company pipeline's monopoly power is wielded by Enova or by Pacific.

address the harm caused by the merger, or are not as effective as the decree. Edison suggests that: (1) The merger be rescinded, (2) the pipeline be divested, (3) the pipeline be controlled by an independent system operator, or (4) the merged company be barred from trading in financial instruments for Southern California electricity markets (Edison Comments at 6).[7]

Two of Edison's proposed remedies—the independent system operator and the bar on trading—are aimed at controlling the preexisting market power of the gas pipeline rather than remedying any harm created by the merger. And, ironically, the Edison remedies aimed most closely at the merger—rescission or divestiture of the pipeline—would not place any limits on the pipeline's new owner's ability to raise the price of electricity or limit the pipeline owner from acquiring assets or contracts that would give it the incentive to do so, even though this incentive and ability is purportedly the gravamen of Edison's concern. The Proposed Final Judgment, in contrast, gives this emerging electric market more protection than Edison's suggested remedies through prior notice and market monitoring provisions.[8]

In the end, Edison's preference for a different remedy is not relevant to the Court's inquiry. Under the Tunney Act, the Court may not choose or fashion a remedy that is ''better'' in someone's opinion than the one negotiated and agreed to by the parties. To the contrary, ''a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.' '' [9] The proposed Final Judgment meets and exceeds this legal standard.

B. City of Vernon's Comments

The City of Vernon recognizes in its comments that the Proposed Final Judgment focuses entirely on the potential of PE/Enova to reduce competition in the electricity market in Southern California. It comments that the proposed judgment ''ignores'' the effect of the merger on the natural gas transmission market in Southern California. The case brought by the Department, however, involved the electricity market in Southern California, and the relief addressed in the Proposed Final Judgment remedies the competitive harm posed by the proposed acquisition to that market. The Complaint does not allege violations in the natural gas transmission market, and the City of Vernon's proposed relief is thus not relevant to this proceeding.

III. The Legal Standard Governing the Court's Public Interest Determination

Once the United States moves for entry of the proposed Final Judgment, the Tunney Act directs the Court to determine whether entry of the proposed Final Judgment ''is in the public interest.'' 15 U.S.C. § 16(e). In making that determination, ''the court's function is not to determine whether the resulting array of rights and liabilities is one that will best serve society, but only to confirm that the resulting settlement is within the reaches of the public interest.'' *United States* v. *Western Elec. Co.*, 993 F.2d 1572, 1576 (D.C. Cir.) (emphasis added, internal quotation and citation omitted), *cert. denied*, 114 S. Ct. 487 (1993).

The Court is not ''to make de novo determination of facts and issues.'' *Western Elec.*, 993 F.2d at 1577. Rather, ''[t]he balancing of competing social and political interests affected by a proposed antitrust decree must be left, in the first instance, to the discretion of the Attorney General.'' *Id.* (internal quotation and citation omitted). In particular, the Court must defer to the Department's assessment of likely competitive consequences, which it may reject ''only if it has exceptional confidence that adverse antitrust consequences will result—perhaps akin to the confidence that would justify a court in overturning the predictive judgments of an administrative agency.'' *Id.* [10] The Court may reject a decree simply ''because a third party claims it could be better treated,'' *United States* v. *Microsoft*, 56 F.3d 1448, 1459 (D.C. Cir. 1995), or based on the belief that ''other remedies were preferable,'' *id.* at 1460.

Further, the Tunney Act does not contemplate judicial reevaluation of the wisdom of the government's determination of which violations to allege in the Complaint. The government's decision not to bring a particular case on the facts and law before it, like any other decision not to prosecute, ''involves a complicated balancing of a number of factors which are peculiarly within [the government's expertise.'' *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). Thus, the Court may

[7] Edison compares its preferred options with the proposed Final Judgment, calling the remedy in the proposed Final Judgment ''the least attractive option'' from Edison's perspective. (Edison Comments at 3 (''The last but least attractive option is to try to lessen the merged firm's incentive to exercise its monopoly power in order to profit from higher electric prices.'').) Edison finds this course less attractive because ''it requires a complex latticework of provisions * * * [that is] difficult to write and even harder to administer.'' *Id.* The alternative it suggests, creating an independent system operator for the pipeline system, has never been done anywhere in the United States and, while possible, cannot be assumed to be easy to write and easier to adminster.

[8] For example, Edison argues that the FTC's consent decree in PacificCorp (*PacifiCorp/The EnergyGroup*, FTC File No. 9710091) provides a superior remedy. It mischaracterizes the FTC decree as equivalent to the divestiture of Pacific's gas pipeline assets that constitute virtually all of the assets Pacific contributed to the merger with Enova. Unlike this case, however, the divesture of coal assets in PacifiCorp was not the equivalent of rescission of the merger. PacifiCorp is a large integrated electric utility with coal holdings in the western United States. It was acquiring the Energy Group, an international electric company, the second largest electric distribution company in the United Kingdom, which also held coal reserves in both eastern and western United States. The FTC decree did not requirement the Energy Group to divest its coal business, much less its primary utility business, as Edison would have the decree in the instant case require divestiture of Pacific's utility pipeline business. Instead, the FTC decree required a specific subset of the Energy Group's western coal mines to be divested. The FTC's PacifiCorp decree stopped with divesture of those specific assets and, unlike the Final Judgment proposed here, did not go further to limit the merged company's reacquisition of assets that would create the same vertical problem as the divested assets.

[9] *United States* v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 153 n.95 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983)(mem.).

[10] The Tunney Act does not give a court authority to impose different terms on the parties. *See e.g., American Tel. & Tel.*, 552 F. Supp. at 153 n. 95; *accord* H.R. Rep. No. 93–1463, at 8 (1974). A court, of course, can condition entry of a decree on the parties' agreement to a different bargain, *see e.g., American Tel. & Tel.*, 552 F. Supp. at 225, but if the parties do not agree to such terms, the court's only choices are to enter the decree the parties proposed or to leave the parties to litigate.

United States v. *Thomson Corp.*, 949 F. Supp. 907 (D.D.C. 1996), cited by Edison (Edison Comments at 9–10), does not support Edison's argument to reject the Proposed Final Judgment. That case involved the Tunney Act review of a proposed final judgment that required one of the merging companies to license a copyright that it claimed but had not licensed prior to the merger. While there was some controversy as to whether the decree's license provisions could have been extracted as the result of a trial, *see Thomson*, 949 F. Supp. at 927, the Court nevertheless considered comments on the specific terms of the license proposal because of the potential anticompetitive harm that could result from ''the merger of these two publishing giants in conjunction with'' the asserted copyright claim. *Id.* at 928. The *Thomson* Court addressed comments on the license provision on that ground, and not because the decree would remedy preexisting wrongs; nor did the court add or alter any provisions to the Final Judgment that had not been agreed to by the parties. Here, in contrast, Edison is not commenting on a specific remedy agreed to by the parties as a means of addressing the harms related to a merger. Instead, Edison is asking this Court to insert an entirely new mechanism for relief into the decree, in order to address Pacific's preexisting pipeline market power as it could be exercised in relation to the acquisition of any electricity assets, regardless of Pacific's merger with Enova. Edison's proposed approach is completely at odds with Judge Friedman's actions in the *Thomson* case. Judge Friedman, as Edison concedes, was careful not to substitute his judgment for the government's and, further, did not adopt proposed remedies that were unrelated to the merger. (*See* Edison Comments at 10).

not look beyond the Complaint ''to evaluate claims that the government did not make and to inquire as to why they were not made.'' *Microsoft*, 56 F.3d at 1459; *see also United States* v. *Associated Milk Producers, Inc.*. 534 F.2d 113, 117–18 (8th Cir. 1976).

The government has wide discretion within the reaches of the public interest to resolve potential litigation. *See e.g.*, *Western Elec. Co.*, 993 F.2d 1572; *American Tel & Tel.*, 552 F. Supp. at 151. The Supreme Court has recognized that a government antitrust consent decree is a contract between the parties to settle their disputes and differences, *United States* v. *ITT Continental Baking Co.*. 420 U.S. 223, 235–38 (1975); *United States* v. *Armour & Co.*, 402 U.S. 673, 681–82 (1971), and ''normally embodies a compromise; in exchange for the saving of cost and elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.'' *Armour*, 402 U.S. at 681. As Judge Greene has observed:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

American Tel. & Tel., 552 F. Supp. at 151. This Judgment has the virtue of bringing the public certain benefits and protection without the uncertainty and expense of protracted litigation. *See Armour*, 402 U.S. at 681; *Microsoft*, 56 F. 3d at 1459.

Finally, the entry of a governmental antitrust decree forecloses no private party from seeking and obtaining appropriate antitrust remedies. Defendants will remain liable for any illegal acts, and any private party may challenge such conduct if and when appropriate.

IV. Conclusion

After careful consideration of the public comments, the United States concludes that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violation alleged in the Complaint and is in the public interest. The United States will therefore ask the Court to enter the proposed Final Judgment after the public comments and this Response have been published in the **Federal Register**, as 15 U.S.C. 16(d) requires.

Dated: January 11, 1999.

Respectfully submitted,

Jade Alice Eaton

D.C. Bar #939629, Trial Attorney, U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, DC 20530. Phone: (202) 307–6316.

Certificate of Service

I hereby certify that I have caused a copy of the foregoing Plaintiff's Response to Public Comments, as well as attached copies of the public comments received from the City of Vernon, California, and from Southern California Edison Company, to be served on counsel for defendant and for public commentators in this matter in the manner set forth below:

By first class mail, postage prepaid:

Steven C. Sunshine,

Shearman & Sterling, 801 Pennsylvania Avenue, N.W., Washington, DC 2004.

John W. Jimison,

Brady & Berliner, 1225 Nineteenth Street, N.W., Suite 800, Washington, DC.

J.A. Bouknight, Jr.,

David R. Roll,

James B. Moorhead,

Steptoe & Johnson LLP, 1330 Connecticut Ave., N.W., Washington, DC 20036.

Dated: January 11, 1999.

Jade Alice Eaton,

D.C. Bar # 939629. Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530, (202) 307–6456, (202) 616–2441 (Fax).

Brady & Berliner

1225 Nineteenth Street. N.W., Suite 800, Washington, DC 20036

August 17, 1998.

Mr. Roger W. Fones,

Chief Transportation Energy & Agriculture Section Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Re: Comments of the City of Vernon, California, on the Proposed Final Judgement, Stipulation in the Competitive Impact Statement in U.S. v. Enova Corporation, Civil No. 98–CV–583

Dear Mr. Fones: Pursuant to the legal notice issued by the Antitrust Division on June 18, 1998 the City of Vernon, California, (''Vernon'') hereby provides these comments in opposition to the approval of the Proposed Final Judgement Stipulation in the Competitive Impact Statement in *U.S.* v. *Enova Corporation*, Civil No. 98–CV–583 (''Proposed Judgement'').

Vernon submits that the Proposed Judgement would permit a merger to be consummated that will alter and damage the potential for competition in the California natural gas market. The Proposed Judgement focuses entirely on the potential of the merged entity to reduce competition in the electricity market in southern California, and orders as a remedy the divestiture of certain electricity generating stations owned by the San Diego Gas & Electric Company (''SDG&E''). The Proposed Judgement ignores the fact that the merger will combine the two largest natural gad transmission and distribution companies in southern California. The merger will thus eliminate the potential for competition between them, or for support by either of them for new natural gas transmission pipeline which would compete with the other.

Vernon operates a municipal electricity utility including its own gas-fired power plant and will complete this year a municipal natural gas utility. Vernon and other natural gas distributing entities in southern California have lacked any meaningful alternative to the monopoly natural gas transmission service from the Southern California Gas Company (''SoCalGas''), the parent of which, Pacific Enterprises, is merging with Enova. Although two interstate pipelines were built into California in the first years of this decade, their systems terminate in the Bakersfield, California, region and do not compete with SoCalGas in its service territory in the large Los Angeles metropolitan region, including Vernon.

In order for a competing pipeline to be constructed into Los Angeles, the sponsor must overcome significant hurdles and expenses of locating and obtaining an environmentally suitable right-of-way, and must have agreements with shippers for an adequate volume of natural gas to support the expensive project. Having large prospective shippers under contract to use a new pipeline is a prerequisite to constructing one. Despite these obstacles, there have been a number of potential pipelines discussed and considered that would have competed with SoCalGas' gas transmission service into the Los Angeles area. However, to date, SoCalGas' actions to frustrate and oppose any such competition have been successful. These efforts have included special discounted contracts offered to the most likely customers of a new pipeline and adopting a penalty tariff that effectively forbids any customer of a new pipeline from taking any service at all from SoCalGas—even at different locations—without paying the full SoCalGas system tariff for transmission in addition to the cost of the competing pipeline.

The single largest potential ''anchor'' customer of a new pipeline to compete with SoCalGas was SDG&E. The merger that would be approved by the Proposed Judgement would eliminate SDG&E's potential role as an anchor shipper on a new pipeline, and cement a permanent alliance between SDG&E and SoCalGas to sustain their joint monopoly on gas transmission services in southern California.

While the divestiture of SDG&E's power plant may have reduced the potential that the merged entity would use that monopoly to favor its own gas-fired generators in a competitive electricity market, that limited divestiture does nothing to reduce the damage to competition created by this merger in the natural gas market.

Across the United States, competition among natural gas transportation companies has benefitted consumers with improved

service at lower tariffs. With the exception of those customers in the Bakersfield area, and those selectively receiving discounts to ensure they will not support competing pipelines, the customers in southern California have not had any benefits of competition among gas transmission providers. The approval of the Proposed Judgement and consummation of the merger it approves will reduce their chances of such benefits.

Vernon submits that approval of the merger should have been conditioned not only on actions to reduce the potential risks to competition in the electricity market, but also to reduce the injury to competition in the natural gas market. Such action could have included a requirement that SoCalGas sell to independent entities a volume of transportation capacity equivalent to that which it had traditionally used to serve SDG&E, or a requirement that SoCalGas offer transportation rights on its system which can be released and brokered to others, creating the potential for a competitive third-party market among gas shippers with defined rights. No such action was taken in the Proposed Judgement.

For this reason, Vernon opposes the approval of the Proposed Judgement.

Respectfully submitted,

John W. Jimison, Esq.,

Attorney for The City of Vernon.

Comments of Amicus Curiae Southern California Edison Company on the Proposed Final Judgment

Kevin J. Lipson,

Mary Anne Mason,

Hogan & Hartson LLP, Columbia Square, 555-Thirteenth Street, NW, Washington, DC 20004–1109, (202) 637–5600.

Stephen E. Pickett,

Douglas Kent Porter, Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, California 91770, (626) 302–1903.

J.A. Bouknight, Jr.,

David R. Roll,

Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036, (202) 429–3000.

Dated: August 17, 1998.

Comments of Amicus Curiae Southern California Edison Company on the Proposed Final Judgment

Southern California Edison Company (''SCE'') respectfully submits the following comments on the proposed Final Judgment in the above referenced matter.[1]

Introduction and Summary

This is a case about an electric utility. Like any company in our capitalistic system, this utility would like to raise its prices in order to increase profits for its shareholders. Finding that competition constrains its ability to increase electricity prices, the utility decides to buy the only company in the world that will give it that ability to raise electricity prices in the area where the utility competes. Not surprisingly, the Department of Justice (''DOJ'') finds the merge to be an obvious violation of the antitrust laws. DOJ then files a complaint and proposes a Final Judgment that permits the merger without eliminating the competitive problem identified in the complaint.

The violation alleged in DOJ's complaint is straight-forward. Enova Corporation (''Enova''), the owner of one of California's three major electric utilities, has acquired Pacific Enterprises (''Pacific''), which owns and operates the intrastate gas pipeline system that provides virtually all of the natural gas consumed in southern California. As DOJ's complaint alleges, control of this pipeline system will provide Enova with monopoly control of natural gas in the southern California market. This in turn will permit Enova to control the price of electricity in southern California much of the time, because natural gas is used to generate electricity ''on the margin'' during most hours of the year in southern California.

In competitive markets, the cost characteristics of a producer on the margin are likely to set the market-clearing price. In southern California, as of April 1, 1998, this is necessarily true, because California has created a power exchange (''PX'')—the first such market in the United States—in which generators of electric power bids for each hour and all successful bidders are paid a price determined by the highest bid that is accepted. Thus, where gas-fueled generation is on the margin, as it is most of the time, an increase in the price of natural gas leads directly to an increase in the price for every kilowatt hour of electricity consumed in southern California.

Prior to the merger, Enova had every incentive to raise electricity prices but it lacked the ability to do so because it has no control over natural gas prices. On the other hand, before the merger, Pacific had the ability to control natural gas prices but had not succeeded in entering the electricity marketing business.[2] Thus, Enova has the incentive but not the ability to manipulate electricity prices; Pacific had the ability but lacked the incentive.

DOJ correctly concluded that a merger of these two firms, which combines the ability and incentive to raise electricity prices in the southern California market, violates the antitrust laws. In the face of this violation, what is the remedy? The most obvious remedy, of course, is to stop the merger from happening. Short of that, the next most effective and logical remedy is to remove the source of the merged firm's *monopoly power,* either by requiring divestiture of the natural gas pipeline system or by creating an independent system operator (''ISO'') to operate that system. The last but least attractive option is to try to lessen the merged firm's incentive to exercise its monopoly power in order to profit from higher electricity prices. This is the least attractive option because curbing incentives to profit from higher electricity prices requires a complex latticework of provisions designed to prevent the merged firm from retaining and acquiring contractual rights and other types of economic interests in electric power. Such a remedy is difficult to write and even harder to administer.

Rather than stopping the merger in its tracks or adopting a structural remedy to remove the source of the monopoly power. DOJ asks this Court to approve a remedy that will have little or no impact on the merged company's incentive to raise electricity prices. The proposed Final Judgment should be rejected because the merged entity still has the unfettered ability to enter into a variety of electric power transactions, which will enable it to profit from higher electricity prices. Specifically:

- While the proposed Final Judgment requires Enova to divest two of its gas-fueled electric generating plants, totaling some 1650 megawatts, it allows the merged company to acquire an unlimited amount of generating facilities built after January 1, 1998, or any repowered/rebuilt facilities, whatever the fuel-type. Thus, the 1650 MW divestiture requirement can be undone with a single purchase of a large new facility.
- There is no prohibition on the merged company contracting, the day after divestiture, to purchase the electrical output of those same divested generating facilities (or other facilities).
- The proposed Final Judgment explicitly permits the merged firm to enter into ''tolling'' arrangements by which it can in essence rent electric generating plants to convert gas into electricity.
- There is no prohibition on the merged company entering into financial contracts (derivatives such as options and futures) that

[1] As a part of these Comments, SCE is attaching the Affidavit of Paul R. Carpenter, an economist who has extensive experience in analyzing energy markets.

[2] Before the merger, Pacific had established a subsidiary for gas and electricity marketing and tried to enter the electricity marketing business. However, as Enova explained to the Federal Energy Regulatory Commission (''FERC''), this subsidiary had not succeeded in securing any contracts to sell electricity at the time of the proposed merger. *See Ensource,* 78 FERC ¶ 61,064, at 61.231 (1997) (''Since Ensource never has engaged in marketing activity* * *'').

would enable it to prohibit from changes in southern California electricity prices.

Under the proposed decree, the merged firm can acquire both new and repowered/rebuilt electric generation assets. It can acquire by contract the economic attributes of ownership of electric generation. It can rent generating units to produce electric power. And it can trade in electricity financial contracts for the southern California market. If it can do all this, then it obviously can benefit from increases in the price of electricity just as it could if it still owned the divested electric generating facilities. Consequently, the proposed Final Judgment does not eliminate the merged firm's incentive to exercise market power in order to increase electricity prices. And it does not even purport to address market power. Therefore, the proposed Final Judgment does not even come close to solving the fundamental competitive problem articulated in DOJ's complaint.

One rationale that DOJ has put forward for having accepted the ineffective remedial measures in the proposed Final Judgment is that more effective remedies would involve relief that extends beyond the effect of the merger, as Pacific could theoretically have engaged in theses activities without a merger. But this is an unlawful merger. Without the acquisition, Enova's incentive to raise electricity prices is not backed by any ability to do so. The merger dramatically and unlawfully changes the landscape by immediately coupling Enova's incentive and electricity-expertise with Pacific's natural gas muscle. The argument that a substantial link between the gas pipeline system and electricity markets could easily have been established without the merger ignores the fact that this merger creates that substantial link.

If, for whatever reason, DOJ prefers not to stop the merger and not to address the upstream source of the market power, but instead chooses to focus on the incentives to exercise its market power in the downstream electricity market, then the public interest requires that it craft remedies designed to curb the incentives that are sufficiently effective to cure the antitrust violation. Because DOJ failed in that task, this Court is faced with a proposed Final Judgment that falls far short of being within the reaches of the public interest.[3]

In summary, SCE urges that the proposed Final Judgment be rejected. If DOJ nevertheless concludes that a salvage effort is appropriate, DOJ and Enova can be sent back to the bargaining table to produce a Final Judgment that remedies the competitive problem described in the complaint. Such remedies would include one of the following:

(1) Rescission of the merger;

(2) Divestiture of the gas pipeline system or, alternatively, establishment of an independent system operator to operate it independently of the merged company; or

(3) Adoption of measures that will eliminate the merged company's incentive to participate directly, and indirectly through financial instruments, in the southern California electricity market in any manner that would allow it to profit from increased electricity prices.

Argument

I. The Tunney Act Standard of Review Requires This Court To Determine Whether the Proposed Final Judgment Is in the Public Interest

On March 9, 1998, the Antitrust Division of DOJ filed a complaint against Enova alleging that the merger of Enova and Pacific will violate Section 7 of the Clayton Act. Along with the complaint, DOJ filed a Stipulation and Order pursuant to which the parties consented to entry of a proposed Final Judgment and Enova agreed to abide by its terms pending its entry by the court.

The filing of the proposed Final Judgment triggered a proceeding under the Antitrust Procedures and Penalties Act, commonly known as the Tunney Act.[4] The purpose of the Tunney Act is to provide notice to the public, an opportunity to comment, and judicial scrutiny of consent decrees in antitrust cases to determine whether they are in the ''public interest.'' The Tunney Act requires DOJ to publish the proposed Final Judgment and to file and publish a competitive impact statement (''CIS'') explaining the case, the anti-competitive conduct involved, the proposed remedy, and any alternative remedies considered by it. DOJ must also furnish to the Court any comments that it receives from the public during a 60-day period commencing with the noticing of the CIS, its response to these comments, and any documents it ''considered determinative in formulating'' the decree.

Before a court may approve a proposed Final Judgment, the Tunney Act requires the court to ''determine that the entry of such judgment is in the public interest''.[5] The Act provides that in making its public interest determination, the court may consider:

(1) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) the impact of entry of such judgment upon the pubic generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.[6]

The scope of Tunney Act review was articulated in a 1995 decision of the Court of Appeals for the D.C. Circuit in *Microsoft*.[7] In that case, District Judge Sporkin had declined to enter a proposed consent decree settling an action by DOJ alleging monopolization and various exclusionary practices. Although the Court of Appeals reversed and ordered entry of the proposed decree without revision, it set forth certain guidelines, among others, that are relevant to the Court's public interest determination in this case:

- ''[T]he court's function is not to determine whether the resulting array of rights and liabilities is the one that will *best* serve society, but only to confirm that the resulting settlement is within the *reaches* of the public interest.'' [8]
- ''[I]f third parties contend that they would be positively injured by the decree, a district judge might well hesitate before assuming that the decree is appropriate.'' [9]

[3] As a diversionary tactic, Enova can be expected to urge the Court to disregard SCE's comments, no matter how persuasive they may otherwise be, because SCE is merely a self-interested competitor of the merged firm. While it is true that SCE is a competitor for electricity sales, SCE's principal interest in this matter is at the largest purchaser of electricity in the southern California market, one that will be directly and significantly harmed by electricity price increases resulting from this merger. Under the California restructuring legislation, the legislature ''froze'' electricity rates at levels in effect as of June 1996. *See* Cal. Pub. Util. Code § 368(a). During the rate freeze period which will end December 31, 2001, SCE must purchase all the energy that it sells to its utility service customers from the PX. SCE's rates include separate components for transmission, distribution, etc. The sum of these separate components is less than the frozen rate levels, with that residual difference being used by SCE to recover costs associated with generation-related assets that would not otherwise be recouped if cost recovery were determined solely by selling energy purchased from these assets at the prevailing market price. As a consequence, SCE's shareholders are at risk and will be directly harmed if PX electricity prices rise to a level that would cause SCE's costs to exceed the frozen rate levels.

[4] 15 U.S.C. § 16(b)–(h).

[5] 15 U.S.C. § 16(e).

[6] *Id.*

[7] *United States* v. *Microsoft,* 56 F.3d 1448 (D.C. Cir. 1995).

[8] *Id.* at 1460 (emphasis in original, internal citations and quotation marks omitted).

[9] *Id.* at 1462.

• ''A district judge * * * would and should pay special attention to the decree's clarity [and may] insist on that degree of precision concerning the resolution of known issues as to make this task, in resolving subsequent disputes, reasonably manageable * * *. If the decree is ambiguous, or the district judge can foresee difficulties in implementation, we would expect the court to insist that these matters be attended to.'' [10]

Under *Microsoft*, it is now clear that a court may not reject a remedy simply because it is not the ''best'' remedy that could have been selected. On the other hand, it is equally clear under *Microsoft* that a court has discretion to reject a negotiated remedy which is ineffective because it does not seek to address and resolve the core competitive problem identified in DOJ's complaint.

Following *Microsoft*, courts have continued to scrutinize proposed consent decrees to determine whether they effectively address and resolve the fundamental competitive problems articulated by DOJ. For instance, in *Thomson*, District Judge Friedman examined concerns about several aspects of a proposed consent decree as expressed in briefs submitted amicus curiae by two competitors of the merging parties, in public comments submitted to DOJ, and at an extended public hearing.[11] Judge Friedman carefully examined arguments concerning each of the four separate areas of concern, noting proposed supplemental commitments [12] and modifications to the initially filed proposed consent decree to resolve some of these concerns.[13] He was careful not to substitute his own judgment for DOJ's as to what could be the best remedy [14] and he declined to suggest relief for conduct unrelated to the merger.[15] Nonetheless, Judge Friedman refused to enter even the revised decree, because neither the original nor the proposed revision resolved substantial concerns that the decree would maintain, by court order, a dubious copyright claim that DOJ's complaint and commentators had identified as a substantial barrier for new competitors seeking to enter the relevant market.[16] Only after the parties submitted a further amendment addressing these concerns did Judge Friedman order entry of the consent decree.[17]

II. The Proposed Final Judgment is Not in the Public Interest

Under standards laid down in *Microsoft* and implemented in *Thomson*, the proposed Final Judgment is not within the ''reaches of the public interest'' because it does not remedy the core competitive problem identified in DOJ's complaint—namely, that the merged entity will have the ability and incentive to increase electricity prices. Unless and until DOJ and Enova agree to a remedy which addresses and resolves this problem, the Court must reject the proposed decree.

A. The Complaint Correctly Identifies the Root of the Competitive Problem: Pacific's Control of Natural Gas Transportation and Storage in California

As a result of its monopoly over intrastate transmission and storage of natural gas, Pacific (via its subsidiary, SoCal Gas), has the power and ability to increase the price of natural gas to gas-fired electric generators which in turn will increase the price of electricity in California. In its complaint, DOJ found that, notwithstanding regulatory oversight, Pacific has the ability to use its control over those assets to manipulate the price of gas to consumers, including gas-fueled electric generators:

• Pacific has ''a monopoly of transportation of natural gas within southern California [and] a monopoly of all natural gas storage services throughout California.'' [18]

• ''[A]lthough regulated by the California Public Utilities Commission ('CPUC'), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, by limiting their supply or cutting them off entirely, which has the effect of raising the price they pay for natural gas.'' [19]

The attached Affidavit of Dr. Paul Carpenter describes the numerous means by which Pacific (via SoCalGas) can exercise its monopoly power, as charged by DOJ, to restrict the availability of gas transportation and gas storage capacity in southern California. These means include SoCalGas' ability to (a) control and deny access to its intrastate transmission and storage assets, (b) manipulate the price of intrastate services, such as short-term balancing or emergency supply services, (c) withhold the quantity of interstate capacity it makes available in secondary markets in order to raise price, (d) determine the volume of flowing supplies on a day-to-day basis through its core-related storage injection and withdrawal decisions, and (e) manipulate prices and access through its possession of valuable operational information.[20]

The ability of Pacific to restrict the availability of gas transportation and storage to consumers, including gas-fueled generators, is the key to its power to increase electricity prices in southern California for two related reasons. *First*, as explained by DOJ, most electricity generated in California is bought and sold through the California PX, which is a computerized bidding system that matches electricity supply and demand every hour.[21] The price of electricity for all units sold is determined by the most expensive unit sold in that hour, regardless of the cost or bidding price of less expensive units.[22] Stated differently, all sellers receive the PX's marginal price, regardless of their bid, and all buyers pay the marginal price.[23]

Second, ''gas-fired plants are in general the most costly to operate.'' [24] In other words, gas-fueled plants are usually on the margin. Because of the California PX, an increase in the price of natural gas to these gas-fired plants will translate in an increase in the price of all electricity sold in California through the PX. DOJ made this point in its CIS as follows:

[d]uring these periods [of high electricity demand], the gas-fired plants, as the most costly to operate and thus the highest bidders

[10] *Id.* at 1461–62.

[11] *United States* v. *The Thomson Corp.*, 949 F. Supp. 907, 909, 912 (D.D.C. 1996), *aff'd per curiam* 1998 U.S. App. LEXIS 12921 (May 29, 1998).

[12] *See, e.g., id.* at 916 (noting that ''Thomson confirmed in writing that it will continue'' a practice that commentators and amicus curiae thought might cease after the merger).

[13] *See, e.g., id.* at 916 (noting adoption of new consent decree provision barring Thomson from taking certain actions to undermine viability of products to be divested under the decree); *id.* at 924 (noting proposal to add language to proposed decree to ensure that licenses to one of the products to be divested may be sublicensed); *id.* at 925 (noting further change to proposed consent decree after Tunney Act hearing to ensure that divestiture will not affect pre-existing rights under a particular contract). *See also id.* at 926 nn. 19–20 (noting changes to initial proposed decree in response to concerns expressed in comments and at the hearing).

[14] *See id.* at 919.

[15] *See, e.g., id.* at 920 (refusing to consider requests to reopen bidding on past contracts, because not related to competition among the parties to the merger).

[16] *See id.* at 927–930 (discussing complaint's allegations and decree's proposed remedy regarding copyright claim).

[17] *See United States* v. *The Thomson Corp.*, 1997–1 Trade Cas. (CCH) ¶71,735, 1997 U.S. Dist. LEXIS 1893 (Feb. 27, 1997).

[18] Complaint ¶15.96 percent of gas-fueled generators in southern California buy gas transportation services from Pacific. *Proposed Final Judgment and Competitive Impact Statement; United States* v. *Enova Corp.* (''CIS''), 63 FR 33393, at 33403 (June 18, 1998).

[19] Complaint ¶16; *see also* Complaint ¶20.

[20] Aff. at ¶8.

[21] CIS at 33403. The CIS states that the matches occur every half-hour; in fact, the matches are hourly.

[22] CIS at 33403.

[23] Aff. at ¶9. This is true with one exception involving nuclear-powered generators, which are covered by a different pricing scheme.

[24] CIS at 33403.

into the [PX], are able to set the price for all electricity sold through the [PX].[25]

In short, what this all means is that as a consequence of its monopoly over gas transportation and storage, Pacific has the unquestioned ability to directly and materially affect the price of electricity in southern California. As summarized by DOJ:

> By virtue of its monopoly over natural gas transportation and storage, Pacific currently has the ability to increase the price of electricity, when during high demand periods, electricity from California gas-fired generators is needed to supplement less costly electricity. Pacific can restrict gas-fired generators' access to gas, which has the effect of raising the cost of gas-filed generators in general. Alternatively, Pacific can cut off or impede the more efficient gas generators' access to gas, leaving the higher-cost generators to meet consumer demand for electricity. *In either case, Pacific is able to increase the cost of electricity from gas-fired plants, thereby increasing the prices they bid into the [PX] and ultimately the price of electricity sold through the [PX].*[26]

To be sure, Pacific's ability to increase electricity prices existed absent the merger. Without the merger, however, Pacific had no incentive to use its market power because it was not in the electricity business, and it had no economic interest in electricity sales.[27] It is surely no coincidence that Enova—one of California's ''big three'' electric utilities and one which every incentive to raise electricity prices—sought out Pacific, the one company in the world that could raise prices in the soon-to-be deregulated California electricity market (the PX). It is also no coincidence that the timing of the merger was to coincide almost precisely with the commencement of operation of that deregulated market.

To take the position, as apparently DOJ does, that Pacific's ability to raise gas prices and hence, electricity prices is not merger related, and therefore should not be subject to any merger-related remedy is to ignore reality. *But for this merger*, Enova would not be able to affect electricity prices. It is the merger that transforms Pacific's previously benign ability to affect electricity prices into a serious, immediate threat to stifle competition in a nascent but vitally important market.

B. The Competitive Problem Attendant to This Merger Calls for a Structural Remedy Directed at the Natural Gas Transportation and Storage Assets

Having identified the source of the competitive problem, and having concluded that the merger was unlawful, DOJ then had to fashion an appropriate remedy. Logic, traditional antitrust policy and precedent, and one of the very terms of the proposed Final Judgment, all point to a structural remedy aimed directly at the source of the market power—Pacific's natural gas transportation and storage assets.[28] Such a remedy would separate Pacific's gas transportation and storage assets from the merged company's other assets, either by divestiture or by creation of an ISO to operate those assets. But, for unexplained reasons, the proposed Final Judgment does no such thing; indeed, this remedy apparently was not even seriously considered. In a section of the CIS entitled ''Alternatives to the Proposed Final Judgment'', the only alternative DOJ stated that it considered was a full trial on the merits.[29] The remedies that the DOJ did adopt are all aimed at curtailing the *incentive* of the merged company to carry out it proven ability to manipulate gas and, hence, electricity prices. The ineffectiveness of these remedies is discussed in the following section.

Ironically, a provision in the proposed Final Judgment itself makes clear that the only completely effective remedy is a structural remedy aimed at the source of the market power; the same provision undermines the effectiveness of the remedies actually proposed by DOJ and Enova, which focus only on incentives. Article XIII. A of the proposed Final Judgment provides that all of the complex provisions of the decree will abruptly terminate in the event ''an Independent System Operator has assumed control of Pacific's gas pipelines within California in a manner satisfactory to the United States.[30] Termination under these circumstances would be appropriate in DOJ's view, because

> [i]n that event, PE/Enova will lose the ability to control access to gas transportation and storage. *Without these tools, the merged company will not be able to raise the price for electricity sold through the [PX] by reducing its gas sales, and the basis for the Final Judgment would be removed.*[31]

Thus, DOJ's own reasoning supports the position that the only way to completely eliminate the merged company's ability to increase electricity prices is to eliminate Pacific's control over its gas transportation and storage assets. This structural remedy serves the public interest because it addresses the core competitive problem and is certain to be effective over the long term. No policing is necessary.

The staff of the Bureau of Economics of the Federal Trade Commission (''FTC'') recently expressed its view that structural remedies aimed directly at the source of market power are the most effective remedies because such structural remedies alter incentives (by eliminating the ability to exercise market power) while behavioral remedies do not:

> As a general proposition, we have found that structural remedies, such as divestiture in merger cases, are the most effective and require the least amount of subsequent monitoring by government agencies. The effectiveness of structural remedies lies in the fact that they directly alter incentives. Behavioral remedies, in contrast, leave incentives for discriminatory behavior in place and impose a substantial burden on government agencies to monitor subsequent conduct.
>
> In 1995, with regard to competition in electric generation and transmission, we suggested that FERC [the Federal Energy Regulatory Commission] promote independent system operators (ISOs) to control the regional electric transmission grids, as an alternative to ordering divestiture of transmission lines or relying solely on open access rules to promote competition in electric generation markets.[32]

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[25] *Id.* DOJ is certainly correct in this critical finding. Attachment B to Dr. Carpenter's affidavit depicts the electricity supply curve for all generating resources in the western United States. As shown, actual demand for electricity (which varies by time of day and by season) falls within a certain band (70,500 megawatts to 93,500 megawatts) about two-thirds of the time. Within that band, 90 percent of the megawatts that can be generated come from gas-fired generators. And, 69 percent of those megawatts come from California gas-fired generators. Aff. at Attach. B.

[26] CIS at 33404 (emphasis added).

[27] A Pacific affiliate did have paper authority from the FERC—the federal overseer of wholesale electricity sales—to make electricity sales but it never made any such sales and, in fact, voluntarily terminated its marketing certificate once the Enova-Pacific merger was announced. *See Ensource*, 78 FERC ¶ 61,064 (1997).

[28] Of course the most obvious and most effective remedy—preventing this unlawful merger from being consummated—was apparently rejected by DOJ. No explanation was given for eschewing this proven, simple method of remedying the effects of this unlawful merger.

[29] *See* CIS at 33407.

[30] Proposed Final Judgment at 33402.

[31] CIS at 33406 (emphasis added).

[32] Comments of the Staff of the Bureau of Economics of the Federal Trade Commission Before the Public Utilities Commission of Texas, at 2 (June 19, 1998). *See* Aff. at ¶ 13. Adoption of a structural remedy aimed at the source of the market power would be consistent with traditional antitrust policy and precedent. *See, e.g., California* v. *American Stores Cos.*, 495 U.S. 271, 294 n.28 (1990) (citing 2 P. Areeda & D. Turner, Antitrust Law § 328b (1978) (''[D]ivestiture is the normal and usual remedy against an unlawful merger''.); *United States* v. *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983) (citing *Ford Motor Co.* v. *US*, 405 U.S. 562,573 (1972) (''[D]ivestiture is not uncommonly the appropriate relief when a Section 7 violation is proven''). *See also United States* v. *Merc & Co., Inc.*, Proposed Final Judgment and Competitive Impact Statement, 45 F.R. 60044 (1980) (ordering divestiture of assets that would give the defendant the ability to exercise market power in

Continued

Thus, as explained by Dr. Carpenter, in a merger of electricity transmission and generation companies, the FTC would focus its relief on the source of the market power—the transmission facilities—rather than the generation facilities that provide the incentive to engage in the anti-competitive activity.[33]

Earlier this year in an analogous situation, the FTC entered into a consent order settling a challenge to a proposed acquisition by an electric power company of a coal supplier.[34] Like the merger in the present case involving electricity and natural gas pipelines, the FTC found that a merger involving electricity and coal posed a direct threat to competition in western U.S. electricity markets. In so concluding, the FTC made findings remarkably similar to DOJ's findings in this case:

- ''PacifiCorp's acquisition of Peabody, which is the exclusive supplier of coal to certain power plants that compete with PacifiCorp's own power plants, raises antitrust concerns.'' [35]
- During off-peak periods in the western United States, ''coal-fired plants frequently are the price-setting, marginal plants.'' [36]
- PacifiCorp's acquisition ''would give PacifiCorp the *power* to raise the price (or otherwise diminish the availability) of coal, a necessary input for any firm seeking to compete with PacifiCorp in electricity generation.'' [37]
- ''PacifiCorp would have an *incentive* to increase fuel costs at Navajo and Mohave in order to drive up the market price of electricity in the western United States.'' [38]

Prior to the acquisition, the coal supplier (Peabody) had the ability to raise coal prices to competing electric generators, but it had no incentive to do so. On the other hand, before the acquisition, the electricity company (PacifiCorp.) had the incentive to increase electricity prices but lacked the ability. It was the merger of the two, bringing together that ability and that incentive, that gave rise to the FTC's concerns.

In stark contrast to DOJ's remedy in the present proceeding, the FTC in *PacifiCorp/The Energy Group* did not hesitate to adopt a remedy which went to the heart of the market power problem identified in the FTC's complaint. The FTC proposed a remedy that required PacifiCorp to divest Peabody Western Coal Company—the owner of the coal mines that conferred market power on the merged firm and enabled it to increase fuel prices at competing generating facilities (Navajo and Mohave). And, the FTC directly addressed and rejected the proposals of several commenters who had recommended conduct/behavioral remedies to resolve the antitrust problem:

- ''Public comments on the consent agreement recommended that we substitute conduct provisions for the order's divestiture requirement, but we were not persuaded that the suggested course of action would be preferable.'' [39]
- ''The divestiture remedy is consistent with longstanding Commission policy which favors the structural approach to remedies, rather than the behavioral approach which seeks to govern conduct through the use of rules.'' [40]

In both *PacifiCorp* and this case, the fuel supply assets are the source of the competitive problem identified by the federal enforcement authorities. The simple, direct way to remedy that problem is to cut out and divest those assets or require that they be controlled by an independent system operator.

C. The Remedies Adopted in the Proposed Final Judgment Fail To Effectively Curb the Merged Company's Incentive To Manipulate Electricity Prices

As explained above, DOJ made no pretext of selecting a remedy designed to address the gas market power problem. Rather, DOJ focused all of its attention on the electricity side of the merged company's business and proposed a complicated set of conditions that are supposed to curb the incentive of the merged company to manipulate electricity prices. DOJ's theory is that if there is no financial gain to be made from electricity price manipulations, then the merged company likely would not engage in such conduct even if it possessed the power and ability to do so. There is nothing wrong with this theory from an analytical point of view. But having chosen this least attractive remedial approach, DOJ needed to ''get it right'' by understanding, anticipating, and then prohibiting all the various means by which the merged company could seek to retain or create incentives to earn profits through electricity price manipulations. DOJ, however, did not do so.

The proposed Final Judgment requires and allows the following:

- Enova is required to sell its Encina and South Bay electricity generation facilities, totaling some 1650 megawatts, to a purchaser acceptable to DOJ.[41]
- Enova is enjoined from acquiring ''California Generation Facilities'' without prior notice and approval of DOJ. [42]
- Enova is enjoined from entering any contracts that allow it to ''control any California Generation Facilities'' without prior notice and approval of DOJ.[43]
- In general, Enova is allowed to acquire or control up to 500 MW of capacity of California Generation Facilities without prior DOJ approval.[44]
- Enova is allowed to ''own, operate, control, or acquire any electricity generation facilities other than California Generation Facilities [and] any cogeneration or renewable generation facilities in California.'' [45]
- Enova is also allowed to ''enter into tolling and reverse tolling agreements with any electricity generation facilities in

violation of Section 7 of the Clayton Act and Sections 1 and 2 of the Sherman Act).

[33] Aff. at ¶ 13.

[34] *PacifiCorp/The Energy Group*, File No. 971 0091. PacifiCorp, headquartered in Portland, Oregon, makes electricity sales throughout the western United States. The Energy Group PLC (''TEG''), headquartered in London, England, is a diversified energy company that owns, among other things, Peabody Coal Company, which produces roughly 15 percent of the coal mined in the United States. *See FTC Restructures Electric/Coal Combination to Ensure that All Consumers Reap Low Prices From Electricity Deregulation*, FTC News Release, Feb. 18, 1998.

[35] Analysis of Proposed Consent Order to Aid Public Comment (''Analysis'') at 4.

[36] Analysis at 3.

[37] Statement of The Federal Trade Commission Upon Withdrawal From Consent Agreement, In the Matter of PacifiCorp, File No. 971 0091, (''Statement'') at 1 (emphasis added).

[38] Analysis at 4 (emphasis added).

[39] Statement at 1 n.1.

[40] Analysis at 8. The merger never was consummated because PacifiCorp subsequently withdrew its bid in the face of a competing offer. In closing the investigation, the FTC stated: ''Absent this turn of events, the Commission would have been inclined to issue the final order against PacifiCorp without modification.'' Statement at 1.

[41] Proposed Final Judgment art. IV(A) at 33398 (requiring divestiture) & (D)(3) at 33398 (specifying DOJ's right to prior approval of purchaser) & (I) at 33399 (specifying the criteria for DOJ approval). The divestiture is to occur within eighteen months, subject to extension by DOJ, or a trustee will be appointed. Proposed Final Judgment art. IV(E) at 33399.

[42] Proposed Final Judgment art. V(A)(1). The term ''California Generation Facilities'' is defined to mean electricity generation facilities in California in existence on January 1, 1998, and any contract to operate and sell output from generating assets of the Los Angeles Department of Water and Power (''LADWP''). Proposed Final Judgment art. II(B) at 33397. ''Acquire'' is defined to mean ''obtaining any interest in any electricity generating facilities or capacity, including but not limited to, all real property * * * capital equipment * * * or contracts related to the generation facility, and including all generation, tolling, reverse tolling, and other contractual rights.'' Proposed Final Judgment art II(A).

[43] Proposed Final Judgment art. V(A)(2) at 33399. ''Control'' means to have the ability to set the level of output of an electricity generation facility.'' Proposed Final Judgment art. II(E) at 33398.

[44] Proposed Final Judgment art. V(B)(1) at 33399. The cap may be increased to 800 MW upon Enova's sale of all of its existing nuclear generating capacity, but only up to 10% of its total retail electricity sales. Proposed Final Judgment art. XIII(D) at 33402.

[45] Proposed Final Judgment art. V(C)(1) and (2) at 33399.

California,'' provided it does not ''control'' them.[46]

As explained by Dr. Carpenter, these remedies are ineffective because they are incomplete.[47] While their aim is to curb the merged company's incentives to harm competition by restricting its participation in certain activities, they also allow other activities that can completely undo what DOJ seeks to achieve. It is as if DOJ closed one door to anti-competitive activity but left wide open several other doors.

The rationale underlying DOJ's required divestiture of the 1650 of the 1650 MW of Enova generating facilities is that infra-marginal assets (assets that are low-cost relative to the market price of electricity) create incentives through the price-clearing mechanism in the PX for the merged company to manipulate gas prices. As stated by DOJ:

The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the inventive to raise electricity prices. [footnote excluded] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators * * *. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceeding its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool and thus the prive PE/Enova would receive for electricity.[48]

But, what DOJ overlooked is that many other arrangements and transactions that are *not* prohibited by the proposed Final Judgment will allow the merged entity to directly, or indirectly through financial instruments, collect the earnings from infra-marginal generating facilities. Specifically, the proposed Final Judgmebnt has left in place significant anti-competitive incentives by permitting the merged company to:

- Build or acquire new or repowered generating facilities;
- Enter into tolling agreements;
- Enter into power generation management contracts;
- Enter into financial contracts tied to prices in the California electricity market

1. Acquisition of New or Repowered Generating Facilities

While the merged company would generally be prohibited from owning or controlling existing California generating facilities over and above the 500 MW cap, the proposed Final Judgment allows it to build or acquire new generating facilities and to acquire plants that are rebuilt, repowered or activated out of dormancy after January 1, 1998. While adding new facilities is generally procompetitive, here that is not the case. Acquisition of new (or rebuilt/repowered/reactivated) generating facilities will create incentives to manipulate gas prices that the merged company does not have, easily undoing via vertical market power the otherwise positive horizontal effect of adding new generation facilities.[49] DOJ required the divestiture of Enova's two generation plants because, as low-cost facilities, they could ''earn substantial profits'' under the PX pricing mechanism (*see supra* at p. 22). That same rationale holds equally true for the types of generating facilities that the proposed Final Judgment permits the merged company to acquire.

By way of example, consider two scenarios. In scenario one, the merged company divests 1650 MW of Enova's generating facilities, and then builds a 1650 MW facility to replace the lost output. Because of technology improvements, the new facility can be brought on-line with costs roughly equal to those of the old facilities. In scenario two, the merged company retains its 1650 MW of existing facilities and a disinterested third party builds a 1650 MW facility. In both scenarios, the market has the same amount of megawatts available for consumption and the merged company has roughly the same incentive to raise gas prices.[50] The proposed Final Judgment permits scenario one but prohibits scenario two. A provision such as that can hardly be said to be within the reaches of the public interest.

2. Tolling Agreements

The proposed Final Judgment permits the merged company to enter into tolling or reverse tolling agreements so long as it does not control the level of the plant's output. Under a tolling agreement, a party who owns natural gas enters into a contract with the owner of the generating facility to use (''rent'') that facility, thereby allowing the gas-owning party to produce electricity for a set fee. The gas-owning party can then sell the electricity at the market price, which may be higher or lower than the set fee.[51]

The problem is that tolling agreements are akin to virtual ownership because they provide the merged company with the same incentive to increase electricity prices as does physical ownership. And, the agreement need not provide for control of the plant's output for that incentive to exist. For example, the merged company could enter into tolling agreements with the two Enova generating facilities that it has agreed to divest. The facilities' operator, whoever that is, would bid into the PX at the facilities' marginal cost and the facilities would operate whenever the bids are successful. To the extent that the agreement provides the merged company with electricity at a fixed price, the company has an incentive to increase the PX price by increasing gas prices—it will simply pocket the additional revenue.[52]

The failure of the proposed Final Judgment to close this gap is another reason to find it not in the public interest.

3. Power Generation Management Contracts

A further reason to reject the proposed Final Judgment is due to its failure to prohibit the merged company from entering into management contracts under which it would operate a generation facility owned by a third party. Such arrangements are similar to tolling agreements in that they permit a sharing in a facility's profits.[53]

Importantly, the proposed Final Judgment recognizes the potential harm to competition that such contracts can cause. It requires the merged company to notify and/or obtain approval from DOJ for management contracts entered into with the Los Angeles Department of Water and Power and with the California Public Power Providers. These restrictions go part way to reducing incentives but apparently they do not apply to contracts relating to all other California generating facilities.[54] Permitting such contracts for certain but not all California generating facilities is inconsistent and not in the public interest.

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[46] Proposed Final Judgment art. (V)(C)(3) at 33399.

[47] Aff. at ¶¶ 19, 21.

[48] CIS at 33404.

[49] Aff. at ¶ 22.

[50] *See* Aff. at ¶ 23.

[51] Aff at ¶ 24.

[52] Aff. at ¶ 25.

[53] Aff. at ¶ 26. A management contract may be structured to be more complex than a tolling agreement (e.g., clauses with operating cost incentives) but, in essence, both arrangements have a built-in incentive to make the facility as profitable as possible. *Id.*

[54] There is some ambiguity due to the definition of ''acquisition'' in the proposed Final Judgment. ''Acquire'' could be interpreted to prohibit any *financial* interest, or it could be interpreted to prohibit any *ownership* interest. The latter interpretation leaves open the possibility of entering into management contracts. *See* proposed Final Judgment at art. II(A); *see also* Aff. at ¶ 28.

4. Financial Market Contracts

Finally, the proposed Final Judgment fails to place any restrictions whatsoever on the merged company's ability to enter into financial contracts (e.g., forwards, futures, options and other derivatives) that provide the same incentive to increase electricity prices.[55] Financial contracts can be used to approximate the same financial position the merged company would have by virtue of owning generation facilities.[56] The merged company, for example, could contract for a one-year call option for 1000 MW of output at a certain ''strike price.'' The higher the electricity market price is above the strike price, the greater the profit when the option is exercised.[57]

As explained by Dr. Carpenter, financial contracts have the potential to foster more anti-competitive creativity than ownership of generation facilities because they are more flexible. While it is difficult to change ownership, it is simple to contract for electricity in varying amounts over differing time horizons and to change positions quickly and frequently. This flexibility allows the merged company to tailor its electricity market position to most advantage itself.[58]

Both individually and collectively, the shortcomings of the proposed Final Judgment are significant because they completely undermine DOJ's effort to curb the merged entity's incentive to increase electricity prices. DOJ's failure to eliminate this incentive renders the proposed Final Judgment ineffective and thus outside the reaches of the public interest. This Court should reject it as presently written.

[55] A forward contract is a non-standardized bilateral contract for future delivery of electricity at a pre-specified price. A futures contracts is a standardized forward contract that is traded on an organized exchange. California-Oregon border and Palo Verde electricity futures contracts, both of which are traded on the New York Mercantile Exchange, are accessible to the California market. Option contracts, which can be either traded on an exchange or done bilaterally, include additional flexibility for the buyer or the seller. For example, a call option gives the buyer the right but not the obligation to purchase electricity in the future at a specified price. Aff. at ¶29 fn.9.

[56] Aff. at ¶29.

[57] Aff. at ¶29.

[58] Aff. at ¶29.

Respectfully submitted,

Kevin J. Lipson,
Mary Anne Mason,
Hogan & Hartson LLP, Columbia Square, 555—Thirteenth Street, NW, Washington, DC 20004–1109. (202) 637–5600.
Stephen E. Pickett,
Douglas Kent Porter,
Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, California 91770. (626) 302–1903.
J.A. Bouknight, Jr.,
David R. Roll,
Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036. (202) 429–3000.

Affidavit of Paul R. Carpenter

Kevin J. Lipson,
Mary Anne Mason,
Hogan & Hartson LLP, Columbia Square, 555—Thirteenth Street, NW, Washington, DC 20004–1109. (202) 637–5600.
Stephen E. Pickett,
Douglas Kent Porter,
Southern California Edison Company, P.O. Box 800, 2244 Walnut Grove Avenue, Rosemead, California 91770. (626) 302–1903.
J.A. Bouknight, Jr.,
David R. Roll,
Steptoe & Johnson LLP, 1330 Connecticut Avenue, NW, Washington, DC 20036. (202) 429–3000.

Dated: August 17, 1998.

1. My name is Paul Carpenter. I am a Principal of The Brattle Group, an economic and management consulting firm with offices at 44 Brattle Street, Cambridge, Massachusetts 02138, in Washington D.C., and London, England.

2. I am an economist specializing in the fields of industrial organization, finance, and regulatory economics. I received a Ph.D. in Applied Economics and an M.S. in Management from the Massachusetts Institute of Technology, and a B.A. in Economics from Stanford University. Since the early 1980s, I have been involved in research and consulting regarding the economics and regulation of the natural gas, oil, and electric power industries in North America, the United Kingdom, and Australia. I have testified frequently before the Federal Energy Regulatory Commission (''FERC''), the Public Utilities Commission of the State of California (''CPUC''), other state and Canadian regulatory commissions, federal courts, the U.S. Congress, the British Monopolies and Mergers Commission, and the Australian Competition Tribunal on issues of pricing, competition and regulatory policy in the natural gas and electric power industries. For at least ten years I have been extensively involved in the evaluation of the economics and structure of the natural gas industry in California, including the interstate pipelines that serve the state, appearing as an expert witness in many CPUC, FERC and Canadian regulatory proceedings regarding the certification and pricing of interstate pipeline capacity to California. Further details of my professional and educational background and a listing of my publications are provided in my curriculum vitae appended as Attachment A.

Introduction and Summary of Opinion

3. I have been asked by Southern California Edison Company (''Edison'') to prepare this affidavit. Its purpose is to evaluate whether the U.S. Department of Justice (''DOJ'') Final Judgment in this proceeding (as further explained in its accompanying Competitive Impact Statement (''CIS'')) remedies the competitive problem identified in DOJ's Complaint—namely, that as a result of their merger, Pacific Enterprises (''Pacific'') and Enova Corporation (''Enova'') will have the incentive and ability to lessen competition in the market for electricity in California.

4. The DOJ observed correctly in its Complaint and CIS that the merger will give the combined company (''the Merged Entity'') both the incentive and the ability to harm competition in the California electricity market by limiting the supply and/or raising the price of natural gas supplied to gas-fired electric generating plants in southern California.

5. In my opinion, the Proposed Final Judgment does not remedy the serious competitive problem identified by the DOJ in its complaint. The bases for my opinion are summarized here and elaborated upon in the remainder of this affidavit:

- The DOJ correctly concluded that the merger will give the Merged Entity both the ability and incentive to raise electricity prices in southern California.
- The DOJ could have remedied this competitive problem by eliminating the ability of the Merged Entity to exercise market power by requiring either:
- The divestiture of Pacific's intrastate natural gas and storage assets to a third party; or
- The creation of an Independent System Operator to hold and operate Pacific's natural gas assets.
- This type of structural remedy is favored by antitrust authorities because it is aimed directly at the source of the competitive problem—market power—and it is clean and easy to enforce, requiring no ongoing administrative involvement in reviewing the conduct and performance of the suspect market.

• The remedy chosen by the DOJ is to leave the Merged Entity's market power intact, and instead to try to curb the Merged Entity's incentives to harm competition by requiring the sale of two generating plants and by restricting its participation in certain activities. This remedy is ineffective. Not only does it leave market power intact, it fails to eliminate significant anticompetitive incentives that are equivalent financially to the ownership of the two power plants.

• The Proposed Final Judgment has left in place significant anti-competitive incentives by permitting the Merged Entity to:

• Build or acquire new or repowered generating capacity.

• Enter into tolling agreements or management contracts.

• Enter into financial contracts (e.g., forwards, futures, options and other derivatives) for electricity.

• These overlooked capabilities are a very real part of the incentives of the Merged Entity, are a standard part of the package of services of any major energy marketer, and they are consistent with the avowed strategic business plans of the Merged Entity.

The Competitive Problem Associated With the Merger

6. Pacific, through its wholly owned subsidiary Southern California Gas Company (''SoCalGas''), is effectively the sole provider of intrastate natural gas transmission and storage services to almost all of the gas-fired electric generating plants in southern California. As a consequence of this market power, SoCalGas has the ability to limit the supply and/or raise the price of natural gas to gas-fired plants. Prior to the merger, however, it had no strong incentive to do so because it had no position in or control over electricity markets.

7. The DOJ has recognized Pacific's ability to restrict the availability of gas transportation and storage to gas-fired generators, and to raise the price of delivered gas to such generators:

Gas-fired power plants cannot and do not switch to other fuels in response to price increases in natural gas transportation or storage services, and in California Pacific controls almost all gas-fired generators' access to gas supply because the state of California has granted Pacific a monopoly on transportation of natural gas within southern California. Consequently, 96% of gas-fired generators in southern California buy gas transportation services from it. Pacific also has a monopoly on all natural gas storage services throughout California. Although regulated by the California Public Utilities Commission (''CPUC''), Pacific has the ability to restrict the availability of gas transportation and storage to consumers, including gas-fired generators, by limiting their supply or cutting them off entirely. Limiting or cutting off gas supply raises the price gas-fired plants pay for delivered natural gas and in turn raises the cost of electricity they produce.[1]

8. The Merged Entity has numerous means to raise prices or limit supply to gas-fired generators in the southern California market. These means are derived primarily from SoCalGas' control of the intrastate transmission, distribution and storage system in southern California, its role as gas buyer for ''core'' residential and small commercial customers, and its holding of excess interstate pipeline capacity under long-term contract.

• *Intrastate transmission and storage access.* As operator of the intrastate transmission, distribution and storage system. SoCalGas has considerable authority and autonomy to determine which gas will flow and under what conditions. It decides on the amount of intrastate capacity available at each interstate pipeline interconnect, based on subjective procedures that are not articulated in any tariff or internal procedural manual. It also has discretion in determining storage availability.

• *Pricing of intrastate services.* As the provider of hub and storage services, SoCalGas is allowed under California regulation to exercise pricing discretion with regard to certain negotiated services. These services include short-term balancing or emergency supply services.

• *Interstate access and pricing.* SoCalGas has discretion in determining the price and quantity of capacity it makes available in secondary (''capacity release'') markets. This discretion presents the Merged Entity with one more means by which to influence the delivered price of gas to its electricity market rivals.

• *Core procurement behavior.* SoCalGas has substantial flexibility in its core-related storage injection and withdrawal decisions that allows it to determine the volume of flowing supplies on a day-to-day basis, notwithstanding customer demand.

• *Use of operational information.* As the operator of the intrastate natural gas transportation and storage system. SoCalGas possesses considerable operational information that is extremely valuable in the restructured natural gas and electricity markets. For example, as system operator. SoCalGas will receive regular nomination information from all of its shippers. Because SoCalGas has considerable discretion in operating its system, it can do so in a manner that can result in the manipulation of prices and access, and thus the cost of rivals of using its system. Such manipulations would be almost impossible to detect, difficult to prove, and not readily subject to cure.

Each one of these advantages is sufficiently potent to enable to the Merged Entity to manipulate the price of gas and/or the quality of service to electricity generators.

9. As of March 31, 1998, California launched the Power Exchange (PX), through which much of the electricity is now bought and sold in California. The PX's price per unit of electricity for any given hour is determined by the bid of the marginal generator—the most expensive generator required to meet load in that hour. All sellers receive the marginal price, regardless of their bid, and all buyers pay the marginal price. As DOJ has acknowledged, because of California's mix of generating capacity, gas-fired generators usually are the marginal suppliers, and the marginal-cost pricing instituted by the PX means that the price bid by gas-fired generators will set electricity prices in the California market the majority of the time.[2] The marginal bid price setting mechanism of the PX means that California gas-fired capacity will have a dominant effect on electricity prices.[3]

10. Enova, through its wholly owned subsidiary, San Diego Gas & Electric (SDG&E), owns gas-fired electric generating stations and controls over 2,600 MW of electric generating capacity. DOJ recognized that SDG&E's control of substantial quantities of electricity sold into the PX gives SDG&E and incentive to raise the PX's electricity price, making sales of its own

[1] Competitive Impact Statement (Case 98–CV–583), at 5–7. See also Complaint, at 6.

[2] To illustrate, Attachment B to this affidavit depicts the electricity supply curve for both utility and non-utility generating resources for the entire Western Systems Coordinating Council (WSCC). This supply curve distinguishes gas-fired capacity and California gas-fired capacity from other generation capacity. As illustrated, actual load (which varies by time of day and seasonally) falls within a band of 70,500 MW to 93,500 MW approximately two-thirds of the time. Within this same band of the supply curve, 90% of the capacity is gas-fired capacity, and 69% is California gas-fired capacity.

[3] While not all California gas-fired capacity is served by SoCalGas, the majority of it is, and it has been found that the prices paid in northern California for gas delivered by Pacific Gas & Electric Co. (PG&E) are determined by the gas supply alternatives available at the southern California border. See CPUC Decision 97–08–055. August 1, 1997, at p.10.

electricity more profitable. To this existing incentive, the merger with Pacific adds the ability to increase the price of electricity. The Merged Entity can accomplish this by increasing the price of natural gas to gas-fired generating plants in southern California, which in turn will raise their cost of producing electricity. Because California gas-fired capacity dominates the electric margin, this will increase the PX's price per unit of electricity to all sellers.[4]

Failure of the Proposed Final Judgment To Impose a Structural Remedy Aimed at Market Power

11. The proposed Final Judgment fails to eliminate the competitive harm caused by the PE/Enova merger because: (1) it does not contain any provisions designed to curb the Merged Entity's *ability* to harm competition through its monopoly over natural gas transportation and supply, and (2) while it requires SDG&E to divest ownership of two gas-fired electric generating plants, it permits the Merged Entity to replicate ownership by entering into contractual arrangements which offer the same *incentives* to engage in anti-competitive activity.

12. The proposed Final Judgment fails to impose the obvious, traditional, and assuredly effective remedy to a market power problem in a merger proceeding. It could have eliminated the ability of the Merged Entity to harm competition by eliminating its ability to exercise market power. It could have done this by requiring the divestiture of Pacific's intrastate natural gas transmission and storage assets, or by requiring the creation of an Independent System Operator (''ISO'') for those assets.

13. The staff of the Bureau of Economics of the Federal Trade Commission has recently expressed its view that structural remedies (such as ISOs) aimed directly at the source of market power are the most effective remedies because such structural remedies alter incentives (by eliminating the ability to exercise market power) while behavioral remedies do not:

> As a general proposition, we have found that structural remedies, such as divestiture in merger cases, are the most effective and require the least amount of subsequent monitoring by government agencies. The effectiveness of structural remedies lies in the fact that they directly alter incentives. Behavioral remedies, in contrast, leave incentives for discriminatory behavior in place and impose a substantial burden on government agencies to monitor subsequent conduct.
>
> * * * In 1995, with regard to competition in electric generation and transmission, we suggested that FERC [the Federal Energy Regulatory Commission] promote independent system operators (ISOs) to control the regional electric transmission grids, as an alternative to ordering divestiture of transmission lines or relying solely on open access rules to promote competition in electric generation markets.[5]

I agree with this view. Thus, for example, in a merger of electricity transmission and generation companies, the FTC would focus its relief on the source of the market power—the transmission facilities—rather than the generation facilities that provide the incentive to engage in anti-competitive activity. As stated above, the FTC would place the transmission facilities in the hands of an independent entity, an ISO, and would prevent those facilities, which confer market power, from being controlled by the merged entity.

14. In remedying the anti-competitive effects of vertical mergers like the present one, the antitrust authorities have opted, and should continue to opt, for structural remedies that eliminate the source of the market power. Recently, in addressing the anti-competitive effects of a proposed merger between an electric utility and a coal company, the FTC insisted on divestiture of the coal supply assets that were the source of the market power which in turn led to anti-competitive control over electricity prices. I agree with this approach and this remedy. A copy of the FTC's reasoning in that case is appended as Attachment C.

15. A structural remedy in this case, requiring intrastate gas transmission and storage divestiture or the creation of an ISO, would eliminate cleanly the Merged Entity's ability to control the price of electricity in California, and it would eliminate the enforcement difficulties associated with behavioral remedies that attempt to control anti-competitive incentives after the fact.[6]

The Proposed Final Judgment Does Not Remedy the Competitive Problem Identified by DOJ

16. The proposed Final Judgment does not attempt to eliminate the Merged Entity's market power over natural gas transportation and storage which gives it the *ability* to harm competition and raise prices in electricity markets. Instead, DOJ has chosen to attempt to curb the Merged Entity's incentive to harm competition by requiring Enova to divest itself of 1,644 MW of generation assets, namely, the Encina and South Bay gas-fired electricity generating plants. In addition, the Final Judgment caps the Merged Entity's ownership of California electricity generation assets at 500 MW.[7] The Final Judgment also enjoins the Merged Entity from acquiring electricity generation facilities in California which were in existence on January 1, 1998 (*except* facilities that are rebuilt, repowered, or activated out of dormancy after January 1, 1998) and/or entering into any contract for operation and sale of output from generating assets of Los Angeles Department of Water and Power (''LADWP''), without prior notice to, and approval of, the United States. Finally, the Final Judgment enjoins the Merged Entity from entering into any contracts that allow it to control the output of electricity generation facilities in California in existence on January 1, 1998 without prior notice to and approval of the United States.

17. Importantly, this merger involves much more than an effort to combine SDG&E's electricity generation *assets* with SoCalGas' natural gas transmission and distribution *assets.* The problem with the merger is that it combines SDG&E's *expertise* in profiting through the acquisition and sale of electric power with SoCalGas' *ability* to control the price of natural gas in California through its monopoly over natural gas transportation and storage services in California.[8] As explained further below, this combination of electricity expertise and natural gas control creates a serious competitive problem that is not remedied by the divestiture of assets and other conditions set forth in the Final Judgment. Specifically, such

[4] Much of the gas-fired generating capacity in California is currently under temporary ''must-run'' contracts for reliability, which when invoked will prevent these units from setting, or profiting from, the PX price. However, this will have no effect when must-run conditions are not declared, and the arrangement is scheduled to expire in three years.

[5] Comments of the Staff of the Bureau of Economics of the Federal Trade Commission Before the Public Utilities Commission of Texas, at 2 (June 19, 1998).

[6] Nowhere in its CIS does DOJ explain why it has failed to impose a remedy that eliminates the ability of the merged entity to raise prices.

[7] Since nuclear plants in California will remain price regulated (i.e., will not receive the PX price) until 2001, Enova's 20% (430 MW) interest in the San Onofre Nuclear Generating Station (''SONGS'') will not be included in the 500 MW cap. If nuclear power prices become deregulated after 2001, SONGS capacity will be included in the cap *and* the period of the final judgment will be extended from five to ten years. A 75 MW contract with Portland General Electric will be included in the cap, unless the contract is terminated or divested. Finally, the capacity of the Encina and South Bay generation facilities will be included in the cap for as long as Enova owns these assets.

[8] The California Commission noted in its merger decision that ''* * * each company sees unregulated energy services (particularly electricity marketing) as a way to increase earnings. But each feels that it lacks critical skills and physical assets.'' See D. 98–03–073, at 24.

electricity expertise could be used to enter into tolling agreements, management contracts and forward and futures contracts that perpetuate the Merged Entity's incentive to manipulate gas prices for anti-competitive ends, notwithstanding the Final Judgment's generation ownership restrictions.

18. As a general matter, it is extremely difficult to eliminate all of the anti-competitive incentives facing a utility in a restructured, partially deregulated wholesale electricity market. Those incentives manifest themselves in many different ways—only one of which is through ownership of existing gas-fired plants. Yet to be confident that the harm is competition is eliminated (when the ability to exercise market power remains), the antitrust authority or regulator must identify *all* of the potential incentives to profit from market manipulation and then design remedies that will curb each and every incentive. As explained below, the Final Judgment fails to curb very significant incentives.

19. The Competitive Impact Statement (CIS) correctly defines the Merged Entity's incentive but misconstrues the relationship between the kinds of transactions the Merged Entity might pursue and the incentives that would be created. As a result, the behavioral remedies put forward in the Final Judgment eliminate only part of the Merged Entity's incentives to raise prices.

20. The CIS recognizes that infra-marginal assets (assets that are low-cost relative to the market price of electricity) create incentives through the price-clearing mechanism in the California PX for the Merged Entity to manipulate gas prices. For example, the CIS states (at page 9):

> The Final Judgment requires Defendant to sell all generation assets that would likely give PE/Enova the incentive to raise electricity prices [footnote excluded] To that end, the Final Judgment requires Defendant to divest all of its low-cost gas generators * * *. Because these generators operate in almost all hours of the year and are relatively low-cost, if PE/Enova were to own them, it could earn substantial profits (revenues exceedings its costs) by restricting the supply of natural gas which, as explained above, would increase the overall price for electricity in the pool [PX] and thus the price PE/Enova would receive for electricity.

21. In making this finding, the DOJ overlooks the fact that many other arrangements and transactions that are *not* prohibited by the proposed Final Judgment create financial positions equivalent to, and potentially even more profitable than, the physical ownership of an infra-marginal generating unit. Any arrangement that allows the Merged Entity to collect or share in the earnings of an infra-marginal generator will give it the incentive to manipulate the spot price of power by increasing gas prices. The Final Judgment does not prohibit, and in fact explicitly allows, several such arrangements. Under the Final Judgment, the Merged Entity is allowed to (1) acquire new, rebuilt or repowered generation, (2) enter into tolling agreements with third-party generation owners, (3) enter into power generation management contracts, and (4) take forward contractual positions in the electricity market. All of these permitted transactions allow the Merged Entity to profit by manipulating the price of electric power, and will risk the abuse of market power as long as the Merged Entity has the continuing ability to influence gas prices that the CIS has acknowledged. As I explain below, in each of these situations the Final Judgment's restrictions simply do not eliminate the Merged Entity's incentives to exercise market power.

New or Repowered Generation Capacity

22. Under the proposed Final Judgment, the Merged Entity would be prohibited from owning or controlling existing generating facilities, but it is permitted to built or acquire new generating capacity and to gain control of plants that are rebuilt, repowered or activated out of dormancy after January 1, 1998. However, the addition of new generation by the Merged Entity is not necessarily benign. All else equal, adding generating capacity is usually procompetitive. However, in this case, all else is decidedly unequal. Allowing the Merged Entity to acquire new generation (or to rebuild, repower or reactivate generation) will give it incentives to manipulate gas prices *which it would not otherwise have*, easily undoing via vertical market power the otherwise positive horizontal effect of adding capacity. By giving the Merged Entity an incentive to raise gas prices, ownership of new or repowered generation could lead to an across-the-board increase in the cost of most of the margin-setting capacity in the market. Thus, the Final Judgment should prohibit the acquisition of new generating capacity for the same reason it requires divestiture of existing capacity. Holding any sort of interest in generating capacity eligible for the PX price gives the Merged Entity an incentive to exercise its market power in the gas market, to the detriment of the electricity market.

23. Another way to view this is by considering two scenarios: (A) the Merged Entity divests its existing generation to a third party, and builds a new generator, or (B) the Merged Entity keeps its existing generation and a disinterested third party builds the new generator. In both scenarios, the market has the same amount of generation, and the Merged Entity has essentially the same incentive to raise gas prices. However, while the CIS correctly recognizes (B) as problematic, the Final Judgment explicitly (though incorrectly) allows (A), the acquisition of new or repowered capacity.

Tolling Agreements

24. In a ''tolling'' agreement, one party contracts for the use of another party's generating capacity, allowing the first party to convert its own gas into electricity for a set fee. The first party can then sell the electricity at the market price, and will be able to collect the associated profit (or loss) as if it owned the generator. The proposed Final Judgment explicitly allows the Merged Entity to enter into tolling agreements, so long as it does not control the plant's output level in the process.

25. Tolling agreements create virtual ownership positions in power plants, and provide the Merged Entity with the same incentives to increase electricity prices as does physical plant ownership. A tolling agreement would allow the Merged Entity to receive all or most of the generator's infra-marginal net revenues, whether or not it controls the plant's output level. The proposed Final Judgment's restriction against controlling plant output displays a misconception of how the Merged Entity could exercise market power. It is not by withholding generating capacity from the market that the Merged Entity would manipulate electricity prices. Withholding capacity is an issue in *horizontal* market power, but not in the *vertical* market power that is of concern in this instance. Vertical market power arises here because the Merged Entity has the ability to raise the price of electricity by raising the price of gas—the dominant margin-setting fuel, and a vertical input to electricity. The Merged Entity can profit from gas market manipulation if it holds a claim on the net revenues of any infra-marginal plant that is operating when gas-fired generation is setting the PX price, regardless of whether it controls the plant's output. The plant operator, whoever it is, would simply bid into the PX at the plant's marginal cost, so that the plant would dispatch when economical. Thus, for example, if the Merged Entity enters into a tolling agreement with the owners of the two plants it has agreed to divest, its

financial stake will be essentially identical to what it would have been under direct ownership. While physical plant ownership is rightly prohibited, the Final Judgment fails to curb the Merged Entity's incentives because it allows tolling agreements that give the Merged Entity the same profit-making potential.

Management Contracts

26. The same issues arise with ''management contracts,'' under which the Merged Entity would operate a plant owned by a third party, typically for a share of the plant's profits. Such arrangements are similar to tolling agreements in that they allow the Merged Entity to share in a plant's net revenues.

27. The problem with the proposed Final Judgment is that it does not clearly prohibit the Merged Entity from entering into management contracts with existing California generating facilities (e.g. its own divested generators or those of others). Thus, the Merged Entity could sign a management contract for one or more of the plants divested by itself or others and enjoy essentially the same financial incentives it could have had by retaining its own plants. Moreover, these units under management contract need not be gas-fired for them to create price manipulation incentives. To perpetuate such incentives, all that is required is that the plant(s) under contract be infra-marginal (i.e., lower cost than the marginal gas-fired plant that is setting the PX price.) To eliminate the anti-competitive incentives associated with management contracts, the Merged Entity would have to be explicitly prevented from entering into a management contract with any entity owning or building generation in California.

28. The proposed Final Judgement recognizes the problems with management contracts when it requires that the Merged Entity notify and/or obtain approval from DOJ for management contracts with assets owned by California Public Power Providers (''CPPP'') and the Los Angeles Department of Water and Power (''LADWP''). These restrictions go part way in reducing the Merged Entity's incentives. But since similar restrictions are *not* applied to management contracts involving *other* assets, the Final Judgment gives the appearance of endorsing such contracts. Relatedly, the Final Judgment prohibits the ''acquisition'' of California Generation Facilities without prior approval. However, by carving out exceptions for management contracts, the meaning of ''acquire'' becomes ambiguous, despite being defined as ''obtaining any interest in any electricity generating facilities or capacity''. ''Acquire'' could be interpreted to prohibit any *financial* interest (which it must do to be effective), or could it be interpreted more narrowly to prohibit only *ownership* interest—which leaves open the possibility of management contracts. By explicitly restricting management contracts with respect to LADWP and CPPP assets only, the proposed Final Judgment appears to endorse a narrow interpretation of ''acquire'', and threatens to leave the Merged Entity with significant incentives to exercise its market power. Such debates concerning interpretation mean that at a minimum, in order to enforce the Final Judgment the DOJ will have to put itself in a significant oversight position to ensure consistency of interpretation and compliance. The need for such continuing regulatory activity by the antitrust authority would have been eliminated had the Final Judgment imposed a structural solution to the market power problem.

Financial Markets

29. It is apparent from the proposed Final Judgement that the DOJ fails to recognize that financial market contracts (derivatives such as forwards, futures, and options) which the Merged Entity may acquire could also provide it with incentives to act anti-competitively.[9] In fact, financial contracts can be used to essentially recreate the same financial position one would have by virtue of power plant ownership. For example, holding a one-year call option for 1,000 MW is financially akin to a year's ownership of a 1,000 MW power plant with variable cost equal to the ''strike price'' of the call (the contract price paid for power if the option is exercised. Such financial market contracts are, in effect, ''virtual generation assets.'' [10] The equivalence between financial and physical assets is such that it is now common for electric industry planners to treat power plant ownership as equivalent to holding a series of call options and/or forward contracts to serve future spot markets for power.

30. Consequently, to the extent power plant ownership creates anti-competitive incentives, so would an equivalent bundle of forward or derivative contracts. While the Final Judgment does attempt to restrict the future acquisition of existing generating capacity in order to prevent anti-competitive behavior, it fails to restrict financial market participation, which creates the same incentives to abuse market power.

Conclusion

31. In its Complaint in this matter, the DOJ found that the proposed merger of Pacific Enterprises and Enova results in the creation of an entity that has the ability and incentive to harm competition in the market for wholesale electric power in California. The proposed Final Judgment, however, fails to rectify the problem because it preserves the ability of the Merged Entity to harm competition while imposing remedies that fail to eliminate the incentives. In particular, the Final Judgment fails entirely to deal with the incentives which the Merged Entity could create through ownership of new or repowered generation or contracting for power via tolling agreements, management contracts or financial contracts. The CIS provides no justification for distinguishing between the acquisition of physical assets and financial assets in creating anti-competitive incentives. The limited restrictions that the proposed Final Judgment does place on the future activities of the Merged Entity in the areas of new capacity, tolling and energy management contracts will not eliminate or even substantially curb the Merged Entity's incentives to harm competition.

32. The proposed Final Judgment does not remedy the serious competitive problem identified by the DOJ in its Complaint.

Attachment A—Paul R. Carpenter, Principal

Dr. Carpenter holds a Ph.D. in applied economics and an M.S. in management from the Massachusetts Institute of Technology, and a B.A. in economics from Stanford University. He specializes in the economics of the natural gas, oil and electric utility

[9] A forward contract for power is simply a non-stardized bilateral contact for future delivery at a pre-specified price. Futures are standardized forward contracts traded on an organized exchange, such as the California-Oregon Border (COB) and Palo Verde (PV) electricity futures contracts which are traded on the New York Mercantile Exchange (NYMEX) and which are accessible to the California market. Options contracts are also derivatives that include additional flexibility for either the buyer or seller. For example, a call option, a common type of derivative, gives the buyer the right but not he obligation to purchase power in the future at a specified price.

[10] Financial contracts can foster even more anti-competitive creativity than power plant ownership, because they are far more flexible. For instance, while it is difficult to change one's ownership of generating capacity, it is simple to contract for power in varying amounts over differing time horizons (a year, a month, a week, a day), and to change one's position quickly and frequently. This would allow the Merged Entity to tailor its electricity market position to make it most advantageous.

industries. Dr. Carpenter was a co-founder of Incentives Research, Inc. in 1983. Prior to that he was employed by the NASA/Caltech Jet Propulsion Laboratory and Putnam, Hayes & Bartlett, and he was a post-doctoral fellow at the MIT Center for Energy Policy Research. He is currently a Principal of *The Brattle Group*.

Areas of Expertise

Dr. Carpenter's areas of expertise include the fields of energy economics, regulation, corporate planning, pricing policy, and antitrust. His recent engagements have involved:

- *Natural Gas and Electric Utility Industries:* consulting and testimony on nearly all of the economic and regulatory issues surrounding the transition of the natural gas and electric power industries from strict regulation to greater competition. These issues have included stranded investments and contracts, design and pricing of unbundled and ancillary services, evaluation of supply, demand and price forecasting models, the competitive effects of pipeline expansions and performance-based ratemaking. He has consulted on the regulatory and competitive structures of the gas and electric power industries in the U.S., Canada, the United Kingdom, Australia and New Zealand.
- *Antiturst:* expert testimony in several of the seminal cases involving the alleged denial of access to regulated facilities; analysis of relevant market and market power issues, business justification defenses, and damages.
- *Regulation:* studies and consultation on alternative rate making methodologies for oil and gas pipelines, on ''bypass'' of regulated facilities before the U.S. Congress; advice and testimony before several state utility commissions and the National Energy Board of Canada on new facility certification policy.
- *Finance:* research on business and financial risks in the regulated industries and testimony on risk, cost of capital, and capital structure for natural gas pipeline companies in the U.S. and Canada.

Professional Affiliations

International Association of Energy Economists
American Bar Association (Antitrust Section)
American Economic Association.

Academic Honors and Fellowships

Stewart Fellowship, 1983
MIT Fellowships, 1981, 1982, 1983
Brooks Master's Thesis Prize (Runner-up), MIT, 1978.

Publications

''Pipeline Pricing to Encourage Efficient Capacity Editions,'' (with Frank C. Graves and Matthew P. O'Loughlin), prepared for Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company, February 1998.

''The Outlook for Imported Natural Gas,'' (with Matthew P. O'Loughlin and Gao-Wen Shao), prepared for The INGAA Foundation, Inc., July 1997.

''Basic and Enhanced Services for Recourse and Negotiated Rates in the Natural Gas Pipeline Industry'' (with Frank C. Graves, Carlos Lapuerta, and Matthew P. O'Loughlin), May 29, 1996, prepared for Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company.

''Estimating the Social Costs of PUHCA Regulation'' (with Frank C. Graves), submitted on behalf of Central and South West Corp. to the U.S. Securities and Exchange Commission in its Request for Comments on the Modernization of Regulation of Public Utility Holding Companies, File No. S7–32–94, February 6, 1995.

''Review of the Model Developer's Report, Natural Gas Transmission and Distribution Model (NGTDM) of the National Energy Modeling System'', December 1994, prepared for U.S. Department of Energy, Energy Information Administration and Oak Ridge National Laboratory under Subcontract No. 80X–SL220V.

''Pricing of Electricity Network Services to Preserve Network Security and Quality of Frequency Under Transmission Access'' (with Frank C. Graves, Marija Ilic, and Asef Zobian), response to the Federal Energy Regulatory Commission's Request for Comments in its Notice of Technical Conference Docket No. RM93–19–000, November 1993.

''Creating a Secondary Market in Natural Gas Pipeline Capacity Rights Under FERC Order No. 636'' (with Frank C. Graves), draft December 1992, Incentives Research, Inc.

''Review of the Component Design Report, Natural Gas Annual Flow Module, National Energy Modeling System,'' August 1992, prepared for the U.S. Department of Energy, Energy Information Administration.

''Unbundling, Pricing, and Comparability of Service on Natural Gas Pipeline Networks'' (with Frank C. Graves), November 1991, prepared for the Interstate Natural Gas Association of America.

''Review of the Gas Analysis Modeling System (GAMS): Final Report of Findings and Recommendations,'' August, 1991, prepared for the U.S. Dept. of Energy, Energy Information Administration.

''Estimating the Cost of Switching Rights on Natural Gas Pipelines'' (with F.C. Graves and J.A. Read), The Energy Journal, October 1989.

''Demand-Charge GICs Differ from Deficiency-Charge GICs'' (with F.C. Graves), Natural Gas, Vol. 6, No. 1, August 1989.

''What Price Unbundling?'' (with F.C. Graves), Natural Gas, Vol. 5 No. 10, May 1989.

Book Review of Drawing the line on Natural Gas Regulation: The Harvard Study on the Future of Natural Gas, Joseph Kalt and Frank Schuller eds., in The Energy Journal, April 1988.

''Adapting to Change in Natural Gas Markets'' (with Henry D. Jacoby and Arthur W. Wright), in Energy, Markets and Regulation: What Have We Learned?, Cambridge: MIT Press, 1987.

Evaluation of the Commercial Potential in Earth and Ocean Observation Missions from the Space Station Polar Platform, Prepared by Incentives Research for the NASA Jet Propulsion Laboratory under Contract No. 957324, May 1986.

An Economic Comparison of Alternative Methods of Regulating Oil Pipelines (with Gerald A. Taylor), Prepared by Incentives Research for the U.S. Department of Energy, Office of Competition, July 1985.

''The Natural Gas Policy Drama: A Tragedy in Three Acts'' (with Arthur W. Wright), MIT Center for Energy Policy Research Working Paper No. 84–012WP, October 1984.

Oil Pipeline Rates and Profitability under Williams Opinion 154 (with Gerald A. Taylor), Prepared by Incentives Research for the U.S. Department of Energy, Office of Competition, September 1984.

Natural Gas Pipelines After Field Price Decontrol: A Study of Risk, Return and Regulation, Ph.D. Dissertation, Massachusetts Institute of Technology, March 1984. Published as a Report to the U.S.

Department of Energy, Office of Oil and Gas Policy, MIT Center for Energy Policy Research Technical Report No. 84–004.

The Competitive Origins and Economic Benefits of Kern River Gas Transmission, Prepared by Incentives Research, Inc., for Kern River Gas Transmission Company, February 1994.

''Field Price Decontrol of Natural Gas, Pipeline Risk and Regulatory Policy,'' in Government and Energy Policy Richard L. Itteilag, ed., Washington, D.C., June 1983.

''Risk Allocation and Institutional Arrangements in Natural Gas'' (with Arthur W. Wright), invited paper presented to the American Economic Association Meetings, San Francisco, December 1983.

''Vertical Market Arrangements, Risk-shifting and Natural Gas Pipeline Regulations,'' Sloan School of Management Working Paper no. 1369–82, September 1982 (Revised April 1983).

Natural Gas Pipeline Regulation After Field Price Decontrol (with Henry Dr. Jacoby and Arthur W. Wright), prepared for U.S. Department of Energy, Office of Oil and Gas Policy, MIT Energy Lab Report No. 83–013, March 1983.

Book Review of An Economic Analysis of World Energy Problems, by Richard L. Gordon, Sloan Management Review, Spring 1982.

''Perspectives on the Government Role in New Technology Development and Diffusion'' (with Drew Bottaro), MIT Energy Lab Report No. 81–041, November 1981.

International Plan for Photovoltaic Power Systems (co-author), Solar Energy Research Institute with the Jet Propulsion Laboratory Prepared for the U.S. Department of Energy, August 1979.

Federal Policies for the Widespread Use of Photovoltaic Power Systems (contributor), Jet Propulsion Laboratory Report to the U.S. Congress DOE/CS–0114, March 24, 1980.

''An Economic Analysis of Residential, Grid-connected Solar Photovoltaic Power Systems'' (with Gerald A. Taylor), MIT Energy Laboratory Technical Report No. 78–007, May 1978.

Speeches/Presentations

''Opening Remarks from the Chair: Rates, Regulations and Operational Realities in the Capacity Market of the Future,'' AIC conference on ''Gas Pipeline Capacity '97,'' Houston, Texas June 17, 1997.

''Lessons from North America for the British Gas TransCo Pricing Regime,'' prepared for AIC conference on: Gas Transportation and Transmission Pricing, London, England, October 17, 1996.

''GICs and the Pricing of Gas Supply Reliability,'' California Energy Commission Conference on Emerging Competition in California Gas Markets, San Diego, Ca. November 9, 1990.

''The New Effects of Regulation and Natural Gas Field Markets: Spot Markets, Contracting and Reliability,'' American Economic Association Annual Meeting, New York City, December 29, 1988.

''Appropriate Regulation in the Local Marketplace,'' Interregional Natural Gas Symposium, Center for Public Policy, University of Houston, November 30, 1988.

''Market Forces, Antitrust, and the Future of Regulation of the Gas Industry,'' Symposium of the Future of Natural Gas Regulation, American Bar Association, Washington D.C., April 21, 1988.

''Valuation of Standby Tariffs for Natural Gas Pipelines,'' Workshop on New Methods for Project and Contract Evaluation, MIT Center for Energy Policy Research, Cambridge, March 3, 1988.

''Long-term Structure of the Natural Gas Industry,'' National Association of Regulatory Utility Commissioners Meeting, Washington D.C., March 1, 1988.

''How the U.S. Gas Market Works—or Doesn't Work,'' Ontario Ministry of Energy Symposium on Understanding the United States Natural Gas Market, Toronto, March 18, 1986.

''The New U.S. Natural Gas Policy: Implications for the Pipeline Industry,'' Conference on Mergers and Acquisitions in the Gas Pipeline Industry, Executive Enterprises, Houston, February 26–27, 1986.

Various lectures and seminars on U.S. natural gas industry and regulation for graduate energy economics courses at Massachusetts Institute of Technology, 1984–96.

Panelist in University of Colorado Law School workshop on state regulations of natural gas production, June 1985. (Transcript published in University of Colorado Law Review.) ''Oil Pipeline Rates after the Williams 154 Decision,'' Executive Enterprises, Conference on Oil Pipeline Ratemaking, Houston, June 19–20, 1984.

''Issues in the Regulation of Natural Gas Pipelines,'' California Public Utilities Commission Hearings on Natural Gas, San Francisco, May 21, 1984.

''The Natural Gas Pipelines in Transition: Evidence From Capital Markets'', Pittsburgh Conference on Modeling and Simulation, Pittsburgh, April 20, 1984.

''Financial Aspects of Gas Pipeline Regulation,'' Pittsburgh Conference on Modeling and Simulation, Pittsburgh, April 19–20, 1984.

''Natural Gas Pipelines After Field Price Decontrol,'' Presentations before Conferences of the International Association of Energy Economists, Washington D.C., June 1983, and Denver, November 1982.

''Spot Markets for Natural Gas,'' MIT Center for Energy Policy Research Semi-annual Associates Conference, March 1983.

''Pricing Solar Energy Using a System of Planning and Assessment Models,'' Presentations to the XXIV International Conference, The Institute of Management Science, Honolulu, June 20, 1979.

Testimonial Experience

Antitrust/Federal Court/Arbitration

In the matter of the Arbitration between Western Power Corp. and Woodside Petroleum Corp., et al., Perth, Western Australia, May–July 1998.

In the United States District Court for the District of Montana, Butte Division, Paladin Associates, Inc. v. Montana Power Company, November–December 1997.

In the United States District Court for the District of Colorado, Atlantic Richfield Co. v. Darwin H. Smallwood, Sr., et al., July 1997.

In the Australian Competition Tribunal, Review of the Trade Practices Act Authorizations for the AGL Cooper Basin Natural Gas Supply Arrangements, on behalf of the Australian Competition and Consumer Commission, February 1997.

In the Southwest Queensland Gas Price Review Arbitration, Adelaide, South Australia, May 1996.

In the matter of the Arbitration between Amerada Hess Corp. v. Pacific Gas & Electric Co., May 1995.

In re Columbia Gas Transmission Corp., Claims Quantification Proceeding in the U.S. Bankruptcy Court for the District of Delaware, Before the Claims Mediator, July and November 1993.

Deposition Testimony in Fina Oil & Gas v. Northwest Pipeline Corp. and Williams Gas Supply (New Mexico) 1992.

Testimony by Affidavit in James River Corp. v. Northwest Pipeline Corp. (Fed. Ct. for Oregon) 1989.

Deposition and Testimony by Affidavit in Merrion Oil and Gas Col, et al., v. Northwest Pipeline Corp. (Fed. Ct. for New Mexico) 1989.

Deposition Testimony in Martin Exploration Management Co., et al. v. Panhandle Eastern Pipeline Co. (Fed. Ct. for Colorado) 1988 and 1992.

Trial Testimony in City of Chanute, et al. v. Williams Natural Gas (Fed. Ct. for Kansas) 1988.

Deposition Testimony in Sinclair Oil Co. v. Northwest Pipeline Co. (Fed. Ct. for Wyoming) 1987.

Deposition and Trial Testimony in State of Illinois v. Panhandle Eastern Pipeline Co. (Fed. Ct. for C.D. Ill) 1984–87.

Economic/Regulatory Testimony

Before the National Energy Board of Canada, Application of Alliance Pipeline Ltd., Hearing Order GH–3–97, December 1997, April 1998.

Before the California Public Utilities Commission, Pacific Enterprises, Enova Corporation, et al. Merger Proceedings, Docket A.96–10–038, on behalf of Southern California Edison, August 1997.

In the Superior Court of the State of California for the County of Los Angeles, Pacific Pipeline System Inc. v. City of Los Angeles, on behalf of Pacific Pipeline System Inc., January 1997.

Before the U.K. Monopolies and Mergers Commission, British Gas Transportation and Storage Price Control Review, on behalf of Enron Capital and Trade Resources Limited, January 1997.

Northern Border Pipeline Company, Federal Energy Regulatory Commission (FERC) Docket No. RP96–45–000, July 1996.

Wisconsin Electric Power Co., Northern States Power Co. Merger Proceedings. FERC Docket No. EC 95–16–000, on behalf of Madison Gas & Electric Co., Wisconsin Citizens Utility Board and the Wisconsin Electric Cooperative Association, May 1996.

Before the California Public Utilities Commission, Application of PG&E for Amortization of Interstate Transition Cost Surcharge, Application 94–06–044, on behalf of El Paso Natural Gas, December 1995.

Tennessee Gas Pipeline Company, FERC Docket No. RP95–112–000, on behalf of JMC Power Projects, September 1995.

Before the National Energy Board of Canada, Drawdown of Balance of Deferred Income Taxes Proceeding, RH–1–95, on behalf of Foothills Pipe Lines Ltd., September 1995.

Pacific Gas Transmission, FERC Docket No. RP94–149–000, on behalf of El Paso Natural Gas, May 1995.

Before the California Public Utilities Commission, Application of Pacific Pipeline System, Inc., A.91–10–013, on behalf of PPSI, April 1995.

Before the National Energy Board of Canada, Multipipeline Cost of Capital Proceeding, RH–2–94, on behalf of Foothills Pipe Lines Ltd., November 1994.

Before the California Public Utilities Commission, Pacific Gas & Electric 1992 Operations Reasonableness Review, Application 93–04–011, on behalf of El Paso Natural Gas, November 1994.

Before the National Energy Board of Canada, Foothills Pipe Lines (Alta.) Ltd., Wild Horse Pipeline Project, Order No. GH–4–94, October 1994.

Iroquois Gas Transmission System, L.P., FERC Docket No. RP94–72–000, on behalf of Masspower and Selkirk Cogen Partners, September 1994.

Tennessee Gas Pipeline Co., FERC Docket No. RP91–203–000, on behalf of JMC Power Projects and New England Power Company, February, May 1994.

Before the California Public Utilities Commission, on the Application of Pacific Gas & Electric Company to Establish Interim Rates for the PG&E Expansion Project, July 1993.

Before the Florida Public Service Commission, Petition of Florida Power Corporation for Order Authorizing A Return on Equity for Florida Power's Investment in the SunShine Intrastate and the SunShine Interstate Pipelines, FPSC Docket No. 930281–EI, June 4, 1993.

Before the Florida Public Service Commission, Application for Determination of Need for an Intrastate Natural Gas Pipeline by SunShine Pipeline Partners, FPSC Docket No. 920807–GP, April–May 1993.

Northwest Pipeline Corp., et al., FERC Docket No. IN90–1–001, February 1993.

City of Long Beach, Calif., vs. Unocal California Pipeline Co., before the California Public Utilities Commission, Case No. 91–12–028, February 1993.

Alberta Energy Resources Conservation Board, on Applications of NOVA Corporation of Canada to Construct Facilities, January 1993.

Before the California Public Utilities Commission, on the Application of Pacific Gas & Electric Co. to guarantee certain financing arrangements of Pacific Gas Transmission Co. not to exceed $751 million, 1992.

Mississippi River Transmission Co., FERC Docket No. RP93–4–000, October 1992, September 1993.

Unocal California Pipeline Co., FERC Docket No. IS92–18–000, August 1992.

Before the California Public Utilities Commission, in the Rulemaking into natural gas procurement and system reliability issues, R.88–08–018, June 1992.

Alberta Energy Resources Conservation Board, Altamont & PGT Pipeline Projects, Proceeding 911586, March 1992.

Before the California Utilities Commission, on the Application of Southern California Gas Company for approval of capital investment in facilities to permit interconnection with the Kern River/Mojave pipeline, A.90–11–035, May 1992.

Northern Natural Gas, FERC Docket No. RP92–1–000, October 1991.

Florida Gas Transmission, FERC Docket No. RP91–1–187–000 and CP91–2448–000, July 1991.

Tarpon Transmission, FERC Docket No. RP84–82–004, January 1991.

Before the California Public Utilities Commission, on the Application of Pacific Gas & Electric Co. to Expand its Natural Gas Pipeline System, A. 89–04–033, May 1990 and October 1991.

CNG Transmission, FERC Docket No. RP88–211, March 1990.

Panhandle Eastern Pipeline, FERC Docket No. RP88–262, March 1990.

Mississippi River Transmission, FERC Docket No. RP89–249, October 1989, September 1990.

Tennessee Gas Pipeline, FERC Docket No. CP89–470, June 1989.

Empire State Pipeline, Case No. 88–T–132 before the New York Public Service Commission, May 1989.

Before the U.S. Congress, House of Representatives, Committee on Energy and Commerce, Subcommittee on Energy and Power, Hearings on ''Bypass'' Legislation, May 1988.

Tennessee Gas Pipeline, FERC Docket No. RP86–119, 1986–87.

Mojave Pipeline Co., FERC Docket No. CP85–437, 1987–88.

Consolidated Gas Transmission Corp., FERC Docket No. RP88–10, 1988.

Panhandle Eastern, FERC Docket No. RP85–194, 1985.

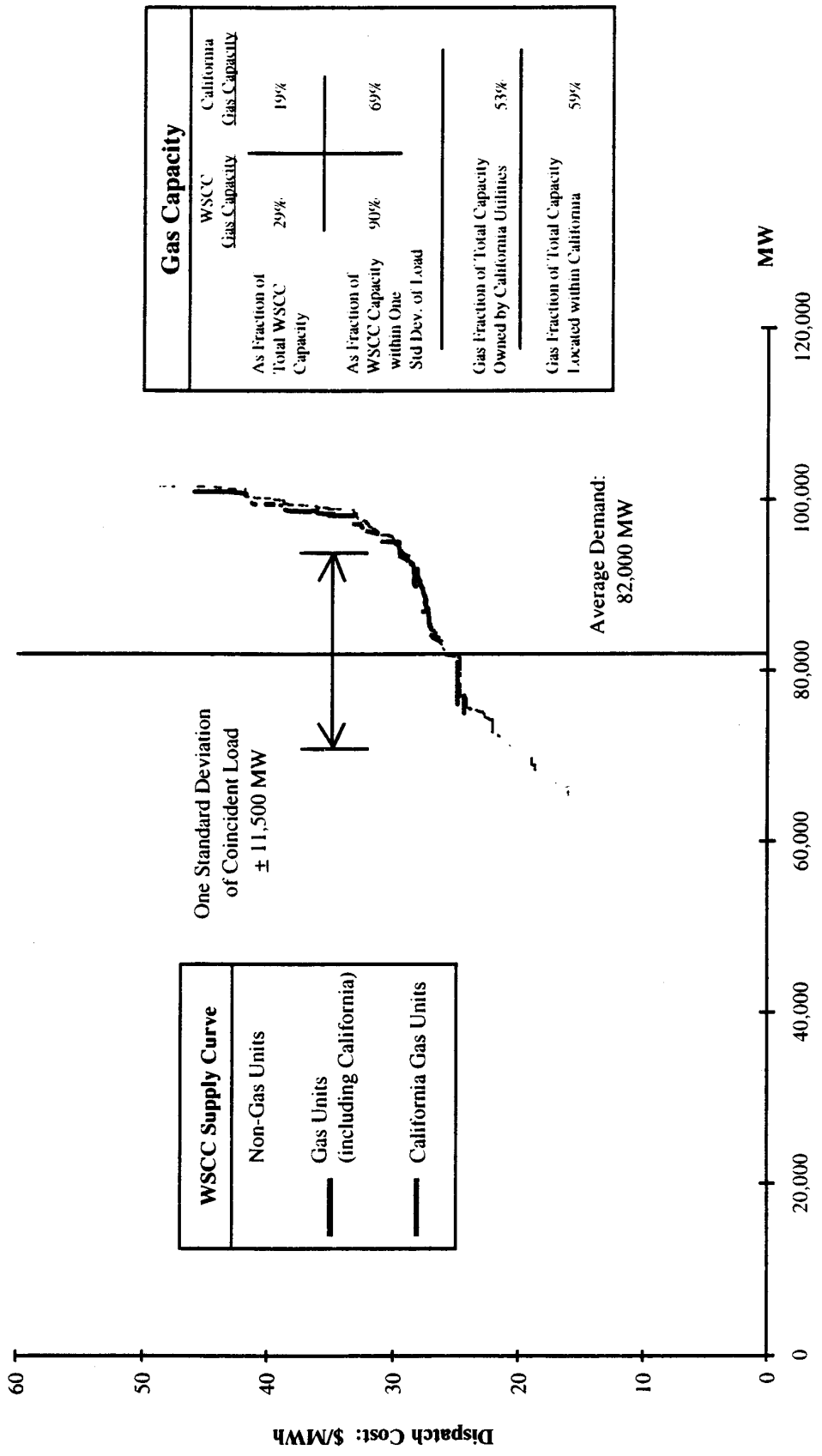
On behalf of the Natural Gas Supply Association in FERC Rulemaking Docket No. RM85–1, 1985–86.

On behalf of the Panhandle Eastern Pipeline Co. in FERC Rulemaking Docket No. RM85–1, 1985.

BILLING CODE 7515–01—P

Attachment B

1996 WSCC Electric Supply Curve



BILLING CODE 4410–11–C

Attachment B—1996 WSCC Electric Supply Curve (Notes and Sources)

Sources

Electric Supply and Demand Database (NERC); RDI 1996 Fuel Price Forecast.

Notes

For graphical clarity, units with dispatch cost above $60/MWh are excluded (30 oil-fired turbines, 740 MW total capacity). Nameplate capacity has been derated to reflect approximate average annual availability; hydro derated to reflect available energy.

The WSCC is the electric reliability council consisting of 11 western states and portions of Canada and Mexico; it contains 162,000 MW of generating capacity from over 1,400 generating units.

The annual average WSCC load is approximately 82,000 MW, and one standard deviation of coincident load is approximately 11,500 MW, so a one-standard deviation band around average load encompasses the range from 70,500 MW to 93,500 MW. Actual values fall within one standard-deviation of the average approximately two-thirds of the time.

Note that this is an ''average annual'' supply curve, in that nameplace capacity of units has been derated to reflect average annual availability (annual energy limits for hydro). Some care must be taken in interpreting this curve, because at any particular point in time, the actual supply curve will differ somewhat, depending on which particular units are actually available at that time. However, it clearly demonstrates that gas, and particularly California gas, is the dominant fuel of the price-setting marginal units in the entire WSCC. Of course, the effect of California gas-fired capacity on just the California market is even greater.

Affidavit of Paul R. Carpenter, Ph.D.

Commonwealth of Massachusetts, County of Middlesex

ss

I, Paul R. Carpenter, being first duly sworn on oath depose and say as follows:

I make this affidavit for the purpose of adopting as my sworn testimony in this proceeding the attached material entitled ''Affidavit of Paul R. Carpenter, Ph.D.'' The statements contained therein were prepared by me or under my direction and are true and correct to the best of my knowledge, information, and belief.

Further affiant saith not.

Paul R. Carpenter

Subscribed and sworn to before me, a notary public in and for the Commonwealth of Massachusetts, County of Middlesex, this 4th day of August, 1998.

[SIGNATURE ILLEGIBLE].

[FR Doc. 99–1393 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to The National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences (NCMS): Advanced Embedded Passives Technology

Notice is hereby given that, on October 7, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences (''NCMS''): Advanced Embedded Passives Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Minnesota Mining and Manufacturing Corporation, St. Paul, MN; Compaq Computer Corporation, Houston, TX; Delphi Delco Electronics Systems, Kokomo, IN; E.I. DuPont de Nemours Co., Research Triangle Park, NC; E.I. DuPont de Nemours Co., Inc., Circleville, OH; International Business Machines, Corporation, Endicott, NY; Interconnect Technology Research Institute, Austin, TX; HADCO Corporation, Salem, NH; MacDermid, Incorporated, Waterbury, CT; Merix Corporation, Forest Grove, OR; Northern Telecom, Inc., McLean, VA; Nu Thena Systems, Inc., McLean, VA; Ormet Corporation, Carlsbad, CA; and National Center for Manufacturing Sciences, Inc., Ann Arbor, MI. The nature and objectives of the venture are to develop and demonstrate Advanced Embedded Passives Technology.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–1394 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—National Center for Manufacturing Sciences, Inc. (''NCMS'')

Notice is hereby given that, on October 15, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), National Center for Manufacturing Sciences, Inc. (''NCMS'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, 3D Systems, Inc., Valencia, CA; MSE Technology Applications, Inc., Butte, MT; Nonlinear Dynamics, Inc., Ann Arbor, MI; Ramtech Group, Inc., North Highlands, CA; Schafer Corporation, Albuquerque, NM; Star Cutter Company, Farmington Hills, MI; TRW Integrated Supply Chain Solutions, McLean, VA; Cisco Systems, Inc., San Jose, CA; and Laser Imaging Systems, Inc., Punta Gorda, FL have been added as parties to this venture. Also, Applied Science & Technology, Woburn, MA; C.N. Burman Company, Patterson, NJ; Viatec, Inc., Hastings, MI; Cincinnati Milacron, Inc., Cincinnati, OH; and The Center for Optics Manufacturing, University of Rochester, Rochester, NY have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. (''NCMS'') intends to file additional written notification disclosing all changes in membership.

On February 20, 1997, National Center for Manufacturing Sciences, Inc. (''NCMS'') filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 17, 1987 (52 FR 8375).

The last notification was filed with the Department on April 10, 1998. A notice was published in the **Federal Register** pursuant to Section 6(b) of the

Act on September 29, 1998 (63 FR 51955).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 99–1395 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Petition for Nonimmigrant Worker.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefor, OMB approval has been requested by February 1, 1999. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until March 23, 1999. During 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarify of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129, Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour and 55 minutes (1.916) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: January 14, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–1384 Filed 1–21–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Reestablishment; Federal Advisory Committee Act; Federal Committee on Apprenticeship; Federal Committee on Registered Apprenticeship

Notice is hereby given that after consultation with the General Services Administration, it has been determined that the reestablishment of a national advisory committee on apprenticeship is necessary and in the public interest. Accordingly, the Employment and Training Administration has chartered the Federal Committee on Registered Apprenticeship (FCRA) which succeeds the Federal Committee on Apprenticeship (FCA). The charter for the FCA expired on January 26, 1998.

The FCRA will be an effective instrument to provide advice and recommendations to the Secretary.

(1) In the development and implementation of administration policies on legislation and regulations affecting apprenticeship;

(2) On the preparation of the American Workforce for sustained employment through employment and training programs for youth, disadvantaged adults, dislocated workers; and other targeted groups;

(3) Regarding measures that will foster quality workplaces that are safe, healthy, and fair; and

(4) In the implementation of the Bureau of Apprenticeship and Training's Child Care Development Specialist Initiative to promote and develop Child Care Apprenticeship Programs.

The Advisory Committee will also provide advice to the Secretary of Labor on ways to achieve the strategic goals set forth in the Department of Labor's Plans required under the Government Performance and Results Act of 1993 and in how to develop systems to measure the achievement of the Department of Labor's goals and objectives. The Committee will consist of seven representatives of employers, seven representatives of labor, and

seven representatives of the public. The National Association of State and Territorial Apprenticeship Directors and the National Association of Governmental Labor officials will have representation on the public group of the Committee. The Secretary shall appoint one of the public members as Chairperson of the Advisory Committee. A representative of the U.S. Department of Education and a representative of the Department of Commerce will be invited to serve as non-voting ''ex-officio'' members of the Committee. The Assistant Secretary of Labor for Employment and Training shall be a member ex-officio. The Director of the Bureau of Apprenticeship and Training shall be the designated Federal official for the Advisory Committee.

The Committee will function solely as an advisory body and in compliance with the provisions of the Federal Advisory Committee Act. Its charter is being filed at this time in accordance with approval by the General Services Administration Secretariat pursuant to 41 CFR 101–6.1015a(a)(2).

Signed at Washington, DC this 28th day of December 1998.

Alexis M. Herman,

Secretary of Labor.

[FR Doc. 99–1465 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 20 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ990002 (Jan. 22, 1999)
Rhode Island
RI990001 (Jan. 22, 1999)

Volume II

Pennsylvania
PA990029 (Jan. 22, 1999)

Volume III

None

Volume IV

Illinois
IL990018 (Jan. 22, 1999)
Ohio
OH990029 (Jan. 22, 1999)

Volume V

None

Volume VI

None

Volume VII

California
CA990028 (Jan. 22, 1999)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the

seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 15th day of January, 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–1327 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Assistant Secretary for Veterans' Employment and Training

Secretary of Labor's Advisory Committee for Veterans' Employment and Training; Notice of Open Meeting

The Secretary's Advisory Committee for Veterans' Employment and Training was established under section 4110 of title 38, United States Code, to bring to the attention of the Secretary, problems and issues relating to veterans' employment and training.

Notice is hereby given that the Secretary of Labor's Advisory Committee for Veterans' Employment and Training will meet on Tuesday, February 9, 1999, beginning at 9:00 am at the U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–2508, Washington, DC 20210.

Written comments are welcome and may be submitted by addressing them to: Ms. Polin Cohanne, Designated Federal Official, Office of the Assistant Secretary for Veterans' Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room S–1315, Washington, D.C. 20210.

The primary items on the agenda are:

- Adoption of Minutes of the Previous Meeting
- Report of the Congressional Committee on Servicemembers and Veterans Transition Assistance
- Certification and Licensing Update
- Implementation of Veterans Legislation Passed in 1998
- Other Matters of Interest to the Committee

The meeting will be open to the public.

Persons with disabilities needing special accommodations should contact Ms. Polin Cohanne at telephone number 202–219–9116 no later than January 26, 1999.

Signed at Washington, D.C. this January 19, 1999.

Espiridion (Al) Borrego

Assistant Secretary of Labor for Veterans' Employment and Training.

[FR Doc. 99–1463 Filed 1–21–99; 8:45 am]

BILLING CODE 4510–79–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–1]

Change of Mailing Address for Notices of Intent To Enforce a Restored Copyright

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice.

SUMMARY: The Copyright Office is notifying the public of a change of mailing address for the submission of Notices of Intent to Enforce (NIE) a restored copyright and registration claims in restored works under the Uruguay Round Agreements Act (URAA). The number of filings submitted during the first two years of the restoration period necessitated the use of a special post office box, but the number of such filings has dramatically decreased making it unnecessary for the Office to maintain this box. All future NIEs, and GATT registrations should be mailed to the pertinent address specified in this notice.

EFFECTIVE DATE: This notice is effective February 22, 1999.

FOR FURTHER INFORMATION CONTACT: Marilyn J. Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: The Uruguay Round General Agreement on Tariffs and Trade (GATT) and the Uruguay Round Agreements Act (URAA) (Pub. L. No. 103–465; 108 Stat. 4809 (1994)) provide for the restoration of copyright in certain works that were in the public domain in the United States. Copyright protection was restored on January 1, 1996, in certain works by foreign nationals or domiciliaries that had entered the public domain for failure to comply with certain requirements prescribed by U.S. copyright law. *See*, 17 U.S.C. 104A (1994).

A copyright owner of any work meeting the requirements of section 104A may register a copyright claim in the restored work during the life of the copyright. The copyright owner may file a Notice of Intent to Enforce (NIE) the restored copyright in the Copyright Office within two years of eligibility. This NIE serves as constructive notice on any reliance party—anyone who is already using the work or acquired copies of the work before the date of enactment of the URAA. Alternatively, the owner may file actual notice on a reliance party at any time.

The URAA also requires the Register of Copyrights to publish lists in the **Federal Register** identifying a restored work and its owner[s] if an NIE has been filed by a party who is eligible to file. Thus, depending on its receipt of filings by eligible parties the Office may continue periodically to publish lists.

During the first two years, because of the large number of expected filings and the special processing they required, the Office established a particular mailing address for the filing of NIEs and registration of copyright claims in GATT restored works. It also created special GATT forms for registration of works and published a format for filing NIEs. The initial two year period for filing with the Office ended, for the overwhelming majority of countries, on December 31, 1997. Consequently, the number of filings has decreased drastically; therefore, the special address is no longer needed.

This notice is to inform all interested parties that the current mailing addresses for filing NIEs and GATT registrations, URAA/GATT, NIEs and Registrations, P.O. Box 72400, Southwest Station, Washington, D.C. 20024, USA *is no longer effective.* The new address for filing NIEs is GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. The new address for GATT registrations is the same as for all other registrations: Library of Congress, Copyright Office, 101 Independence Avenue, S.E., Washington, D.C. 20559–6000.

Dated: January 15, 1999.

Marilyn Kretsinger,

Assistant General Counsel, Copyright Office.

[FR Doc. 99–1396 Filed 1–21–99; 8:45 am]

BILLING CODE 1410–30–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of additional files from the

Nixon Presidential historical materials. Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (''PRMPA'', 44 U.S. C. 2111 note) and 1275.42(b) of the PRMPA Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of textual materials and Abuse of Governmental Power segments of the Nixon White House tapes from among the Nixon Presidential historical materials.

DATES: The National Archives and Records Administration (NARA) intends to make the materials described in this notice available to the public beginning February 25, 1999. In accordance with 36 CFR 1275.44, any person who believes it necessary to file a claim of legal right or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before February 22, 1999.

ADDRESSES: The tape recordings and textual materials will be made available to the public at the National Archives at College Park research room, located at 8601 Adelphi Road, College Park, Maryland beginning at 8:45 a.m. Researchers must have a NARA researcher card, which they may obtain when they arrive at the facility.

Petitions asserting a legal or constitutional right or privilege which would prevent or limit access must be sent to the Archivist of the United States, National Archives at College Park, 8601 Adelphi Road, College Park, Maryland 20740–6001.

FOR FURTHER INFORMATION CONTACT: Karl Weissenbach, Director, Nixon Presidential Materials Staff, 301–713–6950.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened on February 25, 1999, consist of 50.1 cubic feet. In addition, the National Archives is proposing to open 124 declassified segments from the Nixon White House tapes related to Abuse of Governmental Power from 110 separate conversations, totaling approximately 54 minutes of listening time.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. This is the fifteenth of a series of openings of Central Files: the previous openings were on December 1, 1986; March 22, 1988; December 9, 1988; July 17, 1989; December 15, 1989; August 22, 1991; February 19, 1992; July 24, 1992; May 17, 1993; July 15, 1993; January 12, 1995; December 19, 1995; March 26, 1997, and March 18, 1998.

Two files designated for opening on February 25, 1999, are from the White House Central Files, Name Files. The Name Files were used for routine materials filed alphabetically by the name of the correspondent: copies of documents in the Name Files are usually filed by subject in the Subject Files. The Name Files relating to two individuals will be opened on February 25, 1999:

White House Central Files: Alpha Name Files

Warren E. Burger—.1 cubic foot
Henry L. Diamond—less than .1 cubic foot

In accordance with the provisions of Executive Order 12958, several series within the National Security Council files were systematically reviewed and will be made available to the public on February 25, 1999. In addition, a number of documents which were previously withheld from public access have been re-reviewed for release in accordance with 36 CFR 1275.56 (Public Access Regulations) and, in some cases, declassified under the provisions of Executive Order 12958. These documents will be publicly available on February 25, 1999:

National Security Council Files series—12 cubic feet
Other previously restricted materials—38 cubic feet

NARA is also proposing the opening of certain Nixon White House tapes. These 124 segments of previously restricted conversations to be released on February 25, 1999 were withheld from the November 12, 1996 public opening of 201 hours of Abuse of Governmental Power segments. These previously restricted segments were re-reviewed for release and declassified in accordance with the mandatory review provisions of Executive Order 12958 and 36 CFR 1275.56 (Public Access Regulations).

There are no transcripts for these tapes. Tape logs, prepared by NARA, are offered for public access as a finding aid to the tape segments and a guide for the listener. There is a separate tape log entry for each segment of conversation released. Each tape log entry includes the names of participants; date, time, and location of the conversation; and an outline of the content of the conversation.

Listening stations will be available for public use on a first come, first served basis. NARA reserves the right to limit listening time in response to heavy demand. No copies of the tape recordings will be sold or otherwise provided at this time. No sound recording devices will be allowed in the listening area. Researchers may take notes. Copies of the tape log will be available for purchase.

Public access to some of the items in the files segments and some portions of the White House tape segments will be restricted for reasons other than national security as outlined in 36 CFR 1275.52 (Public Access Regulations).

Dated: January 20, 1999.

John W. Carlin,

Archivist of the United States.

[FR Doc. 99–1590 Filed 1–21–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Council on the Humanities; Meeting

February 5, 1999.

Pursuant to the provisions of the Federal Advisory Committee Act (Public L. 92–463, as amended) notice is hereby given that a meeting of the National Council on the Humanities will be held in Washington, D.C. on February 5, 1999, at 12:30 p.m.

The purpose of the meeting is to advise the Chairman of the National Endowment for the Humanities with respect to the review of applications for financial support on Technology grants received by the Division of Preservation and Access and to make recommendations thereon to the Chairman.

The meeting will be held in the Old Post Office Building, 1100 Pennsylvania Avenue, NW, Washington, DC and by teleconference. This meeting will not be open to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code because the Council will consider information that may disclose: trade secrets and commercial or financial information obtained from a person and privileged or confidential, information of a personal nature the disclosure of which will constitute a clearly unwarranted invasion of personal privacy; and information the disclosure of which would significantly frustrate implementation of proposed agency action. I have made this determination under the authority granted me by the Chairman's Delegation of Authority dated July 19, 1993.

Further information about this meeting can be obtained from Ms. Nancy E. Weiss, Advisory Committee Management Officer, Washington, DC

20506, or call area code (202) 606–8322, TDD (202) 606–8282. Advance notice of any special needs or accommodations is appreciated.

Nancy E. Weiss,

Advisory Committee Management Officer.

[FR Doc. 99–1435 Filed 1–21–99; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of the National Museum Services Board

AGENCY: Institue of Museum and Library Services, NFAH.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the agenda of a forthcoming meeting of the National Museum Services Board. This notice also describes the function of the Board. Notice of this meeting is required under the Government through the Sunshine Act (Public Law 94–409) and regulations of the Institute of Museum and Library Services, 45 CFR 1180.84.

TIME/DATE: 10:00 pm—12:00 pm—Friday, February 5, 1999.

STATUS: Open.

ADDRESS: the Madison Hotel, Fifteenth and M Streets, NW, Drawing Rooms I and II, Washington, DC 20005, (202) 862–1600.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lyons, Special Assistant to the Director, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Room 510, Washington, DC 20506, (202) 606–4649.

SUPPLEMENTARY INFORMATION: The National Museum Services Board is established under the Museum Services Act, Title II of the Arts, Humanities, and Cultural Affairs Act of 1976, Public Law 94–462. The Board has responsibility for the general policies with respect to the powers, duties, and authorities vested in the Institute under the Museum Services Act.

The meeting on Friday, February 5, 1999 will be open to the public. If you need special accommodations due to a disability, please contact: Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506–(202) 606–8536—TDD (202) 606–8636 at least seven (7) days prior to the meeting date.

74th Meeting of the National Museum Service Board, The Madison Hotel, 15th and M Streets, NW, Drawing Rooms I and II, Washington, DC, February 5, 1999, 10:00 AM—12:30 PM

Agenda

I. Chairman's Welcome and Approval of the Minutes of the 73rd NMSB Meeting—September 28, 1998
II. Director's Report
III Appropriations Report
IV. Legislative/Public Affairs Report
V. Office of Research and Technology Report
VI. Office of Museum Services Program Report
VII. Office of Library Services Reports

Dated: January 14, 1999.

Linda Bell,

Director of Policy, Planning and Budget, National Foundation on the Arts and Humanities, Institute of Museum and Library Services.

[FR Doc. 99–1496 Filed 1–21–99; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

Public Comment on Recommended Improvements to the Oversight Processes for Nuclear Power Reactors

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing significant revisions to its processes for overseeing the safety performance of commercial nuclear power plants that include integrating the processes. As part of its proposal, the NRC staff established a new regulatory oversight framework with a set of performance indicators and associated thresholds, developed a new baseline inspection program that supplements and verifies the performance indicators, and created a continuous assessment process that includes a methodology for grading the regulatory response to performance on the basis of information derived from the performance indicators and inspection findings. The changes are the result of continuing work following public comment and workshops held on a previously noticed concept, the integrated review of the assessment process (IRAP) [''Public Comment on the Integrated Review of the Assessment Process for Commercial Nuclear Power Reactors,'' August 7, 1998; 63 *FR* 152, 42439]. Public comments are requested on the proposed regulatory framework, baseline inspection program, assessment process, and associated assessment tools. The NRC is soliciting comments from interested public interest groups, the regulated industry, States, and concerned citizens. The NRC staff will consider comments it receives in developing a final proposal for implementing the new processes.

DATES: The comment period expires February 22, 1999. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T–6 D59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Hand deliver comments to: 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Copies of comments received may be examined at the NRC's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Copies of SECY–99–007 and its attachments may be obtained from the NRC's Public Document Room at 2120 L St., N.W., Washington, DC 20003–1527, telephone 202–634–3273. Copies also may be obtained from the NRC's Internet web site at: http://www.nrc.gov/NRC/COMMISSION/SECYS/index.html#1999.

FOR FURTHER INFORMATION CONTACT: Timothy J. Frye, Mail Stop: O–5 H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–1287.

SUPPLEMENTARY INFORMATION:

Background

Over the years, the NRC has developed and implemented different licensee performance assessment processes to address the specific assessment needs of the agency at the time. The systematic assessment of licensee performance (SALP) process was implemented in 1980 following the accident at Three Mile Island to allow for the systematic, long-term, integrated evaluation of overall licensee performance. The senior management meeting (SMM) process was implemented in 1986, following the loss-of-feedwater event at Davis-Besse, to bring to the attention of the highest levels of NRC management to plan a coordinated agency course of action for those plants the performance of which was of most concern to the agency. The plant performance review (PPR) process was implemented in 1990 to periodically adjust NRC's inspection

focus in response to changes in licensee performance and emerging plant issues.

Integrated Review of the Assessment Process

In September 1997, the NRC began an integrated review of the processes used for assessing performance by commercial nuclear power plant licensees. The NRC staff presented to the Commission a conceptual design for a new integrated assessment process in Commission paper SECY–98–045, dated March 9, 1998, and briefed the Commission on the concept at a public meeting on April 2, 1998. SECY–98–045 requested the Commission's approval to solicit public input on the proposed concepts. On June 30, 1998, the Commission issued a staff requirements memorandum (SRM) in response to SECY–98–045 that approved the staff's request to solicit public comment on the concepts presented in the Commission paper [63 FR 152].

Industry Proposal

In parallel with the staff's work on the IRAP and the development of other assessment tools, the nuclear power industry independently developed a proposal for a new assessment and regulatory oversight process. This proposal took a risk-informed and performance-based approach to the inspection, assessment, and enforcement of licensee activities on the basis of the results of a set of performance indicators. This proposal was developed by the Nuclear Energy Institute (NEI) and is further described in ''Minutes of the July 28, 1998, Meeting With the Nuclear Energy Institute to Discuss Performance Indicators and Performance Assessment,'' dated July 30, 1998.

Public Workshop

The staff set out to develop a single set of recommendations for making improvements to the regulatory oversight processes in response to NEI's proposal, the Commission's comments on the IRAP proposal, and comments made at a Commission meeting on July 17, 1998, with public and industry stakeholders and the hearing before the Senate on July 31, 1998.

The IRAP public comment period, which ended on October 6, 1998, and a series of public meetings were used to facilitate internal and external input into the development of these recommendations. As part of the public comment period, the staff sponsored a 4-day public workshop from September 28 through October 1, 1998, to allow participation by the industry and the public in improving the regulatory oversight processes. During the workshop, the participants reached a consensus on the overall philosophy for regulatory oversight and generally agreed on the defining principles for the oversight processes.

Task Groups

Following the public workshop, the NRC staff formed three task groups to complete the work begun at the workshop and to develop the recommendations for the integrated oversight processes: a technical framework task group, an inspection task group, and an assessment process task group. The technical framework task group was responsible for completing the assessment framework, which included defining the strategic areas and cornerstones of licensee performance that need to be measured to ensure that unacceptable risks are not imposed on the public as a result of the operation of nuclear power reactors, and for identifying the performance indicators (PIs) and appropriate thresholds that could be used to measure performance. The inspection task group was responsible for developing the scope, the depth, and the frequency of a risk-informed baseline inspection program that would be used to supplement and verify the PIs. The assessment process task group developed methods for integrating PI data and inspection data, determining NRC action on the basis of assessment results, and communicating results to licensees and the public. Other staff activities to improve the enforcement process were coordinated with these three task groups to ensure that changes to the enforcement process were properly evaluated in the framework structure and that changes to the inspection and assessment programs were integrated with the changes to the enforcement program. The task groups completed their work between October and December 1998, and developed recommendations to be presented to the Commission.

Scope of the Public Comment Period

The NRC staff's recommendations for an integrated oversight process are presented in SECY–99–007, ''Recommendation for Reactor Oversight Process Improvements,'' dated January 8, 1999, and its attachments. The SECY paper also includes the staff's evaluation of public comments received on IRAP. This public comment period will focus on obtaining industry and public views on how the NRC should implement the processes for overseeing and assessing licensee performance.

The NRC seeks public comment and feedback on the specific topics highlighted in the questions below. Commenters are not limited to and are not obligated to address every issue discussed in the questions. In providing comments, please key your response to the number of the applicable question (e.g., ''Response to A.1.''). Comments should be as specific as possible. The use of examples is encouraged.

Comments are requested on the following issues.

A. Regulatory Oversight Framework, Performance Indicators, and Thresholds

1. Framework Structure

The oversight framework includes cornerstones of safety that (1) limit the frequency of initiating events; (2) ensure the availability, reliability, and capability of mitigating systems; (3) ensure the integrity of the fuel cladding, the reactor coolant system, and containment boundaries; (4) ensure the adequacy of the emergency preparedness functions; (5) protect the public from exposure to radioactive material releases; (6) protect nuclear plant workers from exposure to radiation; and (7) provide assurance that the physical protection system can protect against the design-basis threat of radiological sabotage. Are there any other significant areas that need to be addressed in order for the NRC to meet its mission of ensuring that commercial nuclear power plants are operated in a manner that provides adequate protection of public health and safety and the environment and protects against radiological sabotage and the theft or diversion of special nuclear materials?

2. Performance Bands

The oversight framework includes thresholds for determining licensee performance within four performance bands: a licensee response band, an increased regulatory response band, a required regulatory response band, and an unacceptable performance band. The thresholds between the bands were selected to identify significant deviations from nominal industry performance and to differentiate between levels of risk significance, as indicated by PIs or inspection findings. Are there alternative means of setting thresholds between the bands that should be considered?

3. Performance Indicators

The NRC staff developed a set of 20 indicators to measure important attributes of the seven areas listed in question 1 above. The PIs, together with

findings from associated baseline inspections in attributes not fully measured or not measured at all by the indicators, should provide a broad sample of data on which to assess licensee performance in those important attributes. One reason these specific indicators were proposed is because they are readily available and can be implemented in a short period of time. Other indicators will be developed and included in the oversight process as their ability to measure licensee performance is determined.

Will these PIs, along with inspection findings, be effective in determining varying levels of licensee performance?

4. Other Comments

Are there any other comments related to the oversight framework, PIs, or thresholds?

B. Risk-Informed Baseline Inspections

1. Inspectable Areas

The proposed baseline inspection program is based on a set of inspectable areas that, in conjunction with the PIs, provides enough information to determine whether the objectives of each cornerstone of safety are being met. Are there any other areas not encompassed by the inspectable areas that need to be reviewed to achieve the same goal?

2. Other Comments

Are there any other comments related to the proposed baseline inspection program?

C. Assessment Process

1. Frequency of Assessments

The proposed assessment process provides four levels of review of licensee performance: continuous, quarterly, semiannual, and annual. Each successive level is performed at a higher organizational level within the NRC. The semiannual and annual periods would coincide with an annual inspection planning process and the NRC's budgeting process. Are the proposed assessment periods sufficient to maintain a current understanding of licensee performance?

2. Action Decision Model

An action matrix was developed to provide guidance for consistently considering those actions that the NRC needs to take in response to the assessed performance of licensees. The actions are categorized into four areas (management meeting, licensee action, NRC inspection, and regulatory action) and are graded across five ranges of licensee performance. The decision to take an action would be determined directly from the threshold assessments of PIs and inspection areas. As changes in performance become more significant, more significant actions would be considered.

The action matrix is not intended to be absolute. It establishes expectations for NRC-licensee interactions, licensee actions, and NRC actions and does not preclude taking less action or additional action, when justified.

Will the use of the action matrix and underlying decision logic reasonably result in timely and effective action?

3. Communicating Assessment Results

The proposed assessment process includes several methods for communicating information to licensees and the public. First, the information being assessed (PIs and inspection results) will be made public as the information becomes available. Second, the NRC will send each licensee a letter every 6 months that describes any changes in the NRC's planned inspections for the upcoming 6 months on the basis of licensee performance. Third, each licensee will receive an annual report that includes the NRC's assessment of the licensee's performance and any associated actions taken because of that performance. In addition to issuing the annual assessment report, the NRC will hold an annual public meeting with each licensee to discuss its performance. Finally, a public meeting with the Commission will be held annually to discuss the performance at all plants. Do these reports and meetings provide sufficient opportunity for licensees and the general public to gain an understanding of performance and to interact with the NRC?

4. Other Comments

Are there any other comments related to the proposed assessment process?

E. Implementation

1. Transition Plan

The Commission paper includes a transition plan that identifies important activities needed to complete and implement the proposed processes. Are there other major activities not identified on the plan that if not accomplished could prevent successful implementation of the proposed processes?

2. Other Comments

Are there any other comments related to implementing the new processes?

F. Additional Comments

In addition to the previously mentioned issues, commenters are invited to give any other views on the NRC assessment process that could assist the NRC in improving its effectiveness.

Correction

One of the performance indicators is incorrectly stated in two places in the attachments to SECY–99–007. On page 3 of attachment 1 and page 11 of attachment 2, the indicator for Occupational Radiation Safety reads ''* * * personnel exposures exceeding 10% of the stochastic or 2% of the nonstochastic limits.'' It should read ''* * * personnel exposures exceeding 2% of the stochastic or 10% of the nonstochastic limits.''

Dated at Rockville, Maryland, this 15th day of January 1999.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Chief, Inspection Program Branch, Division of Inspection & Support Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 99–1486 Filed 1–21–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of January 19, 25, February 1 and 8, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 18

Tuesday, January 19

2:00 p.m. Briefing on Status of Third Party Oversight of Millstone Station's Employee Concerns Program and Safety Conscious Work Environment (Public Meeting) (Contact: Bill Dean, 301–415–7380)

Wednesday, January 20

9:25 a.m. Affirmation Session (Public Meeting) (If Needed)

9:30 a.m. Briefing on Reactor Inspection, Enforcement And Assessment (Public Meeting) (Contact: Frank Gillespie, 301–415–1275)

Week of January 25—Tentative

There are no meetings scheduled for the Week of January 25

Week of February 1—Tentative

Tuesday, February 2
3:30 p.m. Affirmative Session (Public Meeting) (if needed)
Wednesday, February 3
2:00 p.m. Meeting with Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of February 8—Tentative

Monday, February 8
2:00 p.m. Briefing on HLW Program Viability Assessment (Public Meeting)
Tuesday, February 9
9:30 a.m. Briefing on Fire Protection (Public Meeting)
11:00 a.m. Affirmation Session (Public Meeting) (if needed)

*THE SCHEDULE FOR COMMISSION MEETINGS IS SUBJECT TO CHANGE ON SHORT NOTICE. TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING)—(301) 415–1292. CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at:
http://www.nrc.gov/SECY/smj/schedule.htm

* * * * *

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: January 15, 1999.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 99–1586 Filed 1–20–99; 2:43 pm]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

January 1, 1999.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Pub. L. 93–344). Section 1014(e) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of January 1, 1999, of the two deferrals contained in the first special message for FY 1999. The message was transmitted to Congress on October 22, 1998.

Deferrals (Attachments A and B)

As of January 1, 1999, $167.6 million in budget authority was being deferred from obligation. Attachment B shows the status of each deferral reported during FY 1999.

Information From Special Message

The special message containing information on the deferrals that are covered by this cumulative report is printed in the edition of the **Federal Register** cited below:

63 FR 63949–50, Tuesday, November 17, 1998

Jacob J. Lew,

Director.

Attachments

ATTACHMENT A—STATUS OF FY 1999 DEFERRALS

[in millions of dollars]

	Budgetary resources
Deferrals proposed by the President	167.6
Routine Executive releases through January 1, 1999 (OMB/Agency releases of $0)	.....
Overturned by the Congress	.....
Currently before the Congress	167.6

BILLING CODE 3110–01–P

[FR Doc. 99–1440 Filed 1–21–99; 8:45 am]
BILLING CODE 3110–01–C

ATTACHMENT B
Status of FY 1999 Deferrals - As of January 1, 1999
(AMOUNTS IN THOUSANDS OF DOLLARS)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 1-1-99
DEPARTMENT OF STATE									
Other									
United States emergency refugee and migration assistance fund	D99-1	82,858		10-22-98					82,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic support fund	D99-2	84,777		10-22-98					84,777
TOTAL, DEFERRALS		**167,635**	**0**		**0**			**0**	**167,635**

RAILROAD RETIREMENT BOARD

Proposed Data Collection Available for Public Comment and Recommendations

SUMMARY: In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: RUIA Claims Notification and Verification System. Section 5(b) of the Railroad Unemployment Insurance Act, as amended by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (P.L. 100–647), requires that ''when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer or employers and afford such employer or employers an opportunity to submit information relevant to the claim before making an initial determination on the claim.'' The purpose of the claims notification system is to provide to each unemployment and sickness claimant's base year employer or current employer, notice of each application and claim for benefits under the RUIA and to provide an opportunity for employers to convey information relevant to the proper adjudication of the claim. Railroad employers receive notice of applications and claims by one of two options. The first option, Form Letter ID–4K is a computer generated form letter notice of all unemployment applications, unemployment claims and sickness claims received from employees of a railroad company on a particular day. Form Letters ID–4K are mailed on a daily basis to officials designated by railroad employers. The second option is an Electronic Data Interchange (EDI) version of the Form Letter ID–4K notice. EDI notices of application are transmitted to participating railroads on a daily basis, generally on the same day that applications are received. Railroad employers can respond to RRB notices of applications and claims manually by mailing a completed ID–4K back to the RRB or electronically via EDI. Minor non-burden impacting changes are being proposed to Form ID–4K.

Estimate of Annual Respondent Burden

The estimated annual respondent burden is as follows:

RRB messages	Annual responses	Time (Min)	Burden (Hrs)
ID–4K (EDI version)	176,400	(1)	377
ID–4K (manual)	75,600	2	2,520
Total	252,000		2,897

[1] The burden for the 9 participating employers who transmit EDI responses is calculated at 10 minutes each per day, 251 workdays a year or 377 total hours of burden.

Additional information or comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363. Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 N. Rush Street, Chicago, Illinois 60611–2092. Written comments should be received within 60 days of this notice.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–1491 Filed 1–21–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40936; File No. SR–Phlx–98–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to the Assessment of a Fee on Persons Who Unsuccessfully Contest an Options Ruling Involving a Trading Dispute

January 12, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 26, 1998, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. Several amendments were thereafter received.[3] The proposed rule change, as amended, is described in Items I, II, and III below, which Items have been prepared primarily by Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] By letter dated August 31, 1998, the Exchange revised the effective date of its proposal. *See* letter from Linda S. Christie, Counsel, Phlx, to Mandy Cohen, Special Counsel, Division of Market Regulation (''Division''), Commission (''Amendment No. 1''). Next, the Exchange clarified that the fee only applied to frivolous appeals of option floor decisions and made conforming changes to Rule 124 and Options Floor Procedure Advice F–27. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated November 18, 1998 (''Amendment No. 2''). In its December 9, 1998 letter, the Exchange clarified that (a) the Options Committee approved the changes made by Amendment No. 2, and (b) the amendment dated November 18, 1998, is Amendment No. 2. In addition, the Phlx made minor technical changes to the rule language. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission (''Amendment No. 3''). Finally, the Exchange made technical changes to its rule language and further clarified that the proposed rule change amends only Advice F–27 for options and not for equities. *See* letter from Nandita Yagnik, Attorney, Phlx, to Mandy Cohen, Special Counsel, Division, Commission, dated December 23, 1998 (''Amendment No. 4'').

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Phlx Rule 124 and Options Floor Procedure Advice F–27, Floor Official Rulings (''Advice F–27''), to assess a $250.00 fee on persons who unsuccessfully contest an options ruling imposed under Phlx Rule 124, upon a finding by a Rule 124(d) review panel (''Review Panel''), that the appeal is frivolous.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.[5]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Phlx Rule 124 and Advice F–27 codify procedures respecting Floor Officials and certain rulings issued by Floor Officials on the trading floor. The Exchange proposes to amend Phlx Rule 124 and Advice F–27 to assess a $250.00 fee on persons who frivoulsy contest an options ruling under Rule 124.[6] The imposition of a fine is proposed due to the increased number of appeals filed by Exchange members who trade on the Phlx options floor. Floor Officials have expressed concern regarding appeals, and the Exchange believes that the possibility of paying a fee might discourage members from making frivolous appeals of floor rulings. The fee will only apply to the options floor, since trading disputes more frequently arise from the options floor than from the equity or foreign currency options floors.[7] It should help Floor Officials resolve non-disciplinary trading situations promptly.[8]

2. Statutory Basis

The proposed rule change is consistent with Section 6 of the Act[9] in general, and in particular, with Section 6(b)(5),[10] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices and remove impediments to and perfect the mechanism of a free and open market and a national market system by discouraging unwarranted appeals and thereby providing swifter access to the appeals process. Additionally, the proposal is consistent with Section 6(b)(4)[11] in that it provides for the equitable allocation of a reasonable fee among those persons who unsuccessfully contest an options ruling.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx 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 or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Phlx consents, the Commission will:

(A) by order approve such proposed rule change, or,

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the foregoing 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 will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–98–38 and should be submitted by February 12, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 99–1397 Filed 1–21–99 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Amendment No. 2, *Supra* note 3.

[5] The Commission has modified the text of the summaries prepared by the Exchange.

[6] Pursuant to Rule 124(d), Option Floor Official rulings are reviewable by a minimum of three members of the Sub-Committee on Rules and Rulings, a sub-committee of the standing committee, which shall be empowered to review such rulings, or the Chairperson of the standing committee (or his designee) if three Sub-Committee members cannot be promptly convened. This constitutes a Review Panel for Floor Officials rulings. Floor Official rulings may be sustained, overturned or modified by a majority vote of the Review Panel members present. Decisions of the Review Panel will be considered final decisions of a standing floor committee and may be appealed to the Exchange's Board of Governors pursuant to Exchange By-Law Article XI. *See* Amendment No. 2, *supra* note 3.

[7] *See* Amendment No. 2, *supra* note 3.

[8] This proposal does not affect citations related to floor procedure advices, which are appealable under Rule 970, nor order and decorum violations, which are appealable under Rule 60.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(v)(5).

[11] 15 U.S.C. 78f(b)(4).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted within 60 days of this publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S. W., Suite 5000, Washington, D. C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: ''Nomination for the Small Business Prime Contractor of the Year

Award, Nomination for the Small Business Subcontractor of the Year.''

Type of Request: Extension of a currently approved collection.

Form No's: 883 and 1375.

Description of Respondents: Small Businesses.

Annual Responses: 369.

Annual Burden: 1,476.

Comments: Send all comments regarding this information collection to, Susan Monge, Procurement Analyst, Office Prime Contracts Assistant, Small Business Administration, 409 3rd Street S.W., Suite 8800, Washington, D.C. 20416. Phone No:202–205–7316.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Title: ''Small Business Investment Company (SBIC) Leverage Application Forms and Documents,'' Leverage Application Kits-Section 301 (c) and 301(d).

Type of Request: Extension of a currently approved collection.

Form No's: 25, 26, 27, 28, 33, 34, 444C, 444D, 1022, 1022A, 1022B, 1022C, 1065.

Description of Respondents: Small Business Investment Companies.

Annual Responses: 150.

Annual Burden: 600.

Comments: Send all comments regarding this information collection to, Johnny Kits, Financial Analyst, Office of Chief Administrative Officer, Small Business Administration, 409 3rd Street S.W., Suite 6300, Washington, D.C. 20416. Phone No:202–205–7587.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–1450 Filed 1–21–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Political-Military Affairs

[Public Notice 2931]

Proposed Information Collections: Prior Approval for Brokering Activity; Brokering Activity Reports

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposals submitted to OMB pursuant to 22 C.F.R. Part 129:

1. Type of Request: Existing collection without an OMB control number.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Prior Approval for Brokering Activity pursuant to 22 C.F.R. § 129.7.

Frequency: On occasion.

Form Number: None.

Respondents: Business organizations.

Estimated Number of Respondents: 500.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 2,000 hours.

(Total Estimated Burden based on number of forms received per year.)

2. Type of Request: Existing collection without an OMB control number.

Originating Office: Bureau of Political-Military Affairs, Office of Defense Trade Controls, PM/DTC.

Title of Information Collection: Brokering Activity Reports pursuant to 22 C.F.R. § 129.9.

Frequency: Annual.

Form Number: None.

Respondents: Business organizations.

Estimated Number of Respondents: 500.

Average Hours Per Response: 2 hours.

Total Estimated Burden: 4,000 hours.

(Total Estimated Burden based on number of forms received per year.)

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Public comments, or requests for additional information regarding the collection listed in this notice should be directed to the Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, SA–6, Room 200, U.S. Department of State, Washington, D.C. 20522–0602 (703) 875–6644.

Dated: December 22, 1998.

John P. Barker,

Deputy Assistant Secretary for Export Controls, Bureau of Political-Military Affairs.

[FR Doc. 99–1474 Filed 1–21–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advice the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on February 3, 1999, at 1:00 p.m.

ADDRESSES: The meeting will be held at the Department of Transportation Building (Nassif Bldg.), Room 4342, 400 Seventh Street, SW., Washington, DC, 20590.

FOR FURTHER INFORMATION CONTACT: Linda Williams, Office of Rulemaking, 800 Independence Avenue, SW, Washington, DC 20591, telephone (202) 267–9685.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on February 3, 1998. The agenda for this meeting will include final proposals from the Reserve Duty/Rest Requirements Working Group, and status reports on the Airplane Performance Working Group and the All-Weather Operations Working Group. Attendance is open to the interested public but may be limited by the space available. The Members of the public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contracting the person

listed under the heading **FOR FURTHER INFORMATION CONTACT**.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 19, 1999.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 99–1499 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standard for High Frequency Data Link

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Special Committee 188 meeting to be held February 9–12, 1999, starting at 9 a.m. each day. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington DC 20036.

The agenda will include: February 9–10, (1) Working Group (WG) 2, Minimum Operational Performance Standards; February 10–11 (starting at 1:00 p.m. on February 10); (2) WG–1, Minimum Aviation System Performance Standards; February 12, Plenary Session; (3) Review Summary of October WG–1 Meeting; (4) Review of WG–1 Status; (5) Review of WG–2 Status; (6) Review Activities of the Standards Groups; (7) Open Discussion; (8) Confirm Dates for Future Meetings; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or *http://www.rtca.org* (web site).

Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on January 14, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–1503 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application to Use the Revenue From a Passenger Facility Charge (PFC) at Bradley International Airport, Windsor Locks, Connecticut

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before February 22, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Airport Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert Juliano, A.A.E., Bureau Chief, State of Connecticut, Department of Transportation, Bureau of Aviation and Ports at the following address: 2800 Berlin Turnpike, P.O. Box 317546, Newington, CT. 06131–7546.

Air carriers and foreign air carriers may submit copies of written comments previously provided the State of Connecticut under section 158.23 of Part 158 of the Federal Aviation Regulations.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Scott, PFC Program Manager, Federal Aviation Administration, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803, (781) 238–7614. The application may be reviewed in person at 16 New England Executive Park, Burlington, Massachusetts.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a Passenger Facility Charge (PFC) at Bradley International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On January 5, 1999, the FAA determined that the application to use the revenue from a PFC submitted by the State of Connecticut was substantially complete within the requirements of section 158.25 of Part 158 of the Federal Aviation Regulations. The FAA will approve or disapprove the application, in whole or in part, no later than April 5, 1999.

The following is a brief overview of the use application.

PFC Project #:99–08–U–00–BDL.

Level of the proposed PFC: $3.00.

Charge effective date: September 1, 1997.

Estimated charge expiration date: January 1, 1999.

Estimated total net PFC revenue: $14,360,000.

Brief description of projects: Construction of New Fire Station, Construction of Glycol Recovery Facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: On demand Air Taxi/Commercial Operators (ATCO).

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Connecticut Department of Transportation Building, 2800 Berlin Turnpike, Newington, Connecticut 06131–7546.

Issued in Burlington, Massachusetts on January 8, 1999.

Vincent A. Scarano,

Manager, Airports Division, New England Region.

[FR Doc. 99–1502 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket: RSPA–98–4957; Notice 1]

Notice of Request for Extension of Existing Information Collection

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

FOR FURTHER INFORMATION CONTACT: Marvin Fell, (202) 366–6205, to ask questions about this notice, or write by e-mail to marvin.fell@rspa.dot.gov.

SUMMARY: This notice requests public participation in the Office of Management and Budget (OMB) approval process for the extension an existing RSPA information collection. RSPA's information collection concerns a pipeline safety regulation that requires gas service line operators who do not maintain certain customer piping to notify the customers of the need to maintain the piping.

DATES: Comments on this notice must be received by March 23, 1999 to be assured of consideration.

ADDRESSES: Interested persons are invited to send comments to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh St., SW, Washington, D.C., 20590. Please identify the docket and notice numbers shown in the heading of this notice.

SUPPLEMENTARY INFORMATION:

Title: Customer-Owned Service Lines.

Type of Request: Existing information collection.

Abstract: RSPA pipeline safety regulation 49 CFR 192.16 requires operators of gas service lines who do not maintain buried customer piping up to building walls or certain other locations to notify their customers of the need to maintain that piping. Congress directed DOT to take this action in response to service line accidents. By advising customers of the need to maintain their buried gas piping, the notices may reduce the risk of future accidents.

Each operator must make the following records available for inspection by RSPA or a State agency participating in the Federal pipeline safety program at 49 U.S.C. 60105 or 60106: (1) a copy of the notice currently in use; and (2) evidence that notices have been sent to customers within the previous 3 years.

Estimate of Burden: Minimal.

Respondents: Gas transmission and distribution operators.

Estimated Number of Respondents: 1,590.

Estimated Number of Responses per Respondent: 350.

Estimated Total Annual Burden on Respondents: 9,167 hours.

Comments are invited on: (a) the need for the proposed collection of information for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

All timely written comments to this notice will be summarized and included in the request for OMB approval. All comments will also be available to the public in the docket.

Issued in Washington, DC on January 11, 1999.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 99–1454 Filed 1–21–99; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Proposed Collection; Comment Request

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury (''Treasury''), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Financial Crimes Enforcement Network (''FinCEN'') is soliciting comments concerning a new form, ''Designation of Exempt Person,'' for use by banks and other depository institutions (''banks'') in designating their eligible customers as exempt from the requirement that banks report to Treasury customer transactions in currency in excess of $10,000.

DATES: Written comments should be received on or before March 23, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to: Office of Chief Counsel, Financial Crimes Enforcement Network, Department of the Treasury, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536, *Attention:* PRA Comments—Designation of Exempt Person. Comments also may be submitted by electronic mail to the following Internet address: ''regcomments@fincen.treas.gov'' with the caption in the body of the text, ''*Attention:* PRA Comments—Designation of Exempt Person.''

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3602, or Eileen Dolan, FinCEN, at (703) 905–3618. A copy of the form may be obtained through the Internet at http://www.treas.gov/fincen.

SUPPLEMENTARY INFORMATION:

Title: Designation of Exempt Person.

OMB Number: 1506–0012.

Form Number: TD F 90–22.53.

Abstract: The Bank Secrecy Act, Titles I and II of Pub. L. 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5330, authorizes the Secretary of the Treasury, *inter alia,* to issue regulations requiring records and reports that are determined to have a high degree of usefulness in criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5330) appear at 31 CFR part 103. The authority of the Secretary to administer Title II of the Bank Secrecy Act has been delegated to the Director of FinCEN.

The reporting by financial institutions of transactions in currency in excess of $10,000 has long been a major component of the Department of the Treasury's implementation of the Bank Secrecy Act. The reporting requirement is imposed by 31 CFR 103.22, a rule issued under the broad authority granted to the Secretary of the Treasury by 31 U.S.C. 5313(a) to require reports of domestic coins and currency transactions.

The Money Laundering Suppression Act of 1994, Title IV of the Riegle Community Development and Regulatory Improvement Act (Pub. L. 103–325) amended 31 U.S.C. 5313. The statutory amendments mandate exemptions from currency transaction reporting in the case of customers that

are other banks, certain governmental entities, or businesses for which reporting would serve little or no law enforcement purpose. The amendments also authorize Treasury to exempt certain other businesses.

On September 8, 1997, and September 21, 1998, Treasury issued final rules regarding these statutory amendments (62 FR 47141 and 63 FR 50147, respectively). The final rules reform and simplify the process by which banks may exempt eligible customers.

Under the simplified procedures of the new rules, a key requirement is a ''designation'' sent to the Treasury indicating that a customer will be treated by the bank as an exempt person, so that no further currency transaction reports will be filed on the customer's cash transactions exceeding $10,000. As part of the simplification process, Treasury is issuing a new form specifically for making that designation. This dedicated-use form will be easier to use than the current procedure, which requires banks to complete certain entries on the currency transaction report itself. The dedicated-use form will also enable Treasury to develop procedures for the magnetic media filing of exemptions.

The information collected on the new form, Designation of Exempt Person, TD F 90–22.53 is required to exempt bank customers from currency transaction reporting. The information is used to help determine whether a bank has properly exempted its customers. The collection of information is mandatory.

Type of Review: New information collection.

Affected Public: Business or other for-profit institutions.

Estimated Number of Respondents: 19,000.

Estimated Total Annual Responses: 250,000.

Estimated Total Annual Burden Hours: Reporting average of 10 minutes per response; recordkeeping average of 1 hour per response. Estimated total annual burden hours: Reporting burden of 41,667 hours; recordkeeping burden of 250,000 hours, for an estimated combined total of 291,667 hours.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Records required to be retained under the Bank Secrecy Act must be retained for five years. Generally, information collected pursuant to the Bank Secrecy Act is confidential, but may be shared as provided by law with regulatory and law enforcement authorities.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: January 13, 1999.

William F. Baity,

Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 99–1485 Filed 1–21–99; 8:45 am]

BILLING CODE 4820–03–P

DEPARTMENT OF THE TREASURY

Customs Service

Announcement Concerning Y2K Compliance

AGENCY: Customs Service, Treasury.

ACTION: General notice.

SUMMARY: Customs computer systems have been modified to ensure that they are Y2K compliant—meaning that Customs computer program systems will process data entered for the year 2000 as 2000 and not as the year 1900. This notice announces Customs plan to allow members of the trade with electronic filing capabilities that are approved to interface with Customs through Customs automated systems and that can meet certain operational requirements to transmit trial data to establish if their computer software applications will interface properly with Customs Y2K compliant systems. The purpose of these compliance trials is to provide an opportunity for the trade community to assess their computer applications' Y2K readiness and raise the confidence level of the trade community in Customs Y2k renovated systems.

This notice invites comments concerning any aspect of this exercise and informs interested members of the trade community of the operational requirements for voluntary participation in the exercise.

DATES: The compliance trials will commence no earlier than February 1, 1999 and will run for approximately four months. Any electronic filer interested in participating should contact their Customs or Census client representative on or before February 1, 1999.

ADDRESSES: Written comments regarding this notice and/or requests to participate in these trials should be addressed to the Chief, Trade Support Branch, U. S. Customs Service, 7501 Boston Blvd., #211, Springfield, VA 22153.

FOR FURTHER INFORMATION CONTACT: For information in general, contact your Customs or Census client representative. For carriers filing in the Advance Passenger Information System (APIS), contact the APIS Technical coordinator, Charles Fife (703) 921–5816; Fax (703) 921–5901.

SUPPLEMENTARY INFORMATION:

Background

Because of a decision made at the dawn of the computer age to save scarce computer memory by giving all dates a two-digit field in the belief that those early computers would be replaced by the year 2000, computer systems worldwide may malfunction or produce inaccurate information on January 1, 2000. The reason these computer systems may malfunction is that the computers may misinterpret data entered for the year 2000 (''00'') as 1900, rather than 2000. This problem is frequently referred to as the Y2K (for Year 2000) problem. Unless corrected, such failures will have a costly widespread impact on federal, state, and local governments, foreign governments, and private sector organizations. All sectors of the economy, many of which provide goods and services that are vital to the nation's health and well being, are at risk, including: telecommunications; public utilities; transportation; banking and finance; commerce and small business; national defense; government revenue collection and benefit payments; and health, safety, and emergency services. Moreover, a Y2K problem in one sector may cascade to others due to the many interdependencies and linkages among them.

The various Customs automated interfaces that may be affected by the Y2K problem include, the Automated Broker Interface, the Automated Manifest System, the Automated Commercial Environment, the Advance

Passenger Information System (APIS) and the Automated Export System.

On February 4, 1998, the President issued Executive Order 13073 (63 FR 6467; 3 CFR 1998 Compilation __; 34 Weekly Comp.Pres.Doc. 198) concerning Year 2000 Conversion. That Order directed, in part, that executive branch agencies:

(1) Assure that no critical Federal program experiences disruption because of the Y2K problem;

(2) Assist and cooperate with State, local, and tribal governments to address the Y2K problem where those governments depend on Federal information or information technology or the Federal Government is dependent on those governments to perform critical missions; and

(3) Cooperate with the private sector operators of critical national and local systems, including the banking and financial, the telecommunications, the public health, the transportation, and the electronic power generation systems, in addressing the Y2K problem.

This notice addresses the third of these concerns and seeks to allow those members of the trade community with electronic filing capabilities that are approved to interface with Customs through Customs automated systems and that can meet the operational requirements specified below to transmit trial data to establish if their computer software applications will interface with Customs computers regarding recognition of the year 2000. These trials should raise the confidence level of the trade community in Customs Year 2000 renovated systems.

Trial Design/Plan

Initially, this exercise will occur in cycles, with one week ''on'' and one week ''off'', for a six week period of time. During each cycle, a specific date will be pre-identified as the ''systems date''. For example, on Monday the system clock would be set to 12/31/99; the following Tuesday the system clock would be set to 01/01/00, etc., until the prescribed dates have been utilized and processed. The plan will simultaneously execute similar applications with similar communication protocols and configurations together.

Participation Requirements

This notice requests volunteers. In order to participate in these Y2K trials, the electronic filer must be currently approved (deemed operational) to interface through Customs automated systems. The filer must also be able to perform the following types of actions:

(1) Advance his computer systems' internal clock to conform to the adjusted systems date in the Customs Y2K test environment;

(2) Utilize preestablished test data that will accommodate futuristic date validations in order to accurately process with Customs test system. The dates within this test data must be modified by the participant on each day of the exercise. In the case of the APIS however, participants will be required to utilize test data with preestablished dates; and

(3) Utilize special ''dial-up'' phone lines.

It is noted that participants connecting through other mediums such as dedicated lines, Value Added Networks (VANs), etc., will be carefully supported to coordinate connectivity issues. Other unique system requirements may be necessary to support this effort. These will be identified with participants and coordinated accordingly.

It should be noted that participation in these trials will not permit Customs to certify the trading partner's system for Y2K compliancy.

Interested members of the trade community wishing to participate in these Y2K trials or wishing to submit comments before the date of these trials should contact their Customs or Census client representative or APIS coordinator as indicated at the front of this document.

Dated: January 19, 1999.

S.W. Hall,

Assistant Commissioner, Office of Information and Technology.

[FR Doc. 99–1461 Filed 1–21–99; 8:45 am]

BILLING CODE 4820–02–P

INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition Determinations: ''Diego Rivera: Art and Revolution''

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, ''Diego Rivera: Art and Revolution,'' imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the listed exhibit objects at the Cleveland Museum of Art, Cleveland, Ohio, from on or about February 14, 1999, through on or about May 2, 1999, and the Los Angeles County Museum, Los Angeles, California, from on or about May 30, 1999, through on or about August 16, 1999, and the Museum of Fine Arts, Houston, Texas, from on or about September 19, 1999, through on or about November 28, 1999, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Carol Epstein, Assistant General Counsel, Office of the General Counsel, 202/619–6981, and the address is Room 700, U.S. Information Agency, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: January 15, 1999

Les Jin,

General Counsel.

[FR Doc. 99–1467 Filed 1–21–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Hubert H. Humphrey Fellowship Program Washington Seminar; Request for Proposals

SUMMARY: The Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition to administer the Hubert H. Humphrey Fellowship Program Washington Seminar. Washington-based public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to assist USIA with the planning and implementation of a seminar lasting up to five days for approximately 132 mid-career professionals from developing countries and selected Eastern European countries. The seminar will take place in the first half of November, 1999 (please see seminar date details below).

Program Information

Overview: The Hubert H. Humphrey Fellowship Program provides a year of non-degree, graduate level study and related professional experiences to mid-level professionals from developing countries and selected Eastern European countries. Fellowships are granted

competitively to public and private sector candidates with a commitment to public service in the fields of natural resources/environmental management, public policy analysis/public administration, economic development, agricultural development/economics, finance/banking, human resource management/personnel, urban and regional planning, public health policy/management, technology policy/management, educational planning, and communications/journalism. Fellows are placed by professional field in groups of seven to 15 at one of 11 participating host universities around the country. Fellows are nominated for the program by USIA overseas posts or Fulbright commissions based on their potential for national leadership, commitment to public service, and professional and academic qualifications. By providing these future leaders with exposure to U.S. society, and to current U.S. approaches to the fields in which they work, the program provides a basis for establishing lasting ties among U.S. citizens and their professional counterparts in other countries.

The objectives of the workshop are to:

- Enhance fellows' leadership skills through understanding of U.S. social, cultural, and political processes and institutions, including the unique political environment of Washington, D.C.
- Emphasize opportunities for regional and professional networking among fellows and with U.S. colleagues.

Guidelines: Non-profit organizations with key program staff based in the Washington, D.C. metropolitan area and available for frequent meetings with USIA staff are invited to submit proposals. Organizations also must have experience in conference management, professional exchanges, and international exchanges. Only organizations with at least four years of experience in international exchange activities are eligible to apply for this award. The grant period should begin on August 1, 1999 and conclude on May 31, 2000. The seminar will accommodate approximately 132 participants, in addition to USIA and other staff.

There are two options for conference dates: October 31–November 5 and November 14–19, 1999. Organizations may choose their preferred set of dates according to cost effectiveness and project feasibility.

The recipient organization will be responsible for most arrangements associated with this seminar. These include organizing a coherent schedule of activities, making lodging and transportation arrangements for participants, preparing all necessary support materials, working with Humphrey Fellowship Coordinators at host universities and IIE staff to achieve maximum workshop effectiveness, conducting a final evaluation, and other details which are outlined in the solicitation package. Drafts of all printed materials developed for the seminar should be submitted to the Agency for review and approval. All official documents should highlight the U.S. Government's role as program director and funding source. Please refer to program guidelines in the solicitation package for further details.

Budget Guidelines: The award for this seminar may not exceed $165,000, and cost sharing is strongly encouraged. Applicants must submit a comprehensive, line-item budget for the entire seminar. There must be a summary budget, as well as separate sub-budgets for administrative and program costs. Applicants may provide additional sub-budgets for each program component, phase, location, or activity to provide clarification. Please refer to the solicitation package for complete budget guidelines and formatting instructions.

Announcement Title and Number: All correspondence with USIA concerning this RFP should reference the above title and number E/ASU–99–09.

FOR FURTHER INFORMATION, CONTACT: The Specialized Programs Branch, E/ASU, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone: 202–619–5289 and fax number: 202–401–1433. Applicants may also send a message via Internet to lrieder@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Senior Program Officer Leigh Rieder on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet: The entire Solicitation Package may be downloaded from USIA's website at http://www.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand: The entire Solicitation Package may be requested from the Bureau's ''Grants Information Fax on Demand System,'' which is accessed by calling 202/401–7616. The ''Table of Contents'' listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m., Washington, DC time on Thursday, February 18, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and six copies of the application should be sent to: U.S. Information Agency, Ref.: E/ASU–99–09, Office of Grants Management, E/XE, Room 326, 301 4th Street, SW., Washington, DC 20547.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. ''Diversity'' should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that ''in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy,'' USIA ''shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries.'' Proposals should reflect advancement of this goal in their program contents, to the fullest extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange

with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office and then forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria: Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings, as well as showing clearly how the seminar's objectives will be met. Agenda and plan should adhere to all program guidelines in the Solicitation Package.

3. Multiplier effect/impact: Proposed program should strengthen long-term mutual understanding, including maximum sharing of information, and encourage continued institutional and individual linkages after the fellowship year.

4. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration an program content.

5. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to achieve the seminar's goals.

6. Institution's Record/Ability: Proposals should demonstrate an institutional record of successfully administering programs for professional-level participants, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. Project Evaluation: Proposals should include a plan to evaluate the seminar's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to link outcomes to original project objectives is recommended. Successful applications will be expected to submit intermediate reports during the planning and preparation process.

8. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

9. Cost-sharing: Proposals should maximize cost-sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is ''to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world.'' The funding authority for the program above is provided through legislation.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: January 11, 1999.

William B. Bader,

Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–1466 Filed 1–21–99; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 64, No. 14

Friday, January 22, 1999

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.

CONSUMER PRODUCT SAFETY COMMISSION

Privacy Act of 1974; Republication of Systems of Records

Correction

In notice document 98–34068, beginning on page 71899, in the issue of Wednesday, December 30, 1998, make the following corrections.

1. On page 71899, in the first column, in the **DATES** section, in the fourth line, ''receicved'' should read ''received''.

2. On the same page, in same column, in the last paragraph in the 3rd line, ''Ancient'' should read ''Accident''.

3. On page 71900, in the first column, in the last paragraph, in the third line, ''revisited'' should read ''revised''.

4. On the same page, in the third column, in the last complete paragraph, in the fifth line, after ''with'' add ''the''.

5. On page 71901, in the first column, in the Table of Contents, in the entry for Appendix I, ''Address'' should read ''Addresses''.

[FR Doc. C8–34068 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Office of the Attorney General

[A.G. Order No. 2196-98]

RIN 1105-AA56

Megan's Law; Final Guidelines for the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act, as Amended

Correction

In notice document 98–33377 beginning on page 572, republished in the issue of Tuesday, January 5, 1999, make the following corrections:

1. On page 572, in the first column, in the **Editorial Note**, in the fourth line, ''69656'' should read ''69652''.

2. On page 574, in the first column, in the last paragraph, in the seventh line, ''convicted for'' should read ''convicted of''.

3. On page 575, in the second column, in the last paragraph, in the fourth line, ''statue'' should read ''statute''.

4. On page 576, in the third column, in the first full paragraph, three lines from the end, ''of if the registrant'' should read ''or if the registrant''.

5. On page 578, in the first column, in the first full paragraph, in the 10th line, after ''105th Cong.'' add a comma.

6. On page 582, in the second column, in the first full paragraph, in the second line, ''identify'' should read ''identity''.

7. On page 582, in the third column, in the third paragraph, in the seventh line, ''registrations'' should read ''registration''.

8. On page 582, in the third column, in the fourth paragraph, three lines from the end, ''person'' should read ''persons''.

9. On page 585, in the third column, in the second full paragraph, in the first line ''Subsequent'' should read ''Subsection''.

[FR Doc. C8–33377 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-48]

Revision of Class E Airspace; Burnet, TX

Correction

In rule document 98–33602, beginning on page 70325 in the issue of Monday, December 21, 1998 make the following correction:

On page 70325, in the first column, in the **DATES** section, ''February 10, 1999'' should read ''February 4, 1999''.

[FR Doc. C8–33602 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-49]

Revision of Class E Airspace; Austin, TX

Correction

In rule document 98–33598, beginning on page 70326 in the issue of Monday, December 21, 1998 make the following correction:

On page 70326, in the second column, in the **DATES** section, ''February 10, 1999'' should read ''February 4, 1999''.

[FR Doc. C8–33598 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-51]

Revision of Class E Airspace; Austin, Horeshoe Bay, TX and Revocation of Class E Airspace, Marble Falls, TX

Correction

In rule document 98–33596 beginning on page 70328 in the issue of Monday, December 21, 1998 make the following correction:

On page 70328, in the third column, in the **DATES** section, ''February 10, 1999'' should read ''February 4, 1999''.

[FR Doc. C8–33596 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-52]

Revision of Class E Airspace; San Angelo, TX

Correction

In rule document 98–33595 beginning on page 70330 in the issue of Monday, December 21, 1998 make the following correction:

On page 70330, in the first column, in the **DATES** section, ''February 10, 1999'' should read ''February 4, 1999''.

[FR Doc. C8–33595 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98-ASW-53]

Revision of Class E Airspace; Roswell, NM

Correction

In rule document 98–33594 beginning on page 70331 in the issue of Monday, December 21, 1998 make the following correction:

On page 70331, in the second column, in the **DATES** section, ''February 10, 1999'' should read ''February 4, 1999''.

[FR Doc. C8–33594 Filed 1–21–99; 8:45 am]

BILLING CODE 1505–01–D

Friday
January 22, 1999

Part II

Department of Health and Human Services

Administration for Children and Families

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. 93612–993]

Availability of Financial Assistance for the Mitigation of Environmental Impacts to Indian Lands Due to Department of Defense (DOD) Activities

AGENCY: Administration for Native Americans (ANA), ACF, DHHS.

ACTION: Announcement of availability of competitive financial assistance to assist eligible applicants address environmental problems and impacts from DOD activities to Indian lands.

SUMMARY: The Congress has recognized that DOD activities may have caused environmental problems for Indian tribes and Alaska Natives. These environmental hazards can negatively impact the health and safety as well as the social and economic welfare of Indian tribes and Alaska Natives. Accordingly, the Congress has taken steps to help those affected begin to mitigate environmental impacts from DOD activities by assisting them in the planning, development and implementation of programs for such mitigation. This environmental mitigation program was begun through a program announcement published on December 29, 1993 as a response to the Department of Defense Appropriations Act, Pub.L. 103–139, which was enacted on November 11, 1993. This program continues under Pub.L. 103–335 (the Act), enacted on September 30, 1994. Section 8094A of the Act states that funds appropriated to the Department of Defense (DOD) for Operations and Maintenance Defense-Wide, not less than $8,000,000 shall be made available until expended to the Administration for Native Americans. Provided that such funds shall be made available only for the mitigation of environmental impacts, including training and technical assistance to tribes, related administrative support, the gathering of information, documenting of environmental damage, and developing a system for prioritizing of mitigation, on Indian lands resulting from Department of Defense activities.

DATES: The closing dates for submission of applications are March 12, 1999, November 5, 1999 and November 4, 2000.

ADDRESSES: *Application Kit:* Application kits, approved by the OMB under control number 0980–0204, which expires August 31, 1999, containing the necessary forms and instructions to apply for a grant under this program announcement, may be obtained:

By Mail: Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW, Mail Stop HHH 348–F, Washington, DC 20447–0002, Attention: Aaron Sadler/Application Kit.

By Telephone: Call Janean Chambers, Telephone: (202) 690–6547.

By Telefax: Fax: (202) 690–7441.

By World-Wide-Web: Copies of this program announcement and many of the required forms may be obtained electronically at the ANA World Wide Web Page: http://www.acf.dhhs.gov/programs/ana/index.html

The printed **Federal Register** notice is the only official program announcement. Although all reasonable efforts are taken to assure that the files on the ANA World Wide Web Page containing electronic copies of this Program Announcement are accurate and complete, they are provided for information only. The applicant bears sole responsibility to assure that the copy downloaded and/or printed from any other source is accurate and complete.

SUPPLEMENTARY INFORMATION:

Part I—Additional Information

A. Introduction and Purpose

The program announcement states the availability of any unobligated fiscal year 1995 financial assistance to eligible applicants using funds provided by the DOD through the ANA for the purpose of mitigating environmental impacts on Indian lands related to DOD activities.

Financial assistance awards made under this program announcement will be on a competitive basis and the proposals will be reviewed against the evaluation criteria in this announcement.

The Federal government recognizes that substantial environmental problems, resultant from defense activities, exist on Indian lands and will geographically range from border to border and from coast to coast. The nature and magnitude of the problems will most likely be better defined when affected Indian tribes and Alaska Natives have completed environmental assessments called for in Phase I of this four-phase program.

The Federal government has also recognized that Indian tribes, Alaska Natives and their tribal organizations must have the opportunity to develop their own plans and technical capabilities and access the necessary financial and technical resources in order to assess, plan, develop and implement programs to mitigate any impacts caused by DOD activities.

The ANA and the DOD recognize the potential environmental problems created by DOD activities that may affect air, water, soil and human and natural resources (i.e., forests, fish, plants). It is also recognized that potential applicants may have specialized knowledge and capabilities to address specific concerns at various levels within the four phase program.

Under this announcement proposals will be accepted for any and all of the four phases or one specific phase. These phases are:

- Phase I—assessment of Indian lands to develop as complete an inventory as possible of environmental impacts caused by DOD activities;
- Phase II—identification and exploration of alternative means for mitigation of these impacts and determination of the technical merit, feasibility and expected costs and benefits of each approach in order to select one approach;
- Phase III—development of a detailed mitigation plan, and costing and scheduling for implementation of the design, including strategies for meeting statutory or regulatory requirements and for dealing with other appropriate Federal agencies; and,
- Phase IV—implementation of the mitigation plan.

The availability of funds is contingent upon sufficient final appropriations. Proposed projects will be reviewed on a competitive basis against the specific evaluation criteria presented under each competitive area in this announcement.

ANA continues its policy that an applicant may only submit one application and no applicant may receive more than one grant including any existing ANA grant.

ANA introduces two new requirements within the review criteria for budget proposals in applications. All applicants must clearly demonstrate a plan for an employee fringe benefit package which includes an employee retirement plan benefit, and the funding of travel for key personnel to attend post-award grant management and administration training sponsored by ANA.

B. Proposed Projects To Be Funded

The purpose of this announcement is to invite single year (twelve to seventeen months) or multi-year (eighteen to thirty-six months) proposals

from eligible applicants to undertake any or all of the Phases.

Applicants may apply for projects of up to 36 months duration. A multi-year project, requiring more than 12 months to develop and complete, affords applicants the opportunity to develop more complex and in-depth projects. Funding after the first 12 month budget period of an approved multi-year project is non-competitive and subject to availability of funds.

The following are some known areas of concern. It is expected that applicants may identify additional areas of concern in their applications:

- Damage to treaty protected spawning habitats caused by artillery practice or other defense activities;
- Damage to Indian lands and improvements (e.g. wells, fences) and facilities caused by bombing practice;
- Damage caused to range and forest lands by gunnery range activities;
- Low-level flights over sacred sites and religious ceremonies which disrupt spiritual activities;
- Movement of soil covering the remains of buried Indian people and artifacts requiring, by tradition, their reburial in traditional rituals;
- Operation of dams by the Army Corps of Engineers which has had adverse impacts on spawning beds and treaty fishing rights and water quality due to problems of siltation; reduced stream flows; increased water temperatures; and, dredge and fill problems;
- Leaking of underground storage tanks on lands taken from Indians for temporary war-time use by the DOD;
- Unexploded ordnance from gunnery and bombing practice on Indian lands resulting in significant damage to rangelands, wildlife habitat, stock water wells, etc.;
- Disposal activities related to removal of unexploded ordnance, nuclear waste materials, toxic materials, and biological warfare materials from Indian lands;
- Transportation of live ordnance, nuclear waste, chemical and biological warfare materials from and across Indian lands;
- Seepage of fluids suspected of containing toxic materials onto Indian lands;
- Chlorofluorocarbons (CFC's) resulting from abandoned containers and/or dumping onto Indian lands;
- Polychlorinated biphenyls (PCB's) from transformers which have been abandoned and/or dumped onto Indian lands;
- Public health concerns regarding electromagnetic fields surrounding Defense-related transmission facilities which cross Indian lands; and
- Reclamation activities required to mitigate any or all of the above stated conditions and other activities as they become known.

Phase I

The purpose of Phase I is to conduct the research and planning needed to identify environmental impacts to Indian lands caused by DOD activities on or near Indian lands and to plan for remedial investigations to determine and carry out a preliminary assessment of these problems. These activities may include, but not be limited to, the following:

- Conduct site inspections to identify problems and causes related to DOD activities;
- Identify and develop approaches to handle raw data that will assist in performing comprehensive environmental assessments of problems and causes related to DOD activities;
- Identify approaches and develop methodologies which will be used to develop the activities to be undertaken in Phases II and III;
- Identify other Federal agency programs, if any, that must be involved in mitigation activities and their requirements;
- Identify potential technical assistance and expertise required to address the activities to be undertaken in Phases II and III; and
- Identify other Federal environmental restoration programs that could be accessed to cooperatively coordinate and mobilize resources in addressing short and long-term activities developed under Phase III.

Phase I should result in adequately detailed documentation of the problems and sources of help in solving them to provide a useful basis for examining alternative mitigation approaches in Phase II.

Phase II

The purpose of Phase II activities is to examine alternative approaches for mitigation of the impacts identified in Phase I and to lead toward the mitigation design to be developed in Phase III. Phase II activities may include, but need not be limited to the following:

- Conduct remedial investigation and/or feasibility studies as necessary;
- Plan for the design of a comprehensive mitigation strategy to address problems identified during Phase I which address areas such as land use restoration, clean-up processes, contracting and liability concerns; regulatory responsibilities; and resources necessary to implement clean up actions;
- Design strategies that coordinate with or are complementary to existing DOD cleanup programs such as the Defense Environmental Restoration Program which promotes and coordinates efforts for the evaluation and cleanup of contamination at DOD installations;
- Review possible interim remedial strategies that address immediate potential hazards to the public health and environment in order to provide alternative measures i.e., providing alternate water supplies, removing concentrated sources of contaminants, or constructing structures to prevent the spread of contamination;
- Identify specific types of technical assistance and management expertise required to assist in developing specific protocols for environmental assessments, remedial investigations, feasibility studies, interim remedial actions and strategic planning for existing and future mitigation activities;
- Review other types of assessments that need to be considered, reviewed and incorporated into the conduct and/or design process such as:
- Estimates of clean-up cost;
- Estimate of impacts of short-term approach;
- Estimate of impacts of long-term approach;
- Cultural impacts;
- Economic impacts;
- Human health-risk impacts; and
- Document approaches and procedures which have been developed in order to negotiate with appropriate Federal agencies for necessary cleanup action and to keep the public informed.

In establishing the basis for a design process, particularly when there are multiple problems, the applicants may want to consider a prioritization process as follows:

- Emergency situations that require immediate clean-up;
- Time-critical sites, i.e. sites where the situation will deteriorate if action is not taken soon;
- Projects with minimum funding requirements;
- Projects with intermediate-level funding requirements;
- Projects with maximum funding requirements.

Achieving compliance with Federal environmental protection legislation is the driving force behind all Federal clean-up activities. The following is a list of major Federal environmental legislation that should be recognized in a regulatory review as all Federal, state and local regulatory requirements which could have major impacts in the design of mitigation strategies:

- Indian Environmental General Assistance Program Act of 1992;

- Clean Air Act (CAA);
- Clean Water Act (CWA);
- Safe Drinking Water Act (SDWA);
- Surface Mining Control and Reclamation Act of 1977 (SMCRA);
- Marine Protection, Research and Sanctuaries Act of 1972 (MPRSA);
- Toxic Substances Control Act (TSCA);
- Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA);
- Nuclear Waste Policy Act of 1982 (NWPA);
- Comprehensive Environmental Resource Conservation and Liability Act (CERCLA or Superfund);
- Resource Conservation and Recovery Act of 1976 (RCRA);
- Hazardous and Solid Waste Amendments of 1984 (HSWA);
- National Environmental Policy Act of 1969 (NEPA);

Other Federal legislation that should be included in the regulatory review and that should be of assistance are the tribal specific legislative acts, such as:

- American Indian Religious Freedom Act;
- National Historic Preservation Act of 1991;
- Indian Environmental Regulatory Enhancement Act of 1990;

Other regulatory considerations could involve applicable tribal, village, state and local laws, codes, ordinances, standards, etc. which should also be reviewed to assist in planning, the mitigation design, and development of the comprehensive mitigation strategy.

Phase II should result in a carefully documented examination of alternative approaches and the selection of an approach to be used in the Phase III design process.

Phase III

The purpose of Phase III is the completion of activities initiated under Phase II, the initiation of new activities required to implement programs, and the design of on-site actions required to mitigate environmental damage from DOD activities.

The Phase III activities may include but need not be limited to:

- Development and implementation of a detailed management plan to: Guide corrective action; resolve issues rising from overlapping or conflicting jurisdictions; guide a cooperative and collaborative effort among all parties to ensure there are no duplicative or conflicting regulatory requirements governing the cleanup actions; and, establish a tribal or village framework and/or parameter(s) that will guide the negotiations process for one or multiple cleanup actions;
- Establishment of priorities for mitigation programs when there are multiple clean-up sites; consider at a minimum the nature of the hazard involved: such as its physical and chemical characteristics, including concentrations and mobility of contaminants; the pathway indicating potential for contaminant transport via surface water, ground water and air/soil, and any other indicators that are identified during the environmental assessment, including the prioritization process identified under Phase II;
- Program design and implementation of information dissemination strategies prior to start up of on-site implementation of mitigation program activities;
- Development of a legal and jurisdictional strategy that addresses DOD/contractor liability issues to ensure quality, cost-effective mitigation services, and to evaluate any measures providing equitable risk between the DOD and the remediation contractor, as well as to incorporate Tribal Employment Rights Office (TERO) and other policies and procedures, if required;
- Design of an approval process and other processes necessary for the implementation of tribal and village codes and regulations for current and future compliance enforcement of all mitigation actions;
- Development/design of a documentation strategy to ensure all DOD and contractor cleanup activities are conducted and completed in a environmentally clean and safe manner for the social and economic welfare, as well as public health of Indian and Alaska Native people and the surrounding environment;
- Development and conduct of certified training programs that will enable a local work force to become technically capable to participate in the mitigation activities, if they so choose; and
- Conduct of any other activities deemed necessary to carry out Phase I, II and III activities.

Phase III should result in a comprehensive plan for conducting all aspects of mitigation action contemplated.

Phase IV

The Phase IV activities are the implementation of mitigation plans specified in the detailed plan completed in Phase III.

C. Eligible Applicants

The following organizations are eligible to apply:

- Federally recognized Indian tribes;
- Incorporated Non-Federally and State recognized Indian tribes;
- Nonprofit Alaska Native Community entities, including Alaska Native villages, or tribal governing bodies (IRA or traditional councils) as recognized by the Bureau of Indian Affairs;
- Nonprofit Alaska Native Regional Associations and/or Corporations with village specific projects;
- Nonprofit Native organizations in Alaska with village specific projects; and
- Other tribal or village organizations or consortia of Indian tribes.

Applicants must comply with the following administrative policies:

- Current grantees under this program may not be eligible under this announcement:
- Current grantees under this program whose grant project period extends beyond September 30, 1999, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under this March 12, 1999, deadline of this announcement.
- Grantees under this program whose grant project period extends beyond September 30, 2000, or who have requested an extension of the grant project beyond that date, are not eligible to apply for a grant under the November 5, 1999, deadline of this announcement.
- Grantees under this program whose grant project period extends beyond September 30, 2001, or who have requested an extention of the grant project beyond that date, are not eligible to apply for a grant under the November 4, 2000, deadline of this announcement.
- An application from a federally recognized Tribe, Alaska Native Village or Native American organization must be from the governing body of the Tribe or organization.
- ANA will not accept applications from tribal components which are tribally-authorized divisions of a larger tribe, unless the application includes a Tribal resolution which clearly demonstrates the Tribe's support of the project and the Tribe's understanding that the other applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.
- If a federally recognized Tribe or Alaska Native village chooses not to apply, it may support another applicant's project (e.g., a tribal organization) which serves or impacts their reservation. In this case, the applicant must include a Tribal resolution which clearly demonstrates the Tribe's approval of the project and the Tribe's understanding that the other

applicant's project supplants the Tribe's authority to submit an application under that specific competitive area both for the current competition and for the duration of the approved grant period, should the application be funded.

• Any non-profit organization submitting an application must submit proof of its non-profit status in the application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax exempt organizations described in Section 501(c)(3) of the IRS code or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation identifying the organization as non-profit and bearing the seal of the State in which the corporation or association is domiciled.

• If the applicant, other than a tribe or an Alaska Native Village government, is proposing a project benefiting Native Americans or Native Alaskans, or both, it must provide assurance that its duly elected or appointed board of directors is representative of the community, to be served. To establish compliance with the requirement in the regulations for a Board representative of the community, applicants should provide information establishing that at least ninety (90) percent of the individuals serving on a non-profit applicant's board fall into one or more of the following categories: (1) A current or past member of the community to be served; (2) a prospective participant or beneficiary of the project to be funded; or (3) have a cultural relationship with the community to be served. A list of board members with this information including Tribal or Village affiliation, is one of the most suitable approaches for demonstrating compliance with this requirement.

D. Available Funds

Subject to availability of funds, approximately $2.5 million of financial assistance is available under this program announcement for eligible applicants. It is expected that about 10 awards will be made, ranging from $100,000 to $1 million.

Each eligible applicant described above can receive only one grant award under this announcement.

E. Grantee Share of Project

Grantees must provide at least five (5) percent of the total approved cost of the project. The total approved cost of the project is the sum of the Federal share and the non-Federal share. The non-Federal share may be met by cash or in-kind contributions. The funds for the match must be from a private source, or state source where the funds were not obtained from the Federal government by the state, or a Federal source where legislation or regulation authorizes the use of these funds for matching purposes.

Therefore, a project requesting $300,000 in Federal funds, must include a match of at least $15,789 (5% total project cost). Applicants may request a waiver of the requirement for a 5% non-Federal matching share. Since the matching requirement is low it is not expected that waivers will be necessary. However, the procedure for requesting a waiver can be found in 45 CFR 1336, Subpart E—Financial Assistance Provision.

As per 45 CFR 74.2, In-Kind contributions are defined as ''the value of non-cash contributions provided by non-Federal third parties. Third party-in kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.''

An itemized budget detailing the applicant's non-Federal share, and its source(s), must be included in an application.

If an applicant plans to charge or otherwise seek credit for indirect costs in its ANA application, a current copy of its Indirect Cost Agreement must be included in the application.

It is the policy of ANA to apply the waiver of the non-Federal matching share requirement for the purposes of this particular program announcement.

F. Review Process

1. Initial Application Review

Applications submitted by the post-marked date under this program announcement will undergo a pre-review to determine that:

• The applicant is eligible in accordance with the Eligible Applicants Section of this announcement.

• The application materials submitted are sufficient to allow the panel to undertake an in-depth evaluation. (All required materials and forms are listed in the Grant Application Checklist.)

Applications subjected to the pre-review described above which fail to satisfy one or more of the listed requirements will be ineligible or otherwise excluded from competitive evaluation.

2. Competitive Review of Accepted Applications

Applications which pass the pre-review will be evaluated and rated by an independent review panel on the basis of the specific evaluation criteria. These criteria are used to evaluate the quality of a proposed project, and to determine the likelihood of its success.

A proposed project should reflect the purposes stated and described in the Introduction and Program Purpose (Section A) of this announcement. No additional weight or preference is given to applications because of an increased number of phases proposed. Also, competition is not based on proposals of the same phase or phases but on the merit of the application independent of phase consideration.

ANA staff cannot respond to requests for information regarding funding decisions prior to the official notification to the applicants.

After the Commissioner has made decisions on all applications, unsuccessful applicants are notified in writing within 30 days. The notification will be accompanied by a critique including recommendations for improving the application.

3. Appeal of Ineligibility

Applicants who are excluded from competitive evaluation because of ineligibility, may appeal an ANA decision of applicant ineligibility. Likewise, applicants may also appeal an ANA decision that an applicant's proposed activities are ineligible for funding consideration. The appeals process is stated in the final rule published in the **Federal Register** on August 19, 1996 (61 FR 42817).

G. Criteria

The evaluation criteria are:

(1) Goals and Available Resources (15 points):

(a) The application presents specific mitigation goals related to the proposed project. It explains how the tribe or village intends to achieve those goals identified in the application and clearly documents the involvement and support of the community in the planning process and implementation of the proposed project. The above requirement may be met by submission of a resolution by a tribe or tribal organization stating that community involvement has occurred in the project planning and will occur in the implementation of the project.

(b) The application identifies and documents pre-existing and planned involvement and support of the community in the planning process and

implementation of the proposed project. The type of community you serve and nature of the proposal being made, will influence the type of documentation necessary. For example, a Tribe may choose to address this requirement by submitting a resolution stating that community involvement has occurred in the project planning or may determine that additional community support work is necessary.

A tribal organization may submit resolutions supporting the project proposal from each of its members tribes, as well as a resolution from the applicant organization. Other examples of documentation include: Community surveys; minutes of community meetings; questionnaires; tribal presentations; and/or discussion/position papers.

(c) Available resources (other than ANA and the non-Federal share) which will assist, and be coordinated with the project are described. These resources may be personnel, facilities, vehicles or financial and may include other Federal and non-Federal resources.

These resources should be documented by letters of commitment of resources, not merely letters of support. ''Letters of commitment'' are binding when they specifically state the nature, the amount, and conditions under which another agency or organization will support a project funded with ANA funds. ''Letters of support'' merely express another organization's endorsement of a proposed project. Support letters are not binding commitment letters or do not factually establish the authenticity of other resources and do not offer or bind specific resources to the project.

For example, a letter from another Federal agency or foundation pledging a commitment of $200,000 in construction funding to complement proposed ANA funded pre-construction activity is evidence of a firm funding commitment. These resources may be human, natural or financial, and may include other Federal and non-Federal resources. Statements that additional funding will be sought from other specific sources are not considered a binding commitment of outside resources and therefore carry less significance.

Non-ANA resources should be leveraged to strengthen and broaden the impact of the proposed project in the community. Project designs should explain how those parts of projects which ANA does not fund will be financed through other sources. For example, ANA does not fund construction. Applicants must show the relationship of non-ANA funded activities to those objectives and activities that are funded with ANA grant funds.

(2) Organizational Capabilities and Qualifications (10 points)

(a) The management and administrative structure of the applicant is explained. Evidence of the applicant's ability to manage a project of the proposed scope is well defined. The application clearly demonstrates the successful management of prior or current projects of similar scope by the organization and/or by the individuals designated to manage the project.

(b) Position descriptions and/or resumes of key personnel, including those of consultants, are presented. The position descriptions and/or resumes relate specifically to the staff proposed in the Objective Work Plan and in the proposed budget. Position descriptions very clearly describe each position and its duties and clearly relate to the personnel staffing required to achieve the project objectives. Resumes and/or proposed position descriptions demonstrate that the proposed staff are or will be qualified to carry out the project activities. Either the position descriptions or the resumes contain the qualifications and/or specialized skills necessary for overall quality management of the project. Resumes must be included if individuals have been identified for positions in the application.

Note: Applicants are strongly encouraged to give preference to Native Americans in hiring staff and subcontracting services under an approved ANA grant.

(3) Project Objectives, Approach and Activities (45 points).

The Objective Work Plan in the application includes project objectives and activities related to the long term goals for each budget period proposed and demonstrates that these objectives and activities:

- Are measurable and/or quantifiable;
- Are based on a fully described and locally determined balanced strategy for mitigation of impacts to the environment;
- Clearly relate to the tribe or village long-range goals which the project addresses;
- Can be accomplished with available or expected resources during the proposed project period;
- Indicate when the objective, and major activities under each objective will be accomplished;
- Specify who will conduct the activities under each objective; and
- Support a project that will be completed, self-sustaining, or financed by other than ANA funds at the end of the project period.

(4) Results or Benefits Expected (20 points).

The proposed project will result in specific measurable outcomes for each objective that will clearly contribute to the completion of the project and will help the tribe or village meet its goals. The specific information provided in the application on expected results or benefits for each objective is the basis upon which the outcomes can be evaluated at the end of each budget year.

(5) Budget (10 points).

There is a detailed budget provided for each budget period requested which:

- Fully explains the budget.
- Justifies each line item in the budget categories in Section B of the Budget Information of the application, including the applicant's non-Federal share and its source.
- Explains sufficiently cost and other detail to facilitate the determination of cost allowability and the relevance of these costs to the proposed project.
- Demonstrates that the funds requested are appropriate and necessary for the scope of the project.
- Includes sufficient funds for principal representatives from the applicant organization to travel to one post-award grant training and technical assistance conference. This travel and training should occur as soon as practical.
- Includes an employee fringe benefit budget that provides grant-funded employees with a qualified, self-directed, portable retirement plan in addition to Social Security. ANA will fund at least five (5) percent of the employer's share, and up to the full grant-project Federal share of employer contributions when based on a program providing benefits equally to all grant- and non-grant employees.

ANA considers a retirement plan to be a necessary, reasonable and allowable cost in accordance with OMB rules. Minimum standards for an acceptable retirement fringe benefit plan are:

- The plan must be ''qualified'', i.e., approved by the Internal Revenue Service to receive special tax-favored treatment.
- The plan exists for the exclusive benefit of the participants; funds are to be used for retirement and certain other pre-retirement needs, not for the organization's needs.
- The plan must have a vesting schedule that does not exceed the initial budget period of the ANA grant.
- The plan must be a 401(k) for people who work in corporations or 403(b) plan for people who work for not-for-profit organizations. An alternate proposal may be submitted for review

and approval during grant award negotiations. Alternate proposals may include the use of Individual Retirement Accounts, Money Purchase Pension Plans, Defined Benefit Pension Plans, Combination Plans, etc. In no case will a non-qualified deferred compensation plan, e.g., Supplemental Executive Retirement Plan (SERPs) or Executive Bonus Plan be accepted.

H. Contact Information

Georgeline Sparks, Program Specialist, Department of Health and Human Services, Administration for Children and Families, Administration for Native Americans, 370 L'Enfant Promenade, SW., Mail Stop HHH 348–F, Washington, DC 20447, tel: (202) 690–6420, e-mail: GSparks@acf.dhhs.gov

I. General Guidance to Applicants

The following is provided to assist applicants to develop a competitive application.

(1) Program Guidance:

- The Administration for Native Americans will fund projects that present the strongest prospects for meeting the stated purposes of this program announcement. Projects will not be funded on the basis of need alone.
- In discussing the problems being addressed in the application, relevant historical data should be included so that the appropriateness and potential benefits of the proposed project will be better understood by the reviewers and decision-maker.
- Supporting documentation, if available, should be included to provide the reviewers and decision-maker with other relevant data to better understand the scope and magnitude of the project.

(2) Technical Guidance:

- Applicants are strongly encouraged to have someone other than the author apply the evaluation criteria in the program announcement and to score the application prior to its submission, in order to gain a better sense of its quality and potential competitiveness in the review process.
- ANA will accept only one application under this program announcement from any one applicant. If an eligible applicant sends two applications, the one with the earlier postmark will be accepted for review unless the applicant withdraws the earlier application.
- An application from an Indian tribe, Alaska Native Village or other eligible organization must be submitted by the governing body of the applicant.
- The application's Form 424 must be signed by the applicant's representative (tribal official or designate) who can act with full authority on behalf of the applicant.
- The Administration for Native Americans suggests that the pages of the application be numbered sequentially from the first page and that a table of contents be provided. The page numbering, along with simple tabbing of the sections, would be helpful and allows easy reference during the review process.
- Two (2) copies of the application plus the original are required.
- The Cover Page should be the first page of an application, followed by the one-page abstract.
- Section B of the Program Narrative should be of sufficient detail as to become a guide in determining and tracking project goals and objectives.
- The applicant should specify the entire length of the project period on the first page of the Form 424, Block 13, not the length of the first budget period. ANA will consider the project period specified on the Form 424 as governing.
- Line 15a of the Form 424 should specify the Federal funds requested for the first Budget period, not the entire project period.
- Applicants proposing multi-year projects need to describe and submit project objective workplans and activities for each budget period. (Separate itemized budgets for the Federal and non-Federal costs should be included).
- Applicants for multi-year projects must justify the entire time-frame of the project and also project the expected results to be achieved in each budget period and for the total project period.

(3) Grant Administrative Guidance:

- The application's Form 424 must be signed by the applicant's representative authorized to act with full authority on behalf of the applicant.
- The Administration for Native Americans recommends that the pages of the application be numbered sequentially and that a table of contents be provided. Simple tabbing of the sections of the application is also helpful to the reviewers.
- An application with an original signature and two additional copies are required.
- The Cover Page (included in the Kit) should be the first page of an application, followed by the one-page abstract.
- The applicant should specify the entire project period length on the first page of the Form 424, Block 13, not the length of the first budget period. Should the application propose one length of project period and the Form 424 specify a conflicting length of project period, ANA will consider the project period specified on the Form 424 as the request. ANA may negotiate a reduction of the project period. The approved project period is shown on block 9 of a Financial Assistance Award.
- Line 15a of the Form 424 must specify the Federal funds requested for the first Budget Period, not the entire project period.
- Applicants may propose a 17 month project period. However, the project period for the first year of a multi-year project may only be 12 months.

(4) Projects or activities that generally will not meet the purposes of this announcement.

- Proposals from consortia of tribes or villages that are not specific with regard to support from, and roles of member tribes.
- The purchase of real estate or construction.

J. Paperwork Reduction Act of 1995 (Pub. L. 104–13)

Public reporting burden for this collection of information is estimated to average 29.5 hours per response, including the time for reviewing instruction, gathering and maintaining the data needed, and reviewing the collection of information.

The following information collections are included in the program announcement Application Kit, OMB control number 0980–0204, expires August 31, 1999.

K. Due Date for Receipt of Applications

The closing dates for applications submitted in response to this program announcement are March 12, 1999, November 5, 1999 and November 4, 2000.

L. Receipt of Applications

Applications must either be hand delivered or mailed to the address in PART II, Section E, APPLICATION PROCESS.

The Administration for Native Americans will not accept applications submitted electronically nor via facsimile (FAX) equipment.

Deadline

Applications shall be considered as meeting the announced deadline if they are either:

1. received on or before the deadline date at the place specified in the program announcement, or

2. sent on or before the deadline date and received by the granting agency in the time for the independent review under DHHS GAM Chapter 1–62 (Applicants are cautioned to request a legibly dated U.S. Postal Service

postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications

Applications which do not meet the criteria above are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines

The granting agency may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc., or when there is a widespread disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicants.

Part II—General Application Information and Guidance

A. Definitions

Funding areas in this program announcement are based on the following definitions:

- Indian land is defined as all lands used by American Indian tribes and Alaska Native Villages.
- A *multi-purpose community-based Native American organization* is an association and/or corporation whose charter specifies that the community designates the Board of Directors and/or officers of the organization through an elective procedure and that the organization functions in several different areas of concern to the members of the local Native American community. These areas are specified in the by-laws and/or policies adopted by the organization. They may include, but need not be limited to, economic, artistic, cultural, and recreational activities, and the delivery of human services such as health care, day care, counseling, education, and training.
- *A multi-year project* is a project on a single theme that requires more than 12 months to complete and affords the applicant an opportunity to develop and address more complex and in-depth strategies than can be completed in one year. A multi-year project cannot be a series of unrelated objectives with activities presented in chronological order over a two or three year period.
- *Budget Period* is the interval of time (usually 12 months) into which the project period is divided for budgetary and funding purposes.
- *Core administration* is funding for staff salaries for those functions which support the organization as a whole, or for purposes unrelated to the actual management or implementation of work conducted under an ANA approved project. However, functions and activities that are clearly project related are eligible for grant funding. For example, the management and administrative functions necessary to carry out an ANA approved project are not considered ''core administration'' and are, therefore, eligible costs. Additionally, ANA will fund the salaries of approved staff for time actually and reasonably spent to implement a funded ANA project.
- *Real Property* means land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.
- *Construction* is the term which specifies a project supported through a discretionary grant or a cooperative agreement, to support the initial building of a facility.

B. Activities That Cannot Be Funded

The Administration for Native Americans does not fund:

- Projects that operate indefinitely or require ANA funding on a recurring basis.
- Projects in which a grantee would provide training and/or technical assistance (T/TA) to other tribes or Native American organizations which are otherwise eligible to apply to ANA (''third party T/TA''). However, the purchase of T/TA by a grantee for its own use or for its members' use (as in the case of a consortium), where T/TA is necessary to carry out project objectives, is acceptable.
- The support of on-going social service delivery programs or the expansion, or continuation, of existing social service delivery programs.
- ANA will not fund the purchase of real property.
- ANA will not fund construction.
- Objectives or activities for the support of core administration of an organization.
- Costs of fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are unallowable under a grant award.

Projects or activities that generally will not meet the purposes of this announcement are discussed further in Part I, Section H, General Guidance to Applicants.

C. Multi-Year Projects

This announcement is soliciting applications for project periods up to 36 months. Awards, on a competitive basis, will be for a one-year budget period, although project periods may be as long as 36 months. Funding after the 12 month budget period of an approved multi-year project is non-competitive. The non-competitive funding for the second and third years is contingent upon the grantee's satisfactory progress in achieving the objectives of the project according to the approved work plan, the availability of Federal funds, compliance with the applicable statutory, regulatory and grant requirements, and determination that continued funding is in the best interest of the Government.

D. Intergovernmental Review of Federal Programs

This program is not covered by Executive Order 12372.

E. Application Process

(1) Application Submission by Mail:

Each application should include one signed original and two (2) copies of the grant application, including all attachments. Assurances and certifications must be completed. Submission of the application constitutes certification by the applicant that it is in compliance with Drug-Free Workplace and Debarment and these forms do not have to be submitted. The application must be hand delivered or mailed by the closing date to: U.S. Department of Health and Human Services, Administration for Children and Families, ACYF/Office of Grants Management, 370 L'Enfant Promenade, S.W., Mail Stop HHH 326–F, Washington, D.C. 20447–0002, Attention: Lois B. Hodge—ANA No 93612–993.

(2) Application Submission by Courier:

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m., Monday through Friday, on or prior to the established closing date at: Administration for Children and Families, ACYF/Office of Grants Managment, ACF Mail Room, Second Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, Attention: Lois B. Hodge, ANA No. 93612–993.

The application must be signed by an individual authorized: (1) to act for the applicant tribe, village or organization, and (2) to assume the applicant's obligations under the terms and conditions of the grant award.

(3) Application Consideration:

The Commissioner of the Administration for Native Americans determines the final action to be taken

with respect to each grant application received under this announcement.

The following points should be taken into consideration by all applicants:

- Incomplete applications and applications that do not otherwise conform to this announcement will not be accepted for review. Applicants will be notified in writing of any such determination by ANA.
- Complete applications that conform to all the requirements of this program announcement are subjected to a competitive review and evaluation process. An independent review panel consisting of reviewers familiar with environmental problems of Indian tribes and Alaska Native villages will evaluate each application against the published criteria in this announcement. The results of this review will assist the Commissioner in making final funding decisions.
- The Commissioner's decision will also take into account the comments of ANA staff, state and Federal agencies having performance related information, and other interested parties.
- As a matter of policy the Commissioner will make grant awards consistent with the stated purpose of the announcement and all relevant statutory and regulatory requirements under 45 CFR Parts 74 and 92 applicable to grants under this announcement.
- After the Commissioner has made decisions on all applications, unsuccessful applicants will be notified in writing within approximately 120 days of the closing date. Successful applicants are notified through an official Financial Assistance Award (FAA) document. The Administration for Native Americans staff cannot respond to requests for funding decisions prior to the official notification to the applicants. The FAA will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, the budget period, and the amount of the non-Federal matching share requirement.

(Catalog of Federal Domestic Assistance Program Number 93.612
Native American Programs)

Dated: January 13, 1999.

Gary N. Kimble,

Commissioner, Administration for Native Americans.

[FR Doc. 99–1208 Filed 1–21–99; 8:45 am]

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Federal Register

Friday
January 22, 1999

Part III

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

Montana Regulatory Program and Abandoned Mine Land Reclamation Plan; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–017–FOR]

Montana Regulatory Program and Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with certain exceptions and additional requirements, a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') and abandoned mine land reclamation plan (hereinafter, the ''Montana plan'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed statutory revisions pertaining to the designation of the Montana State Regulatory Authority and the reclamation agency SMCRA, statutory definitions of ''Prospecting'' and ''Prime farmland,'' revegetation success criteria for bond release, prospecting under notices of intent, and permit renewal. The amendment was intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, as amended by the Abandoned Mine Reclamation Act of 1990 (Pub. L. 101–508), to provide additional flexibility afforded by the revised Federal regulations, to provide additional safeguards, to clarify ambiguities, and to improve operational efficiency.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6550; Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program and Plan

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

On November 24, 1980, the Secretary of the Interior conditionally approved the Montana plan as administered by the Department of State Lands. General background information on the Montana program, including the Secretary's finding, the disposition of comments, and conditions of approval of the Montana plan can be found in the October 24, 1980, **Federal Register** (45 FR 70445). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.25.

II. Proposed Amendment

By letter dated May 16, 1995, Montana submitted a proposed amendment to its program and plan (Administrative Record No. MT–14–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the proposed amendment in response to required program amendments at 30 CFR 926.16 (f) and (g), and at its own initiative. The provisions of the Montana Code Annotated (MCA) that Montana proposed to revise were: 82–4–203, MCA (Definitions); 82–4–204, MCA (Rulemaking authority); 82–4–205, MCA (Administration by department); 82–4–221, MCA (Mining permit required); 82–4–223, MCA (Permit fee and surety bond); 82–4–226, MCA (Prospecting permit and the definition of ''Prospecting''); 82–4–227, MCA (Refusal of permit); 82–4–231, MCA (Submission of and action on reclamation plan); 82–4–232, MCA (Area mining—bond—alternate plan); 82–4–235, MCA (Inspection of vegetation—final bond release); 82–4–239, MCA (Reclamation); 82–4–240, MCA (reclamation after bond forfeiture); 82–4–242, MCA (funds received by regulatory authority); 82–4–251, MCA (Noncompliance—suspension of permits); and 82–4–254, MCA (Violation—penalty—waiver).

OSM announced receipt of the proposed amendment in the June 5, 1995, **Federal Register** (60 FR 29521), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–14–06). Because no one requested a public hearing or meeting, none was held. The public comment period ended on July 5, 1995.

During its review of the amendment, OSM identified concerns relating to: 82–4–203, MCA, subsections (6), (10), and (12) (the definitions of ''Board'', ''Commissioner'', and ''Director''); 82–4–205, MCA (Board rules and Administration by department); 82–4–235, MCA (Inspection of vegetation—final bond release); 82–4–203, MCA, subsection (25) and 82–4–226, MCA, subsection (8) (the definition of ''Prospecting'', prospecting permit and notices of intent). OSM also addressed outstanding required program amendments at 30 CFR 926.16(h), (i), and (j) as they related to prospecting. OSM notified Montana of the concerns by letter dated December 5, 1996 (Administrative Record No. MT–14–08).

Montana responded in a letter dated November 6, 1997, by submitting a revised amendment and additional explanatory information (Administrative Record No. MT–14–11). The revisions to the amendment consisted of new statutory language enacted by the 1997 Montana Legislature. Montana proposed revisions to, and additional explanatory information concerning: 82–4–203, subsections (6), (10), and (12), 2–15–111, 2–15–121, 2–15–3501, and 2–15–3502, MCA (the definitions of ''Board'', ''Commissioner'', and ''Director''); 82–4–204 and 82–4–205, MCA (Board rules and Administration by department); 82–4–235, MCA (Inspection of vegetation—final bond release); 82–4–203, MCA, subsection (25) and 82–4–226, MCA, subsection (8) (the definition of ''Prospecting'', prospecting permit and notices of intent to prospect), and required program amendments at 30 CFR 926.16(h), (i) and (j).

Based upon the revisions to, and additional explanatory information for, the proposed program amendment submitted by Montana, OSM reopened the public comment period in the December 5, 1997, **Federal Register** (62 FR 64327; Administrative Record No. MT–14–12) and provided an opportunity for a public hearing or meeting on its substantive adequacy. Because no one requested a public hearing or meeting, none was held. The public comment period ended on December 22, 1997.

III. Director's Findings

As discussed below, the Director finds, in accordance with SMCRA, 30 CFR 732.15, 732.17, 884.14, and 884.15, with certain exceptions and additional requirements, that the proposed program and plan amendments submitted by Montana on May 16, 1995, and as revised and supplemented with additional explanatory information on November 6, 1997, is no less effective and the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Montana's Statutes

Montana proposed revisions to the following previously-approved statutes that are nonsubstantive in nature and consist of minor editorial, punctuation, grammatical, and recodification changes (corresponding Federal regulations or SMCRA provisions are listed in parentheses):

82–4–203, MCA, subsections (1), (2), (3), (4), (7), (8), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (26), (27), (28), (29), (30), (31), (32), (33), (34), and (35), (SMCRA Section 701, 30 CFR 700.5 and 701.5), Definitions.

82–4–221, MCA, Subsections (2) and (3), (SMCRA Section 506(d)(3)), Mining permit required;

82–4–226, MCA, subsections (1) and (2), (30 CFR 772.12), Prospecting permit;

82–4–227, MCA, subsections (1), (2), (5), (7), (8), (9), (11), and (12), (SMCRA Section 510), Refusal of permit;

82–4–231, MCA, subsections (1) and (6), (SMCRA Sections 508, 510, 513, and 515, and 39 CFR 773), Submission of and action on reclamation plan;

82–4–232, MCA, subsection (6), (SMCRA Sections 508, 509, and 515), Area mining required—bond—alternative; and

82–4–251, MCA, subsections (6) and (7), (SMCRA Section 521), Noncompliance—suspension of permits.

Because the proposed revisions to these previously-approved statutes are nonsubstantive in nature, the Director finds that these proposed Montana statutory revisions are no less effective than the Federal regulations and no less stringent than SMCRA. The Director approves these proposed statutory revisions.

2. MCA 82–4–203(6) and (12) and MCA 2–15–3502, Definitions of ''Board'' and ''Department''; MCA 2–15–3501, Definition of ''Director''; and MCA 82–4–204 and 82–4–205, Board Rules and Administration by Department

Montana Senate Bill 234 (SB 234) proposes to revise the environmental and natural resource functions of the state government to, among other things, replace the former Board of Land Commissioners with the new Board of Environmental Review at MCA 82–4–203(6), and transfer the rulemaking powers of the former Board of Land Commissioners to the Board of Environmental Review. All other powers of the former Board of Land Commissioners would go the renamed Department of Environmental Quality.

Montana proposes to limit the Board of Environmental Review at MCA 82–4–204 to adopting general rules pertaining to strip mining and underground mining; and adopting rules relating to the filing of reports, issuance of permits, monitoring, and other administrative and procedural matters.

At MCA 82–4–205, Montana proposes to give the Department of Environmental Quality, three duties previously held by the Board of State Lands, in addition to retaining duties previously assigned to the former Department of State Lands. Those new duties are: (1) The issuance of orders requiring an operator to adopt remedial measures necessary to achieve compliance; (2) the issuance of a final order revoking a permit for failure to comply with a notice of noncompliance, an order suspension, or an order requiring remedial measures; and (3) conducting hearings on the provisions or rules adopted by the board.

The effect is that the newly created Department of Environmental Quality will increase its responsibilities for the Montana coal mining and reclamation program over those previously held by the former Department of State Lands. In contrast, the newly created Board of Environmental Review would retain diminished responsibilities over those previously held by the Board of State Lands.

In revising the Montana statutes to reflect the reorganized duties of the Board of Environmental Review and the Department of Environmental Quality, Montana has changed the terminology in its statutes to delete the reference to ''Commissioner'' and insert, as appropriate, ''Board'', ''Department'', or ''Director.'' Specifically, Montana proposed to delete the definition of ''Commissioner'' at former MCA 82–4–203(10) and use the term ''Director.'' Montana proposed to change the statutory definition of ''Department'' at recodified MCA 82–4–203(12) to refer to the Department of Environmental Quality, instead of the former Department of State Lands. The cross-reference to ''Article X, section 4, of the constitution of this state'' in the definition of ''Board'' at MCA 82–4–203(6) was changed to ''section 21''. The cross-reference to ''Title 2, chapter 15, part 32'' in the definition of ''Department'' at proposed MCA 82–4–203(12) was changed to ''section 20''. Statutes which were revised to reflect these changes were: MCA 82–4–223(2) and (3), 82–4–226(8), 82–4–227(3) and (4), 82–4–231(9) and (10), 82–4–232(7), 82–4–240, 82–4–242, 82–4–251(1), (2), (3), (4), (5), and (8), and 82–4–254(1), (2), and (3).

In response to these proposed statutory revisions, OSM sent Montana an issue letter dated December 5, 1996 (Administrative Record No. MT–14–08), which requested: (1) copies of referenced sections 20 and 21; (2) clarification and additional information on the State's reorganization as required by 30 CFR 732.17(b), specifically those items mentioned at 30 CFR 731.14(d), (e), (f), and (g), and 732.15; and (3) a definition of ''Director.''

In its response to OSM's issue letter, Montana submitted revised statutes at MCA 2–15–3501 defining the ''Department of environmental quality'', MCA 2–15–3502 defining the ''Board of environmental review'', MCA 2–15–111 describing the appointment and qualifications of department heads, and MCA 2–15–121 describing the administrative allocation for agencies under the various departments in Montana (Administrative Record No. MT–14–11). With respect to item #1 of the issued letter, Montana deleted the previously referenced sections 20 and 21, and changed the references to MCA 2–15–3501 and 2–15–3502, respectively. Montana also submitted MCA 2–15–111, cross-referenced in MCA 2–15–3501, to further explain the duties of the department heads. MCA 2–15–121, cross-referenced in MCA 2–15–3502, addresses the administrative allocations of agencies under departments in Montana. In response to item #3 in the issue letter, Montana provided MCA 2–15–3501 to define ''Director.''

Montana stated, in response to item #2 of the December 5, 1996, issue letter, that:

During the reorganization, the Coal and Uranium Bureau was removed from the Reclamation Division, Montana Department of State Lands and transferred intact to the Permitting and Compliance Division, Department of Environmental Quality. The Coal and Uranium Bureau and the Opencut Bureau where then combined to form a new bureau—Industrial and Energy Minerals Bureau (organization chart attached). In the formation of the new bureau, the staff and functions of the coal and uranium mining program remained intact and similar to what existed prior to the reorganization. Since the program was moved intact, the civil penalty assessment and collection authority and provisions for the administrative and judicial review of State program actions were maintained in the Montana Code Annotated and the Administrative Rules of Montana. Therefore, no changes to these provisions were made.

SMCRA and its implementing regulations do not require that a primacy State organize its regulatory agency in any specific manner as long as the State regulatory authority has sufficient authority to implement and enforce the State program. The reconfiguration of the Montana coal mining program under the renamed Department of Environmental Quality is substantially the same as that under the former Department of State Lands, which was in existence when the Montana coal program was approved on April 1, 1980.

OSM finds these statutory revisions, as explained by the cross-referenced statutes subsequently submitted, to adequately clarify the Montana reorganizations of its environmental and natural resource departments in SB 234. Therefore, the Director finds that the revised and recodified statutes are no less effective than the corresponding Federal regulations at 30 CFR Chapter VII and 43 CFR Part 4. The Director approves the proposed amendment, specifically the revised statutes at: MCA 2–15–3501; 2–15–3502; 82–4–203 (6) and (12); 82–4–204; 82–4–205; 82–4–223(2) and (3); 82–4–226 (8); 82–4–227(3) and (4); 82–4–231 (9) and (10); 82–4–232(7); 82–4–240; 82–4–242; 82–4–251 (1), (2), (3), (4), (5), and (8); and 82–4–254 (1), (2), and (3).

3. MCA 82–4–203 (24), Definition of ''Prime Farmland''

Montana proposes to revise the definition of ''Prime farmland'' by deleting the list of criteria to be taken into consideration by the U.S. Secretary of Agriculture in part (a), and instead referencing 7 CFR Part 657 in the **Federal Register** (Vol. 4, No. 21) which defines the same criteria. At part (b), Montana proposes to delete the reference to the aforementioned **Federal Register** notice and to reference land that ''historically has been used for intensive agricultural purposes.''

The Federal definition of ''Prime farmland'' at 30 CFR 701.5 and SMCRA Section 701 (20) is similar to the Montana definition in that both consider criteria prescribed by the U.S. Secretary of Agriculture at 7 CFR Part 657 to define ''Prime farmland.'' However, where the proposed Montana definition references land that ''historically has been used for intensive agricultural purposes'', the Federal definition references lands which have been ''Historically used for cropland.'' The Montana program does not define the phrase ''historically has been used for intensive agricultural purposes.'' When the Montana program was approved with this phrase, part (b) also reference the criteria of 7 CFR Part 657 as contained in the **Federal Register** notice (Vol. 4, No. 21). With the proposed removal of the **Federal Register** criteria in part (b), the interpretation of part (b) of the Montana definition of ''Prime farmland'' becomes unclear.

The Montana program does define the phrase ''Historically used for cropland'' at ARM 26.4.301(52), although this phrase is not used in the definition of ''Prime farmland.'' Both ARM 26.4.301(52), the definition of ''Historically used for cropland'' and 30 CFR 701.5, the Federal definition of ''Historically used for cropland'' contain the same two ''Prime farmland'' criteria: (1) Lands used for prime farmland for any 5 of the 10 years immediately preceding acquisition for coal mining; and (2) a regulatory authority determination based on additional cropland history. However, the Montana program does not contain the third part of the Federal definition, which states ''lands that would have likely been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.''

Therefore, because the Montana definition of ''Prime farmland'' proposes to rely exclusively on an undefined phrase in part (b), the Director finds the proposed definition to be less effective than the Federal counterpart at 30 CFR 701.5 and disapproves this revision. In addition, the Director places a required program amendment on the Montana program to revise the definition of ''Historically used for cropland'' at ARM 26.4.301(52) to include the criteria concerning ''lands that would likely have been used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.''

4. MCA 82–4–203(25) and 82–4–226(8), Definition of ''Prospecting''

In response to the required program amendment codified at 30 CFR 926.16(f), Montana submitted both Senate Bill 234 and House Bill 0162 which defined ''Prospecting'' with different language. OSM, in the issue letter to Montana dated December 5, 1996 (Administrative Record No. MT–14–08), requested that Montana clarify which proposal the State would like OSM to consider.

Montana responded by letter dated November 6, 1997 (Administrative Record No. MT–14–11), with a 1997 revised version of the definition of ''Prospecting'' at MCA 82–4–203(25). The revised definition responds to OSM's concerns in the required program amendment at 30 CFR 926.16(f) by: (1) Including the activities of gathering surface or subsurface geologic, physical, or chemical data by mapping, trenching, or geophysical or other techniques necessary to determine the location, quantity, or quality of a mineral deposit (coal or uranium); (2) clarifying that an activity need not involve surface disturbance to be considered ''prospecting''; and (3) removing the word ''*natural*'' to refer to mineral deposit at MCA 82–4–226(8) and 82–4–203(25) so that the definition would include such human-made structures as coal waste piles.

The Director finds that Montana's revised definition of ''Prospecting'' at MCA 82–4–203(25) to be no less effective than the Federal definition of ''Coal exploration'' at 30 CFR 701.5 and no less stringent that SMCRA Section 512. The Director approves the proposed amendment and removes the required program amendment at 30 CFR 926.16(f).

5. MCA 82–4–239, Reclamation

In this abandoned mine land reclamation (AMLR) statute, Montana has made revisions to reflect the reorganized duties of the Board of Environmental Review and the Department of Environmental Quality. Montana has changed the wording to delete ''Board'' and insert ''Department'' as appropriate. However, Montana has not submitted an organizational chart for its reorganized AMLR plan under the renamed Department of Environmental Quality. The organizational chart submitted in the November 6, 1997, revised amendment with explanatory information (Administrative Record No. MT–14–08) clarifies the current State

organization for the Title V (Regulatory) program, not the Title IV (AMLR) plan.

In the final rule dated July 19, 1995 (60 FR 36998), concerning Montana's AMLR plan, OSM approved a renaming of the former Department of State Lands as the Department of Environmental Quality. However, the organizational chart (Exhibit A) submitted in that amendment (Administrative Record No. MT–AML–01; March 22, 1995) showed no renaming or reorganization of the Divisions and Bureaus below the Departmental level. Supporting documentation from Governor Marc Racicot dated June 15, 1995, and from the Department's Chief Legal Counsel, John North, dated June 9, 1995, only referred to the name change to the Department of Environmental Quality, and did not specify a renaming of Divisions and Bureaus, nor a change in the State organizational chart concerning the AMLR plan (Administrative Record No. MT–AML–18).

At this time, it is unclear what the new reorganization of the Montana AMLR plan consists of, as well as which AMLR rules and statutes have been revised as a result of the 1995 State reorganization. During the Montana reorganization, the regulatory (Title V) and the abandoned mine land reclamation (Title IV) programmatic rules were recodified from ARM 26.4 to ARM 17.24. This new recodification is reflected in the November 6, 1997, Montana submittal (Administrative Record No. MT–14–11). However, OSM has never approved the recodification as Montana removed some of its abandoned mine land reclamation provisions without explanation. Before OSM can approve the recodification, the missing AMLR rules must be explained. The regulatory program (Title V) was recodified intact.

Therefore, the Director is deferring approval on the revision to MCA 82–4–239 until these issues are clarified. The Director is requiring that Montana submit and receive approval on the AMLR reorganization initiated in 1995 and revised by the 1997 Montana legislature, as well as submit and obtained approval on all revised AMLR statutes and rules, subsequent to final rule **Federal Register** notice, 60 FR 36998, dated July 19, 1995.

6. MCA 82–4–221(1), Mining Permit Required

Montana proposes to require that an application for permit renewal be filed at least 240 days, and no more than 300 days, prior to permit expiration. Both the State and Federal statutes provide a procedural time period for the involved parties to file an application for permit renewal prior to the expiration of the valid permit. Section 506(d)(3) of SMCRA and 30 CFR 774.15(b)(1) only require that such filing shall be made *at least* 120 days prior to the expiration of the valid permit. The Federal requirement, unlike the State's proposal, does not set a limit on how far in advance an applicant may submit an application for permit renewal. This State proposal is a procedural requirement which provides involved parties with similar rights and remedies as those provided by SMCRA at Section 506(d)(3) and 30 CFR 774.15(b)(1). Accordingly, the Director finds that the State's proposed revision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.15(b)(1). The Director approves the proposed amendment.

7. MCA 82–4–226(8), Prospecting Permits and Notices of Intent

In the February 1, 1995, final rule **Federal Register** (60 FR 6006), OSM placed three required program amendments on the Montana program concerning a prospecting permit at MCA 82–4–226(8). The required program amendment at 30 CFR 926.16(h) required that Montana prohibit prospecting under notices of intent when more than 250 tons of coal are to be removed. The required program amendment at 30 CFR 926.16(i) required that Montana delete the word ''reasonable'' in the final sentence of MCA 82–4–226(8). The required program amendment at 30 CFR 926.16(j) required that Montana provide authority for the inspection of monitoring equipment and prospecting methods for prospecting conducted under notices of intent, and access to and copying of any records required by the Montana program on such prospecting operations, at any reasonable time without advance notice upon presentation of appropriate credentials, and to provide for warrant-less right of entry for prospecting operations conducted under notices of intent, to be no less effective in meeting SMCRA's requirements than 30 CFR 840.12(a) and (b).

In the November 6, 1997, submittal (Administrative Record No. MT–14–11), Montana modified its statute at MCA 82–4–226(8), and presented additional explanatory information concerning prospecting, in order to respond to the three required program amendments.

a. Prospecting (Coal Exploration) Under Notices of Intent

Montana proposed to revise MCA 82–4–226(8) to state that prospecting that is not conducted in an area designated unsuitable for coal mining, that is not conducted for the purposes of determining the location, quality, or quantity of a mineral deposit, ''and that does not remove more than 250 tons of coal'', is not subject to subsections (1) through (7) (the requirements for a prospecting permit). ''In addition, prospecting that is conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface is not subject to subsections (1) through (7).''

The revisions made by Montana in the November 6, 1997, submittal (Administrative Record No. MT–14–11), now restrict prospecting under a notice of intent to those operations which remove less than 250 tons of coal. The revisions meet the federal requirements at SMCRA Section 512(d) and 30 CFR Part 772 which require that coal exploration permits be obtained when an exploration operation will remove more than 250 tons of coal, regardless of the intent of the prospecting (coal or overburden) or the degree of disturbance. With these revisions, the Montana program becomes no less stringent that SMCRA and no less effective than the Federal regulations. The Director approves the proposed amendment and removes the required program amendment at 30 CFR 926.16(h).

In addition to restricting prospecting operations under a notice of intent to those which remove less than 250 tons of coal, the Montana revisions at MCA 82–4–226(8) also restrict prospecting operations under a notice of intent to those lands outside of an area designated as ''lands unsuitable.'' The Montana program now contains the same provisions as the Federal counterpart at 30 CFR 772.11(a) and 772.12(a) which prohibit coal exploration under a notice of intent, and require an exploration permit, for any coal exploration on lands unsuitable, regardless of whether the exploration ''substantially disturbs'' the natural and surface. The Director finds the Montana revision at MCA 82–4–226(8) to be no less effective than the Federal requirements at 30 CFR 772.11(a) and 772.12(a). The Director approves the revision.

b. Specification of Which Prospecting Activities Are Required To Meet Performance Standards and Specification of Applicable Performance Standards

In the February 1, 1995, **Federal Register** notice (60 FR 6006), finding 5(b) requested that Montana clarify which performance standards are applicable to prospecting operations. At that time, OSM approved the revision to MCA 82–4–226(8) with the proviso that it not be implemented until Montana had promulgated and OSM had approved a definition of ''substantially disturb'' which was no less effective than 30 CFR Part 772 and 30 CFR 701.5.

In its November 6, 1997, response (Administrative Record No. MT–14–11), Montana stated that:

> Section 82–4–226(8) * * * provides that lands substantially disturbed under a notice of intent, * * * must be conducted in accordance with the performance standards of the board's rules regulating the conduct and reclamation of prospecting operations that remove coal. Therefore, any prospecting that ''substantially disturbs'' the land surface must comply with the same performance standards, regardless of whether the prospecting is done pursuant to a notice of intent or a prospecting permit.

Montana's explanation also lists the performance standards contained in Chapter 10 of the Administrative Rules of Montana (ARM), as those which apply to prospecting (coal exploration) operations. This explanation meets the requirements of SMCRA Section 512(a) which requires that all exploration which substantially disturbs the natural land surface be conducted in accordance with the performance standards of SMCRA Section 515.

Therefore, Montana has complied with the proviso in finding 5(b) in the February 1, 1995, **Federal Register** notice (60 FR 6006). The Director accepts the explanatory information provided by Montana. With this explanation, the Montana program is no less stringent than SMCRA in meeting performance standards for coal exploration operations.

c. Right of Entry To Inspect

At 30 CFR 926.16(i), OSM required that Montana delete the word ''reasonable'' from MCA 82–4–226(8) so that the State regulatory program would have the authority to right of entry to any coal exploration operation without advance notice, upon presentation of appropriate credentials, and not limited to ''reasonable'' times. At 30 CFR 926.16(j), OSM required that Montana revise its program to provide authority for the inspection of prospecting operations conducted under notices of intent, and access to the records on such operations at any reasonable time without search warrant.

In the November 6, 1997, response (Administrative Record No. MT–14–11), Montana noted that the required program amendment changes to the statutes had not been made. In lieu of making the statutory revisions, the State argued that two existing rules respond to OSM's concerns. Those rules are: ARM 26.4.1201 and 26.4.1202. ARM 26.4.1201, Frequency of Inspections, requires ''such periodic partial or complete inspections of prospecting operations as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit.'' ARM 26.4.1202, Method of Inspections, states that ''Inspections must occur without prior notice to the permittee, except for necessary on-site meetings, be conducted on an irregular basis, and be scheduled to detect violations on nights, weekends, and holidays.'' (Montana's response actually references the rules at ARM 17.24.1201 and 17.24.1202, reflecting the State's 1996 rules recodification. Refer to the discussion in Finding No. 5 above concerning the recodification.)

The existing rules at ARM 26.4.1201 and .1202 allow for State inspections to take place at prospecting operations without prior notice to the permittee and to be conducted on an irregular basis. OSM interprets these rules as allowing inspections at other than ''reasonable'' times. In addition, these same rules would allow for inspections of prospecting operations ''as are necessary to enforce the Act, the rules adopted pursuant thereto, and the permit'', as well as to ''collect evidence of violations and to file inspection reports adequate to determine whether violations exist.'' OSM, therefore, interprets these rules as providing sufficient ''authority for the inspection of monitoring equipment and prospecting methods for prospecting conducted under notices of intent, and access to and copying of any records required by the Montana program on such prospecting operations, at any reasonable time without advance notice upon presentation of appropriate credentials, and to provide for warrantless right of entry for prospecting operations conducted under notices of intent.''

OSM believes that these rules address the concerns of the required program amendments at 30 CFR 926.16 (i) and (j), as well as serve to clarify the statute at MCA 82.4.226(8). The Director approves the explanatory information presented by Montana and removes the required program amendments at 30 CFR 926.16 (i) and (j).

8. MCA 82–4–235, Inspection of Vegetation—Final bond Release

In the May 16, 1995, submittal, Montana proposed to revise MCA 82–4–235(1) to provide that final bond release may *not* be withheld on the basis that introduced species compose a major or dominant component of the reclaimed vegetation on lands which were seeded with a seed mix approved to include substantial introduced species (applicable to both pre- and post-SMCRA areas) (Administrative Record No. MT–14–01). This proposal had the effect of allowing, in some circumstances, final bond release when revegetation performance standards are not achieved. However, OSM notified Montana in the December 5, 1996, issue letter (Administrative Record No. MT–14–08) that SMCRA Section 519(c)(3) requires that prior to final bond release, the operator must have successfully completed all reclamation activities, including not only planting the approved seed mix, but also achieving revegetation success standards, OSM could not approve proposed MCA 82–4–235(1).

In the November 6, 1997, response to OSM's issue letter, Montana deleted the sentence in subsection (1) which would have allowed, in some circumstances, final bond release when revegetation performance standards were not achieved (Administrative Record No. MT–14–11). The remaining changes to proposed subsection (1) contain two non-substantive wording changes. The first proposed revision to subsection (1) is to make the timing of the final bond release inspection and evaluation of permanent diverse vegetative cover, dependent upon an application for final bond release, not upon the satisfactory stand, itself, having been established. SMCRA, also, requires that the regulatory authority conduct a performance bond release inspection upon receipt of a notification and request from the permittee. Therefore, the State revision is no less stringent than SMCRA.

The second proposed revision to subsection (1) is to change the February 2, 1978, seeding date to May 3, 1978. This means that any reclamation work such as augmented seeding, fertilizing, or irrigation taking place after May 3, 1978 (previously February 2, 1978) may not receive final bond release until at least 10 years after the last year of such work. May 3, 1978, nine-months after the effective date of SMCRA, is the date upon which, or after, all surface coal mining operations on State-regulated

lands must be in compliance with the provisions of SMCRA, according to SMCRA Section 502(c) and 30 CFR 710.11(a)(3)(ii). Therefore, the Director finds this revision to be no less effective than the Federal regulations and no less stringent than SMCRA. The effect of OSM's approval is that the paragraph labeled ''82–4–235 (Effective on occurrence of contingency) Inspection of vegetation—final bond release'' in Montana's 1997 legislative amendment (Administrative Record No. MT–14–11) would be approved.

Montana proposes to revise paragraph (2) of MCA 82–4–235 to provide revised bond release criteria on revegetated lands seeded with mixtures of introduced species on which coal was removed prior to May 3, 1978 (the effective date of SMCRA), or lands on which coal was not removed or lands disturbed after May 2, 1978. Montana states the intent of this provision is to provide revegetation success standards for lands which were reclaimed using seed mixes containing introduced species during a period (1970s and 1980s) when native seed mixes were in short supply. Montana's proposed changes concern lands disturbed prior to the effective date of SMCRA (August 3, 1997) and reclamation on those lands. The changes do not conflict with any SMCRA requirement. Therefore, the Director is approving MCA 82–4–235(1) and (2).

9. MCA 82–4–227(10), Coal Conservation Plan

OSM placed a required program amendment (30 CFR 926.16(g)) on Montana in the February 1, 1995, **Federal Register** notice (60 FR 6006) to modify its program to require that no permit or major permit revision be approved unless the coal conservation plan affirmatively demonstrate that failure to conserve coal will be prevented. OSM placed the required program amendment on the Montana program due to a typographic error which unintentionally resulted in a substantive revision to state program amendment dated July 28, 1993, Administrative Record No. MT–11–01.

In the May 16, 1995, submittal (Administrative Record No. MT–14–01), Montana subsequently proposed a statutory revision at MCA 82–4–227(10) which corrected the earlier error and restored the State program to its previous statutory language. Therefore, the Director finds the Montana revised statute to be no less effective than the Federal requirement and approves the proposed language. The Director removes the required program amendment at 30 CFR 926.16(g).

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), 884.15(a), and 884.14(a)(2), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana program and plan.

The Natural Resources Conservation Service responded on June 6, 1997, with the recommendation that reclaimed areas be fenced under grazing conditions in order to ensure that stands of introduced species and off-site native species become established (Administrative Record No. MT–14–04). OSM responds that this is not required in either the Montana program, or the Federal statutes or regulations. Therefore, to require the fencing of reclaimed areas under grazing conditions would be more stringent than either the Federal statutes or the regulations. However, the requirement to fence reclaimed lands during the vegetation establishment period is often placed on the permit by the State, OSM, or other Regulatory Agency, and potentially even required by lease. This is because protection of the revegetated area is in the operator's best interest, since the operator will eventually be required to meet revegetation success standards. OSM has forwarded the comments from the Natural Resources Conservation Service to Montana for consideration.

The U.S. Army Corps of Engineers and the Bureau of Indian Affairs had no objections to the proposed revisions (Administrative Record Nos. MT–14–07 and MT–14–05).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Purusant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MT–14–03). The proposed revisions did not relate to air quality or water quality, and the EPA did not submit comments.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendments from the SHPO and ACHP (Administrative Record No. MT–14–03). Neither SHPO nor ACHP responded to OSM's request.

V. Director's Decision

Based on the above findings, the Director approves, with certain exceptions and additional requirements, Montana's proposed amendment as submitted on May 16, 1995, and as revised and supplemented with additional explanatory information on November 6, 1997.

The Director approves, as discussed in: Finding No. 1, proposed MCA 82–4–203(1), (2), (3), (4), (7), (8), (10), (11), (13), (14), (15), (16), (17), (18), (19), (20), (21), (22), (23), (26), (27), (28), (29), (30), (31), (32), (33), (34), and (35), concerning Definitions; proposed MCA 82–4–221 (2) and (3), concerning Mining permit required; proposed MCA 82–4–226 (1) and (2), concerning Prospecting permit; proposed MCA 82–4–227(1), (2), (5), (7), (8), (9), (11), and (12), concerning Refusal of permit; proposed MCA 82–4–231 (1) and (6), concerning Submission of and action on the reclamation plan; proposed MCA 82–4–232(6), concerning Area mining—bond—alternative; proposed MCA 82–4–251 (6) and (7), concerning Noncompliance—suspension of permits; Finding No. 2, proposed MCA 82–4–203 (6) and (12), 82–4–204, 82–4–205, 82–4–223 (2) and (3), 82–4–226 (8), 82–4–227 (3) and (4), 82–4–231 (9) and (10), 82–4–232 (7), 82–4–240, 82–4–242, 82–4–251 (1), (2), (3), (4), (5), and (8), 82–4–254 (1), (2), and (3), 2–15–3501, and 2–15–3502, concerning the definitions of ''Board,'' ''Department,'' and ''Director,'' Board Rules and Administration by department; Finding No. 4, proposed MCA 82–4–203(25) and 82–4–226(8), concerning the definition of ''Prospecting;'' Finding No. 6, proposed MCA 82–4–221(1), concerning Mining permit required; Finding No. 7, proposed MCA 82–4–226(8), concerning Prospecting permit and notices of intent; Finding No. 8, proposed MCA 82–4–235, concerning Inspection of vegetation—final bond release; and Finding No. 9, proposed MCA 82–4–227(10), concerning the Coal conservation plan.

As discussed in Finding Nos. 3 and 5, the Director is disapproving the proposed revisions to MCA 82–4–203(24) and deferring her decision on the proposed revisions to MCA 82–4–239.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana program and plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Abandoned mine reclamation programs, Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.10(a) is revised to read as follows:

§ 926.10 State regulatory program approval.

* * * * *

(a) Montana Department of Environmental Quality, Industrial and Energy Minerals Bureau, P.O. Box 200901, Helena, Montana 59620–0901, (406) 444–1923.

* * * * *

3. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
May 16, 1995	January 22, 1999	MCA 2–15–3501, 2–15–3502, 82–4–203(1) through (35), except (24); MCA 82–4–204; MCA 82–4–205; MCA 82–4–221; MCA 82–4–223; MCA 82–4–226(8); MCA 82–4–227; MCA 82–4–231; MCA 82–4–232(6) and (7); MCA 82–4–235; MCA 82–4–240; MCA 82–4–242; MCA 82–4–251; and MCA 82–4–254(1) through (3). Decision deferred on MCA 82–4–239; MCA 82–4–203(24) disapproved.

4. Section 926.16 is amended by removing and reserving paragraphs (f), (g), (h), (i), and (j); and adding paragraph (k) to read as follows:

§ 926.16 Required program amendments.

* * * * *

(k) By March 23, 1999, Montana shall revise ARM 26.4.301(52), or otherwise modify its program, to require that the definition of ''Historically used for cropland'' address lands that would have been likely used as cropland for any 5 out of the last 10 years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

5. Section 926.21 is added to read as follows:

§ 926.21 Required abandoned mine land plan amendments.

Pursuant to 30 CFR 884.15, Montana is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a) By March 23, 1999, Montana shall submit a copy of the State's reorganization of the abandoned mine land reclamation plan, as well as all statutes and rules relating to the abandoned mine land reclamation plan revised subsequent to the final rule published in the **Federal Register** dates July 19, 1995 (60 FR 36998).

(b) [Reserved].

[FR Doc. 99–1445 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–018–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is approving, with additional requirements, a proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Montana proposed revisions to rules pertaining to permit renewals, permit requirements, and notices of intent to prospect. The amendment was intended to revise the Montana program to be consistent with the corresponding Federal regulations and SMCRA, to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

EFFECTIVE DATE: January 22, 1999.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–6550; Internet address: gpadgett@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16 and 926.30.

II. Proposed Amendment

By letter dated March 5, 1996, Montana submitted a proposed amendment to its program (Administrative Record No. MT–15–01) pursuant to SMCRA (30 U.S.C. 1201 *et seq.*). Montana submitted the proposed amendment at its own initiative. The provisions of Administrative Rules of Montana (ARM) that Montana proposed to revise were: 26.4.410, ARM (permit renewal); 26.4.1001, ARM (prospecting permit requirement); and 26.4.1001A, ARM (notice of intent to prospect).

OSM announced receipt of the proposed amendment in the April 10, 1996, **Federal Register** (61 FR 15910), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–15–04). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 10, 1996.

During its review of the amendment, OSM identified concerns at ARM 26.4.1001(1)(a) and 26.4.1001A(1) and (1)(b)(ii) relating to the removal of more than 250 tons of coal under a notice of intent. OSM notified Montana of the concerns by letter dated December 6, 1996 (Administrative Record No. MT–15–09).

Montana responded by submitting additional explanatory information in a letter dated November 6, 1997 (Administrative Record No. MT–15–12). The explanatory information consisted of a proposed statutory revision for a separate amendment currently under review by OSM (SPATS No. MT–017–FOR; Administrative Record No. MT–14–01). Instead of revising the proposed rules to address OSM's concerns with prospecting permit requirements and a notice of intent to prospect, Montana explained that proposed statutory revisions made by the 1997 Montana legislature to the Montana Code Annotated at 82.4.226(8), MCA, to require a permit for prospecting when more than 250 tons of coal would be removed, would resolve OSM's concerns.

Based upon the additional explanatory information for the proposed program amendment submitted by Montana, OSM reopened the public comment period in the December 2, 1997, **Federal Register** (62 FR 63685; Administrative Record No. MT–15–13). Because no one requested a public hearing or meeting, none was held. The reopened public comment period ended on December 17, 1997.

Also being considered in this final approval of SPATS No. MT–018–FOR (Administrative Record No. MT–15–01) is language from an earlier submitted amendment, SPATS No. MT–003–FOR (Administrative Record No. MT–12–01; dated February 1, 1995) insofar as it relates to the requirements for prospecting permits and notices of intent to prospect. Montana originally proposed revisions to ARM 26.4 1001 and proposed to add ARM 26.4 1001A in SPATS No. MT–003–FOR.

Before OSM was able to take action on MT–003–FOR, Montana proposed further revisions to ARM 26.4.1001 and 26.4.1001A as part of the SPATS No. MT–018–FOR. Therefore, OSM is considering and taking action on all revisions to ARM 26.4.1001 and 26.4.1001A as part of SPATS No. MT–018–FOR, and is removing the proposed revisions from SPATS NO. MT–003–FOR. Montana agreed to this approach in a telephone conversation on January 23, 1998 (Administrative Record Nos. MT–12–21 and MT–15–14).

The definition of ''substantially disturb'', which was submitted in the State's February 6, 1996, response (SPATS No. MT–003–FOR; Administrative Record No. MT–12–19) to OSM's issue letter dated October 17, 1995 (Administrative Record No. MT–12–16), is also being considered for approval in SPATS No. MT–018–FOR and is being withdrawn from SPATS No. MT–003–FOR.

III. Director's Findings

As discussed below, the Director, in accordance with SMCRA and 30 CFR 732.15 and 732.17, finds, with additional requirements, that the proposed program amendments submitted by Montana on March 5, 1996, and as supplemented with additional explanatory information on November 6, 1997, is no less effective than the corresponding Federal regulations and no less stringent than SMCRA. Accordingly, the Director approves the proposed amendment.

1. Nonsubstantive Revisions to Montana's Rules

Montana proposed revisions to the following previously-approved rules that are nonsubstantive in nature and consist of minor editorial, grammatical, or recodification changes (corresponding Federal provisions are listed in parentheses):

26.4.1001, ARM, subsections (1) (codification) and (2) (introductory text and codification), (30 CFR 772.12), prospecting (coal exploration) permits.

Because the proposed revisions to these previously-approved rules are nonsubstantive in nature, the Director

finds that these proposed Montana rules revisions are no less effective than the Federal regulations. The Director approves these proposed rules.

2. Substantive Revisions to Montana's Rules That Are Substantively Identical to the Corresponding Provisions of the Federal Regulations

Montana proposed to revise its programs by adding the following rules that are substantive in nature and contain language that is substantively identical to the requirements of the corresponding Federal regulation provisions (listed in parentheses).

26.4.1001, ARM, subsection (1)(b), (30 CFR 772.12(a) (in part)), requirements for prospecting permits;
26.4.1001, ARM, subsection (2)(c), (30 CFR 772.12(b)), requirements for prospecting permits;
26.4.1001, ARM, subsection (2)(g)(iii)(A) and (C), (30 CFR 772.12(b)), requirements for prospecting permits;
26.4.1001, ARM, subsections (4) and (5), (30 CFR 815.13, 772.13, and 815.1), performance standards applicable to prospecting (coal exploration) under prospecting permits and requirements to keep the permit on-site;
26.4.1001A, ARM, subsections (1), (3) (introductory text), (3)(a), (4) (introductory text), and (4)(a), (30 CFR 772.11(a) (in part) and (b)), requirements for notices of intent to prospect (conduct coal exploration); and
26.4.1001A, ARM, subsections (4)(c) (in part), (6), and (7), (30 CFR 772.13 and 815.13), performance standards applicable to prospecting (coal exploration) under notices of intent and requirement to keep documents on-site.

Because these proposed Montana rules are substantively identical to the corresponding provisions of the Federal regulations, the Director finds that they are no less effective than the Federal regulations. The Director approves these proposed rules.

3. ARM 26.4301(114), Definition of ''Substantially Disturb''

On February 6, 1996, Montana proposed a definition of ''substantially disturb'' which is substantially similar to the Federal definition at 30 CFR 701.5, except that it does not include the removal of more than 250 tons of coal (SPATS No. MT–003–FOR; Administrative Record No. MT–12–19).

The Federal definition of ''substantially disturb'' at 30 CFR 701.5 provides that anytime an exploration operation removes more than 250 tons of coal, the operation would ''substantially disturb'' the natural land surface. This would require that performance standards be met, as the Federal regulations at 30 CFR 815.1 and 772.13(a) provide that the performance standards therein apply to coal exploration and reclamation activities which ''substantially disturb'' the natural land surface.

Montana subsequently proposed a statutory revision at MCA 82–4–226(8) in a response dated November 6, 1997. The revised statute would require that: (1) prospecting which removes less than 250 tons of coal is not subject to the prospecting permit requirements of MCA 82–4–226 (1) through (7) (except if conducted on lands unsuitable); and (2) prospecting conducted to determine the location, quality, or quantity of a mineral deposit outside an area designated unsuitable, that does not remove more than 250 tons of coal, and that does not substantially disturb the natural land surface, is not subject to the prospecting permit requirements at MCA 82–4–226 (1) through (7) (SPATS No. MT–017–FOR; Administrative Record No. MT–15–12). These revisions now require the operator to obtain a permit when more than 250 tons of coal will be removed or which will take place on lands designated as unsuitable for surface mining.

The 250 ton limit serves two purposes in the Federal regulations: (1) it determines when a notice of intent to explore (prospect) may be allowed, as opposed to when a permit is required (30 CFR 772.11(a) vs. 772.12(a)); and (2) it determines if the performance standards of 30 CFR Part 815 must be met (30 CFR 772.13 and 815.1). Montana's statutory changes in SPATS No. MT–017, Administrative Record No. Series MT–014–FOR, satisfactorily accomplish purpose # 1 above. Purpose # 2 above is addressed at proposed ARM 26.4.1001(5) and 1001A(7) which require all prospecting, regardless of extent of disturbance (under permits or notice of intent, respectively), to meet the performance standards of ARM, Chapter 10. ARM 26.4.1001(5) specifically states that prospecting operations under a permit are subject to the performance standards of ARM, Chapter 10. ARM 26.4.1001A(7) states that prospecting operations under a notice of intent are subject to all the performance standards of ARM, Chapter 10, except those which relate to a permit, permit transfer, bonding, and permit renewal. OSM notes that the performance standards of Chapter 10 are currently being revised in connection with the program amendment submitted February 1, 1995, as SPATS No. MT–003–FOR (Administrative Record No. MT–12–01). Based on the above discussion, the Director is approving the definition of ''substantially disturb'' at ARM 26.4.1001.

4. ARM 26.4.410, Permit Renewal

Montana proposes to require that an application for permit renewal be filed at least 240 days, and no more than 300 days, prior to permit expiration. Both the State and Federal regulations provide a procedural time period for the involved parties to file an application for permit renewal prior to the expiration of the valid permit. Section 506(d)(3) of SMCRA and 30 CFR 774.15(b)(1) only require that such filing shall be made *at least* 120 days prior to the expiration of the valid permit. The Federal requirement, unlike the State's proposal, does not set a limit on how far in advance an applicant may submit an application for permit renewal. The State proposal is a procedural requirement which provides involved parties with similar rights and remedies as those provided by SMCRA at Section 506(d)(3) and 30 CFR 774.15(b)(1).

The Director finds that the State's proposed revision is no less stringent than SMCRA and no less effective than the Federal regulations at 30 CFR 774.15(b)(1). The Director approves the proposed amendment.

Montana has proposed an identical change to its statutes at MCA 82–4–221(1) which is also under consideration by OSM at this time (SPATS No. MT–017–FOR; Administrative Record No. MT–14–01). A final **Federal Register** notice is being published simultaneously on the statutory revision.

5. ARM 26.4.1001 and 26.4.1001A, Prospecting

Montana initiated proposed revisions to ARM 26.4.1001 and the addition of 26.6.1001A in its February 1, 1995, submittal (SPATS No. MT–003–FOR; Administrative Record No. MT–12–01), in order to implement the new statutory provision for prospecting under notices of intent that was approved by OSM on February 1, 1995 (60 FR 6006). On March 5, 1996, Montana submitted further revisions to ARM 26.4.1001 and 26.4.1001A in a new submittal, now the subject of this **Federal Register** action (SPATS No. MT–018–FOR; Administrative Record No. MT–15–01). Many of the proposed revisions or additions are nonsubstantive or are substantively identical to the corresponding Federal counterparts and are addressed in Finding Nos. 1 and 2 above. Montana has also proposed statutory revisions addressing prospecting, which are being considered in a separate rule making action being published concurrently with this one.

a. Proposed Requirements for Prospecting Permits

Montana proposes at ARM 26.4.1001(1) that a prospecting operation must be conducted under a prospecting permit if it will either: (1) be conducted on lands designated unsuitable for mining (no matter what the purpose or scope of the operation); or (2) is intended to collect data on the minerals (rather than on the environment) and will substantially disturb the land surface. A proposed statutory provision being concurrently evaluated (82–4–226(8), MCA; see SPATS No. MT–017–FOR) also requires that any prospecting operation that removes more than 250 tons of coal must be conducted under a prospecting permit. In sum, a prospecting permit would be required for any prospecting operation which: (1) is conducted on lands unsuitable; (2) removes more than 250 tons of coal; or (3) is conducted to collect mineral rather than environmental data and substantially disturbs the land surface.

The Federal regulations at 30 CFR 772.12(a) similarly require a coal exploration permit for operations which will be conducted on lands designated as unsuitable for mining or which will remove more than 250 tons of coal. There is no Federal provision requiring a prospecting permit for the third class of operations proposed by Montana; however, OSM believes that requiring prospecting permits for this class of operations will assist Montana in the effective implementation of its program. Under 30 CFR 730.11(b), no State rule providing for more stringent environmental controls shall be found to be inconsistent with OSM regulations. With the understanding that the proposed statutory provisions at 82–4–226(8), MCA, is being simultaneously approved, the Director finds that the proposed rule revisions at ARM 26.4.1001(1) are no less effective than the Federal requirements at 30 CFR 772.12(a) and is approving the revisions.

b. Proposed Requirements for Prospecting Under Notice of Intent To Prospect

Montana proposes at ARM 26.4.1001A(1) that prospecting operations may be conducted under a notice of intent to prospect (rather than requiring a prospecting permit) if the proposed prospecting operation: (1) will not be conducted on lands designated unsuitable for mining; and either (2), is intended to collect data on the environment (rather than on the minerals); or (3), is intended to collect data on the minerals but will not substantially disturb the land surface. A proposed statutory provision being concurrently evaluated (82–4–226(8), MCA; see SPATS No. MT–017–FOR) also requires that any prospecting operation that removes more than 250 tons of coal must be conducted under a prospecting permit. In sum, a notice of intent to prospect would be allowed only for those prospecting operations which: (1) are not conducted on lands unsuitable; (2) remove less than 250 tons of coal; and (3) are conducted to collect environmental data or, if conducted to collect mineral data, will not substantially disturb the land surface.

The Federal regulations at 30 CFR 772.11(a) similarly allow notices of intent for operations which will not be conducted on lands designated as unsuitable for mining and which will not remove more than 250 tons of coal (summary items #1 and #2 above). The Federal regulations do not address the purpose of exploration and hence, do not address Montana's third class of operations. However, OSM notes that any of that third class of prospecting operations (those conducted to obtain mineral data but do not substantially disturb the land surface and those that collect only environmental data), would be required by proposed ARM 26.4.1001(1) (discussed under Finding No. 5a above) to operate under a prospecting permit if they either: (1) occur on lands unsuitable or, (2) remove more than 250 tons of coal. In the event that these two rule requirements might be interpreted to conflict, the proposed statutory provision at MCA 82–4–226(8) (being concurrently evaluated) clearly limits notices of intent to prospecting that does not occur on lands unsuitable and that does not remove more than 250 tons of coal; see also the discussion under Finding No. 3 above. Therefore, under the Montana proposal taken together with the proposed statutory revision, no prospecting operation could be conducted under a notice of intent that would, under the Federal requirements, require a coal exploration permit.

With the understanding that the proposed statutory provision at 82–4–226(8), MCA, is being simultaneously approved, the Director finds that the proposed rule additions at ARM 26.4.1001A(1) are no less effective than the Federal requirements at 30 CFR 772.11(a) and is approving the revisions.

c. Content Requirements for Notices of Intent to prospect

Montana has proposed several requirements for the contents of notices of intent; most are approved in Finding No. 2 above. But Montana has also proposed requirements for which there is no corresponding Federal provision, particularly at ARM 26.4.1001A(2) and (3)(b) (information needed for Montana to determine the purpose of the prospecting and whether it will substantially disturb the land surface), and ARM 26.4.1001A(4)(b) (reports to be provided to assist investigations).

OSM notes that the Federal program does not address the purpose of exploration activities, but believes that these provisions will assist Montana in the effective implementation of its program. OSM also notes that under Montana's proposal, all prospecting operations would be required to meet prospecting performance standards, regardless of their purpose and whether they substantially disturb the land surface (see proposed ARM 26.4.1001(5) and 26.4.1001(7) which are approved in Finding No. 2 above). Therefore the Director finds that these proposed rule additions do not conflict with any Federal requirements, and approves the proposed rules.

d. Procedural Requirements for Prospecting Permits and Notices of Intent

Montana has proposed several requirements for processing notices of intent and prospecting permits for which there is no corresponding Federal provision, particularly at ARM 26.4.1001(3) (in part) and 26.4.1001A(2) (in part) (expiration of permit and notice of intent after one year); and 26.4.1001A(5) (Departmental response to applicant on notice of intent regarding proposed extent of disturbance).

OSM believes that these provisions will assist Montana in the effective implementation of its program. OSM also notes that under Montana's proposal, all prospecting operations would be required to meet prospecting performance standards, regardless of whether they substantially disturb the land surface (see proposed ARM 26.4.1001(5) and 26.4.1001A(7) which are approved in Finding No. 2 above). Therefore the Director finds that these proposed rule additions do not conflict with any Federal requirements, and approves the proposed rules.

However, in the course of evaluating this submittal, OSM noted that proposed ARM 26.4.1001(3) would provide that prospecting permits are subject to renewal, suspension, and revocation in the same manner as mining permits; but the proposal would not provide for permit issuance procedures, which would include such requirements as public review and

comment, and administrative and judicial appeals. Upon further review, OSM found that under the Montana program only ''test pit prospecting permits'' are subject to the permit issuance procedures of Subchapter 4 (see ARM 26.4.401(1)).

The Federal regulations at 30 CFR 772.12(c), (d), and (e), and 772.15, provide for public notice and opportunity to comment on prospecting permit applications, regulatory authority decisions on such applications, notice and hearing requirements on the prospecting applications, and for public availability of permit information. These Federal requirements apply to all prospecting permits, not just those that involve surface excavations. Therefore the Director is requiring Montana to amend its program (at ARM 26.4.401, 26.4.1001, or otherwise) to provide for permit issuance procedures, including public comment, administrative and judicial appeal, and public availability of information, for all prospecting permits.

IV. Summary and Disposition of Comments

Following are summaries of all substantive written comments on the proposed amendment that were received by OSM, and OSM's responses to them.

1. Public Comments

OSM invited public comments on the proposed amendment, but none were received.

2. Federal Agency Comments

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from various Federal agencies with an actual or potential interest in the Montana program.

Three agencies responded that they had no comments: the U.S. Army Corps of Engineers (April 15, 1997; Administrative Record No. MT–15–05); the Bureau of Indian Affairs (April 19, 1997; Administrative Record No. MT–15–07); and the Montana Department of Fish, Wildlife and Parks (May 10, 1997; Administrative Record No. MT–15–08).

3. Environmental Protection Agency (EPA) Concurrence and Comments

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to solicit the written concurrence of EPA with respect to those provisions of the proposed amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

Pursuant to 30 CFR 732.17(h)(11)(i), OSM solicited comments on the proposed amendment from EPA (Administrative Record No. MT–15–03). The proposed amendment does not concern air quality or water quality, and EPA did not submit comments.

4. State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Pursuant to 30 CFR 732.17(h)(4), OSM solicited comments on the proposed amendment from the SHPO and the ACHP (Administrative Record No. MT–15–03). The SHPO responded on April 19, 1997, that they had no comments (Administrative Record No. MT–15–06). The ACHP did not respond.

V. Director's Decision

Based on the above findings, the Director approves, with certain additional requirements, Montana's proposed amendment as submitted on March 5, 1996, and as supplemented with additional explanatory information on November 6, 1997.

The Director approves, as discussed in: Finding No. 3, ARM 26.4.301(114), the definition of substantially disturb; Finding No. 4, ARM 26.4.410, concerning permit renewals; Finding Nos. 1, 2, 5a and 5d, ARM 26.4.1001 (except 26.4.1001(3)); and Finding Nos. 2, 5b, 5c, and 5d, ARM 26.4.1001A, concerning notices of intent to prospect.

With the requirement that Montana further revise its program, the Director approves, as discussed in Finding No. 5d, ARM 26.4.1001(3), concerning the procedural requirements for prospecting permits.

The Federal regulations at 30 CFR Part 926, codifying decisions concerning the Montana program, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by Section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under Sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of Section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year

on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1998.

Russell F. Price,

Acting Regional Director, Western Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 926—MONTANA

1. The authority citation for part 926 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 926.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 926.15 Approval of Montana regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * * * *
March 5, 1996	January 22, 1999	ARM 26.4.301(114); 26.4.410; 26.4.1001; and 26.4.1001A.

3. Section 926.16 is amended by adding paragraph (l) to read as follows:

§ 936.16 Required program amendments.

* * * * *

(l) By March 23, 1999, Montana shall revise ARM 26.4.1001, ARM 26.4.401, or otherwise modify its program, to provide for public notice and opportunity to comment on prospecting permit applications, regulatory authority decisions on such applications, and notice and hearing requirements on prospecting permit applications, to be no less effective than 30 CFR 772.12(c), (d), and (e), and 772.15.

[FR Doc. 99–1462 Filed 1–21–99; 8:45 am]

BILLING CODE 4310–05–M

Friday
January 22, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 17 and 52

Federal Acquisition Regulation: Option Clause Consistency; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 17 and 52

[FAR Case 98–606]

RIN 9000–AI26

Federal Acquisition Regulation; Option Clause Consistency

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to make the format of the Option to Extend Services clause consistent with the format of other FAR option clauses. The change also permits the time period for providing a preliminary notice of the Government's intent to exercise a contract option to be tailored.

DATES: Comments should be submitted on or before March 23, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98–606@gsa.gov.

Please cite FAR case 98–606 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 98–606.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the clause at FAR 52.217–8, Option to Extend Services, to permit the contracting officer to insert, in the clause, a time period for exercise of the option consistent with other option clauses at FAR 52.217–6, –7, and –9. This proposed rule also amends the clause at FAR 52.217–9, Option to Extend the Term of the Contract, to clarify that the time period for providing preliminary notice of option exercise may be tailored. The current prescription for the clause permits the use of a clause ''substantially the same as'' the clause at FAR 52.217–9. This proposed change emphasizes that 60 days is the standard number of days within which to provide notice, but the contracting officer may specify a different number of days, when appropriate. Finally, an editorial amendment is made at FAR 17.208(g).

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely amends the FAR clause pertaining to option to extend services to permit insertion of an option period within the clause, rather than in the contract schedule. The rule also clarifies existing FAR guidance pertaining to preliminary notice of the Government's intent to exercise a contract option. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98–606), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

List of Subjects in 48 CFR Parts 17 and 52

Government procurement.

Dated: January 14, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 17 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 17 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 17—SPECIAL CONTRACTING METHODS

2. Section 17.208 is amended by revising paragraph (g) to read as follows:

17.208 Solicitation provisions and contract clauses.

* * * * *

(g) The contracting officer shall insert a clause substantially the same as the clause at 52.217–9, Option to Extend the Term of the Contract, in solicitations and contracts when the inclusion of an option is appropriate (see 17.200 and 17.202) and it is necessary to include in the contract any or all of the following:

(1) A requirement that the Government shall give the contractor a preliminary written notice of its intent to extend the contract.

(2) A statement that an extension of the contract includes an extension of the option.

(3) A specified limitation on the total duration of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

2. Section 52.217–8 is amended by revising the clause date and the clause to read as follows:

52.217–8 Option to Extend Services.

* * * * *

OPTION TO EXTEND SERVICES [DATE]

The Government may require continued performance of any services within the limits and at the rates specified in the contract. These rates may be adjusted only as a result of revisions to prevailing labor rates provided by the Secretary of Labor. The option provision may be exercised more than once, but the total extension of performance hereunder shall not exceed 6 months. The Contracting Officer may exercise the option by written notice to the Contractor within [*insert the period of time within which the Contracting Officer may exercise the option*].

(End of clause)

3. Section 52.217–9 is amended by revising the clause date and paragraph (a) of the clause to read as follows:

52.217–9 Option to Extend the Term of the Contract.

* * * * *

OPTION TO EXTEND THE TERM OF THE CONTRACT [DATE]

(a) The Government may extend the term of this contract by written notice to the Contractor within [*insert the period of time within which the Contracting Officer may*

exercise the option], provided that the Government shall give the Contractor a preliminary written notice of its intent to extend at least _____ days [*60 days unless a different number of days is inserted*] before the contract expires. The preliminary notice does not commit the Government to an extension.

* * * * *

(End of clause)

[FR Doc. 99–1316 Filed 1–21–99; 8:45 am]

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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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Freedom of Information Act; implementation; published 12-23-98

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